

+-----+
 | ADMINISTRATIVE DIRECTIVE |
 +-----+

TRANSMITTAL: 90 ADM-39

TO: Commissioners of
 Social Services

DIVISION: Income
 Maintenance

DATE: October 22, 1990

SUBJECT: Revision of Public Assistance "Undue Hardship" Policy

SUGGESTED

DISTRIBUTION: Food Stamp Staff
 Public Assistance Staff
 Staff Development Coordinators

CONTACT

PERSON: Please call 1-800-342-3715 and ask for:

Public Assistance:
 John McCarthy, extension 4-9346

Food Stamps:
 County Representative, extension 4-9225

ATTACHMENTS:

Attachment A - Annotated DSS-4015 - not available
 on-line.
 Attachment B - Undue Hardship Examples -
 available on-line.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
89 ADM-21	80 ADM-39	352.31(d)(2)	106-b	PASB	ABEL
81 ADM-55	81 ADM-22	348	145	XIX-A-3	Transmittal
81 ADM-22				XIX-D-1	90-2
80 ADM-39				through D-3 MARG p. 435	

I. PURPOSE

This Directive will inform local districts of updated procedures to follow when making a determination of undue hardship when a portion of the public assistance grant is being deducted for recoupment purposes.

II. BACKGROUND

Section 402(a)(22) of the Social Security Act and 45 CFR 233.20(a)(13)(A) of federal regulations require that the state must take all reasonable steps necessary to promptly correct any overpayment. New York State Social Services Law Section 106-b requires correction of overpayments in a manner consistent with federal law and regulation. The requirement for prompt recovery is reflected in the minimum five percent recoupment contained in Department regulation 352.31(d)(2). 81 ADM-55 established guidelines for the recoupment of overpayments.

In December 1976, the New York State Court of Appeals decided in the matter of Reyes v. Dumpson and Lavine that the recoupment and/or recovery of public assistance funds must not cause undue hardship. The concept of undue hardship was added to section 106-b of the Social Services Law by Chapter 1053 of the Laws of 1981. 80 ADM-39 established guidelines for determining undue hardship. This ADM supersedes 80 ADM-39, reflects policy changes which have occurred since 80 ADM-39, updates the expenses used in undue hardship calculations and reflects the effect of the minimum five percent recoupment requirement.

III. PROGRAM IMPLICATIONS

This directive provides a more current method to follow when making undue hardship determinations and insures that an undue hardship determination will be made on the basis of individual case circumstances.

IV. REQUIRED ACTION

In order to provide the recipient with an opportunity to submit evidence supporting an undue hardship claim, the local social services district must adhere to the following procedures for all types of recoupments.

A. Identification of Reason for Recoupment

Generally, for upstate districts there are six basic types of recoupments. These are:

1. Overpayments made to a recipient through agency error (ABEL Recoupment Type 1).

2. Overpayments caused by non-intentional client error (ABEL Recoupment Type 2).
3. Advance payment for shelter, fuel, and/or utilities (ABEL Recoupment Type 3).
4. Overpayments occasioned or caused by the recipient's willful withholding of information concerning income or resources (ABEL Recoupment Type 4 - Intentional Program Violation). The term "Intentional Program Violation" generally pertains to the Food Stamp Program. For public assistance purposes, this code should only be used in cases where fraud has occurred as determined through legal proceedings or where a recipient voluntarily admits and attests that fraud has been committed.
5. Overpayments caused by IV-D payments being issued in error (ABEL Recoupment Type 5).
6. Overpayments caused when a landlord evicts a recipient and keeps the security deposit. This action may be due to either non payment of rent or client caused damages. The overpayment includes allowances which are granted for finders' or brokers' fees and/or moving expenses due to eviction (ABEL Recoupment Type 6).

The Income Maintenance worker must identify the type of recoupment action being planned and send the appropriate mandatory notice as specified in 89 ADM-21.

B. Notice of Adverse Action for Recoupment of Overpayments

Whenever any adjustment in grant is made due to the recoupment of an overpayment, the appropriate mandated notice must be annotated as follows:

1. the recoupment box must be checked;
2. the reason for the recoupment must be explained;
3. the amount and the period of time the reduced payment will be in effect must be indicated;
4. the proposed rate of recoupment must be indicated;
5. the effective date of the recoupment must be indicated;

A sample DSS-4015 notice annotated for the implementation of a recoupment is attached. It is strongly recommended that only one recoupment be implemented at a time.

C. Determining Undue Hardship

Any reduction in the public assistance grant will cause a hardship. An undue hardship occurs when a client is faced with the situation that income does not allow for enough to eat, to pay for shelter, to pay for utilities, to clothe and purchase personal incidentals for the client's children or to pay for extraordinary medical needs that are not covered by Medicaid.

It is the responsibility of the client who claims undue hardship will occur, or will become more severe, to submit verified evidence to support the claim. The worker is responsible for notifying the client, whenever a client claims undue hardship, of the kinds of documents necessary to support the claim of undue hardship. These documents would include:

1. three months of utility bills;
2. three months of fuel bills;
3. rent receipts where the amount paid exceeds the maximum shelter allowance;
4. evidence of the need to purchase items to meet a health condition as verified by a doctor or other health professional where these needs are not covered by Medicaid.

