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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 90 ADM-26

TO: Commissioners of
 Social Services

DIVISION: Income
 Maintenance

DATE: August 27, 1990

SUBJECT: Shelter Allowances for Public Assistance Residents of Public
 Housing Authorities (McCoy v. Perales)

 SUGGESTED

DISTRIBUTION: Public Assistance Staff
 Food Stamp Staff
 Medical Assistance Staff
 Staff Development Coordinators

CONTACT

PERSON: Public Assistance: Dottie O'Brien at 1-800-342-3715,
 extension 4-6853
 Food Stamps: Food Stamp County Representative,
 extension 4-9225

ATTACHMENTS: None.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
83 ADM-51	85 ADM-30	352.3(a)	P.L. 97-35	<u>PASB</u>	
85 ADM-30		352.3(d)	<u>McCoy v.</u>	Section	
		352.32(e)(3)	<u>Perales</u>	XIII-D-9- all	
			<u>Swift v.</u>	<u>FSSB</u>	
			<u>Toia</u>	Section	
				XI-C-5-all	

I. PURPOSE

The purpose of this administrative directive is to clarify public assistance policy regarding the impact of the stipulation in the McCoy v. Perales litigation on shelter allowances for tenants of public housing authorities. Districts were previously advised of this stipulation in 85 ADM-30 "Shelter Allowances for Certain Public Assistance Residents of Federally Subsidized Public Housing Authorities (PHA's) (McCoy v. Perales litigation)."

II. BACKGROUND

Federal Law P.L. 97-35 permitted federally subsidized public housing authorities to compute rent based on the percentage of the tenant's gross income or adjusted gross income. Prior to McCoy, Department Regulation 352.3(d) provided only that the rental allowances to tenants of public housing were a fixed amount for the household size for a rate approved by the Department for the specific housing authority.

The stipulation in McCoy requires that the Department provide rent sufficient to meet the federal income based rent charges, if these are higher than the approved rate. This higher amount would be paid up to the local district shelter maximum. That is, local districts must grant a shelter allowance to a public assistance tenant of a federally subsidized housing authority in the actual amount computed by the housing authority up to the local district shelter maximum provided for in Department Regulation 352.3(a).

III. PROGRAM IMPLICATIONS

This directive may result in some public assistance households receiving an additional shelter allowance if their rent computation by the PHA is income based. The effect of this transmittal is expected to be minimal.

IV. REQUIRED ACTION

Public assistance residents of public housing authorities are to be granted a shelter allowance based on the housing authority's rent computation if the rent is based on a percentage of gross or adjusted gross income or the approved rent schedule for the authority, whichever amount is higher.

A. Public Assistance

In determining rental allowance in federally subsidized public housing, local social services districts are required to use the following guidelines.

1. If the housing authority bases its rent charges on the public housing rent schedule, then the schedule approved by the Department for that housing authority controls the public assistance shelter allowance.
2. If the public housing rent is based on income, then local districts must authorize the amount charged to the household up to the private housing maximum.
3. If there is a mixed household, when the PA tenant is not the tenant of record and the rent is income based, the amount of rent allowed is the rent charged to the PA tenant by the NPA tenant of record with the following restrictions:
 - the rental amount can never go above the lower of either the rent charged by the PHA or the private housing maximum, and
 - the rent can never go below the approved welfare rent for that authority for that size PA household.
4. If there is a mixed household and the PA recipient is the tenant of record and the NPA person contributes to the rent, the rent contribution is subtracted from the actual amount charged by the PHA. This is in accordance with the way we budget NPA persons living in a PA household (Swift v. Toia). If this results in the rental amount being less than the public housing schedule, the lower amount is allowed. This is the only exception to the lower limits stated previously. If this results in the rental amount being higher than the private housing maximum, the maximum is allowed.

B. Food Stamps

The food stamp shelter expense amount is the total actual shelter cost which is incurred by the food stamp household.

The ongoing public assistance shelter allowances are counted as food stamp income. Any retroactive public assistance payments made to food stamp households as a result of this directive are non-recurring lump sum payments and are treated as resources in the month received.

C. Medical Assistance Implications

Medical Assistance income eligibility for ADC-related or SSI-related A/Rs is determined by comparison of income to the higher of the Public Assistance or Medical Assistance standard. For residents of public housing, shelter allowances used in arriving at the Public Assistance standard of need shall be calculated as described in Section IV.A. of this directive.

D. Systems Implications

1. WMS

a. Upstate

This policy clarification will have no effect on ABEL budgeting as ABEL currently supports shelter allowances up to the maximums provided in NYCRR 352.3(a) for Shelter Type "02 - Rent Public" situations.

In a mixed household situation where the PA tenant is not the tenant of record and rent is income based (see Section IV, A, 3 above), if the rent being charged the PA tenant is less than the approved welfare rent for that authority for that size PA household, workers should enter the approved welfare rent schedule amount for that authority in both the actual and allowable shelter fields on the PA Input Screen. This will insure that the rent allowed will not go below the approved rent schedule. If the PA household is also in receipt of FS, the actual shelter amount must be input on the FS ABEL budget.

b. NYC

This policy clarification will not affect the ABEL budget processing of calculations containing shelter type 02, (NYCHA Apartment-Utilities Included) or, shelter type 24 (NYCHA Apartment-Utilities Not Included). Workers should determine, prior to input on Household Screen NSBL02, the correct shelter amount for the situations described in Section IV.A. If the shelter amount is greater than the public housing schedule, the message A0061 "Established Shelter Standard Exceeded" is displayed upon transmittal to remind workers that the shelter amount input is greater than the public housing schedule. ABEL will continue to cap the maximum allowance for shelter type 02 and shelter type 24 at the private housing maximum.

2. MBL Implications

MBL currently supports shelter allowances up to the maximums provided in NYCRR 352.3(a) for Public Housing with Shelter Type code 02-Rent Public. The worker should enter the actual shelter amount on the MA Budget Record Screen. MBL will determine the PA Standard of Need by using the actual shelter amount if lower than the maximum shelter allowance, or will use the maximum allowance if the actual shelter amount is higher than the maximum allowance.

V. EFFECTIVE DATE

This directive is effective September 1, 1990 retroactive to October 1, 1983. This is the effective date of the McCoy stipulation and the effective date of the original McCoy transmittal, 85 ADM-30.

Oscar R. Best, Jr.
Deputy Commissioner
Division of Income Maintenance