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## Administrative Directive

### Section 1

<b>Transmittal:</b>	02 ADM 4
<b>To:</b>	Local District Commissioners
<b>Issuing Division/Office:</b>	Division of Temporary Assistance
<b>Date:</b>	May 6, 2002
<b>Subject:</b>	Food Assistance Program (FAP): Expansion of Eligibility to Certain Victims of Domestic Violence
<b>Suggested Distribution:</b>	Temporary Assistance Directors Food Stamp Directors CAP Coordinators Domestic Violence Liaisons TOP Coordinators Staff Development Coordinators
<b>Contact Person(s):</b>	Food Stamp Policy - Eastern Regional Team at 800-343-8859, extension 3-1469
<b>Attachments:</b>	None
<b>Attachment Available On – Line:</b>	<input type="checkbox"/>

### Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
98 ADM-3 97 ADM-23 97 ADM-5		18 NYCRR 358 - 1.1 358 - 2.27 and parts 387 and 388	S 4863-B as Chapter 362 Sect. 148 - b, Welfare Reform Act of 1997 SSL 95 (10)	FSSB Section V- A-6, 1 - 6.2	96 LCM 86 97 LCM 21 GIS 96 TA/DC039 GIS 97 TA/DC015 TA/DC020 TA/DC021

### Section 2

#### I. Purpose

This directive advises local social services districts (districts) that eligibility for Food Assistance Program (FAP) benefits is extended to certain eligible victims of domestic violence.

## **II. Background**

The New York State Welfare Reform Act of 1997 created a Food Assistance Program (FAP) for people who were otherwise eligible to receive federal food stamps except for the non-citizen provisions of sections 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). FAP was authorized in New York State beginning September 1, 1997. Participation in FAP is optional for local districts.

As a result of the Agricultural Research, Extension and Education Reform Act (AREERA) of 1998, most aliens who were receiving State FAP benefits became eligible for federal food stamps, effective November 1, 1998. The only group who remained potentially eligible for FAP but not for federal food stamps as of November 1, 1998 were aliens who:

- are now 60 years or older;
- on August 22, 1996, were residing in the same social services district in which the application for FAP is being made;
- were not disabled and were not 65 or older on August 22, 1996.

Chapter 362 of the Laws of 2001 extends eligibility for FAP participation to aliens who are victims of domestic violence. The determination of whether an individual is a victim of domestic violence is based on criteria used for Family Assistance households or Immigration and Naturalization Services (INS) classification as qualified aliens based on the federal battered alien criteria.

## **III. Program Implications**

Participation in FAP may increase due to the new group of potentially eligible persons.

## **IV. Required Action**

### **A. Continuation of the FAP Program**

Districts are encouraged to continue to offer FAP to aliens. Any district that wishes to begin or discontinue participation in the program must notify the Division of Temporary Assistance (DTA) in writing. Districts may start participation in FAP at any time by notifying DTA.

Districts may withdraw from participation in FAP by providing written notification to this office at least 30 days prior to terminating the program. Notice must be provided to the FAP recipients in accordance with Department Regulations.

### **B. FAP Eligibility for Certain Non-Citizens Who Are Victims of Domestic Violence**

A non-citizen who does not qualify for federal food stamp benefits, but who is a victim of domestic violence, may qualify for FAP benefits under certain circumstances. To qualify, the individual must:

- Be defined as a victim of domestic violence in accordance with Family Violence Option (FVO) procedures for identifying victims of domestic violence; or
- Be classified as a qualified alien through application of the federal provisions regarding battered spouses and dependents.

In addition to meeting the domestic violence criteria, an individual must meet all of the existing requirements of FAP eligibility. Such individuals must:

- Meet all other requirements for eligibility to receive federal food stamps except for the provisions of Section 402 of PRWORA;
- Have an immigration status in which the individual would be otherwise eligible to receive federal food stamp benefits except for the alien provisions of PRWORA, i.e., legal alien;
- On August 22, 1996, have resided in the district where the application for FAP is filed;
- Have not been absent from the country for more than 90 days within the 12-month period immediately preceding the date of the FAP application; and
- Apply for citizenship, if qualified to apply, within 30 days from the date of application for FAP.

#### C. Domestic Violence Procedures

The State standards for assessing an individual to determine if the individual is a victim of domestic violence are found in 98 ADM-3, which outlines New York State's domestic violence screening and assessment procedures. An assessment and determination by a domestic violence liaison in accordance with these procedures is sufficient to meet the FAP domestic violence criteria. Persons who meet the State domestic violence assessment criteria for FAP do not also need to be classified as battered spouses or dependents in accordance with federal criteria, which are described in section IV.D of this directive.

#### D. Federal Alien Battered Spouses and Dependents Provision

To be a qualified alien under the battered spouse and dependents criteria of Section 431 (c) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, an alien must demonstrate that:

- (1) The Immigration and Naturalization Service or the Executive Office for Immigration Review has granted a petition or application filed by or on behalf of the alien or the alien's child under one of several subsections of the Immigration and Naturalization Act (INA); and
- (2) the alien or the alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien or by a member of the spouse's or parent's family residing in the same household as the alien, but only if the spouse or parent consents to or acquiesces in such battery or cruelty and in the case of a battered child, the alien did not actively participate in the battery or cruelty; and
- (3) there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought (defined under the Federal Register, Vol. 62, No. 142, pages 39874 – 39875); and
- (4) the battered alien or child no longer resides in the same household as the abuser.

## E. District Responsibilities

Districts that participate in FAP must extend the program to this new group of potentially eligible persons. FAP districts must:

- a) provide staff with appropriate training;
- b) implement the provisions of this directive;
- c) develop and implement procedures to identify eligible clients; and
- d) as in all situations involving domestic violence victims, workers must safeguard client information to maintain client confidentiality.

Districts' procedures must ensure that eligibility workers inform individuals who do not qualify for federal food stamps and have not been found to have met the INA battered spouse and dependents criteria, but whose immigration status and residency might otherwise qualify them for FAP, that they may qualify for FAP if they are victims of domestic violence. Eligibility workers must refer an individual who so requests to the domestic violence liaison. A FAP district's domestic violence liaison must ask each individual referred to him or her for assessment to give written permission for the liaison to speak to the eligibility worker about the individual's eligibility for FAP. Eligibility workers must note, in the case record of an individual whose eligibility for FAP is based on the domestic violence liaison's assessment, the date and time of the liaison's oral statement that the individual "meets the FAP eligibility criteria in SSL 95(10)(b)(iii)(2)."

## V. Systems Implications

These cases should not be entered into the WMS DV subsystem.

## VI. Effective Date

Districts must implement the requirements of this directive beginning May 13, 2002.

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Issued By

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