To determine whether or not a recoupment will cause undue hardship, the worker must determine the following items of expenditures:

1. Expenses

- a. Unmet Food Needs. The unmet food needs of the client are determined by deducting the value of food stamps actually received by the client from the USDA's Thrifty Food Plan by family size. The difference equals the unmet food needs for undue hardship purposes only.

Thrifty Food Plan schedule effective October 1, 1989.

1 person = \$ 99	6 people = \$472
2 people = \$182	7 people = \$521
3 people = \$260	8 people = \$596
4 people = \$331	9 people = \$671
5 people = \$393	10 people = \$746

NOTE: The Thrifty Food Plan is updated in October of each year. The most recent Thrifty Food Plan must be used in the undue hardship calculations.

- b. Shelter obligation as verified.
- c. Average of utility costs incurred for last three months.
- d. Average of fuel costs incurred for last three months.

NOTE: These amounts (a,b,c,d) should be included as items of expense whether or not they have actually been paid and whether or not they are restricted to a vendor.

- e. Clothing and personal incidentals for children at \$25.00 per month for each child.
 - f. Special Needs. Special needs are items necessary to meet a health condition as verified by a doctor or other health professional when such needs are not covered by Medicaid (e.g., air conditioner or air filter for asthmatics; necessary over-the-counter medicines or remedies).
2. Next, the worker must determine the following sources of income:
- a. Amount of public assistance grant (prior to recoupment);
 - b. Exempt or disregarded income;
 - c. All other income, including but not limited to, net applicable income, Social Security, VA, child support pass-through payments, contributions of any other individuals in the household with income (e.g., a non-legally responsible relative), and all other contributions to the PA household. SSI benefits received by non-PA household members must not be counted as income.
3. The worker must then compare the totals of both the necessary expenses and the sources of income.
- a. If the necessary expenses exceed income, recoupment at 5% must be initiated.
 - b. If the total income exceeds the total expenditures, there is a monthly average amount available and a recoupment can be applied. The worker must determine, based upon this average, how much of a recoupment can be applied. This is done by dividing the monthly average amount available by the full PA needs, (exclusive of JTPA, refrigerator rental, and occupational training allowances), to find the percentage it represents. However, in no instance can a recoupment exceed 10% or be less than 5% of the total needs.

NOTE: The case should be examined at recertification or when any change in circumstances occurs to determine if an increase or decrease of the recoupment amount is warranted.

NOTE: A recoupment may be instituted for as long as necessary to secure repayment of the overpayment or advance. However, in cases of large overpayments where the client has a valid

undue hardship claim and only a minimum 5% recoupment can be applied, the district may, if appropriate local resources exist, consider encouraging the client to relocate to less expensive housing or may provide money management services.

Attachment B contains examples of how an undue hardship determination would be made.

D. Documentation of Recoupments

1. Whenever a grant is being reduced for recoupment purposes, the following must be documented in the case record:

- a. the amount of such recoupment;
- b. the rate at which the recoupment is being applied;
- c. the effective date and period of such recoupment; and
- d. the reason for the recoupment.

This documentation can be accomplished by including a copy of the ABEL budget in the case record.

V. MEDICAL ASSISTANCE IMPLICATIONS

The undue hardship evaluation procedures described in this Directive are used only to determine the amount of a recoupment to be applied when Public Assistance has made overpayments or advance payments to an A/R. Since Medical Assistance does not provide cash benefits, recoupments are not used to recover Medical Assistance payments.

Recoveries for Medical Assistance incorrectly or correctly paid are made under limited circumstances. The Medical Assistance Reference Guide on page 435 offers a description of recoveries for Medical Assistance.

VI. ADDITIONAL INFORMATION

You are reminded that cases of alleged fraud must be processed in accordance with Section 145 of the Social Services Law and Part 348 of Department regulations.

VII. EFFECTIVE DATE

This Directive is effective November 1, 1990.

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

Example 1

Mrs. Smith, mother of three, has requested an undue hardship conference on a proposed letter of reduction she received concerning a 10% reduction in her grant due to an advance for rent to avoid eviction. She has received \$600 to pay two months rent. Her rent is \$300 per month without heat and utilities. She resides in Suffolk County and uses gas to heat her apartment. The worker elicits the following information:

Number in family	=	4	
Rent	=	\$300	Heat and Utilities not included
Utilities	=	\$ 60	(average of last three months bills)
Fuel	=	\$ 90	(average of last three months bills)
Verified Medical Expenses	=	\$ 0	
Unmet Food Needs	=	\$113	(food needs for 4 per Thrifty Food Plan (\$331) minus the value of food stamps received for 4 (\$218) = \$113)
Public Assistance Grant	=	\$733	

Worksheet

<u>Expenses</u>		<u>Income</u>	
Unmet Food Needs	\$113	Public Assistance Grant and Needs	\$733
Rent	\$300	Exempt Income	\$ 0
Utilities	\$ 60	Other Income	\$ 0
Fuel	\$ 90	Liquid Resources	\$ 0
Clothing/Personal Incidentals for three Children @ \$25/Child	\$ 75		
Verified Medical Expenses	\$ 0		
TOTAL EXPENSES	\$638	TOTAL INCOME	\$733

Income is greater than expenses by \$95. Since \$95.00 represents 13% of the \$733.00 PA needs, the worker can recoup at the maximum rate of 10% or \$73.30 per month.

Example 2

Mrs. Jones, mother of one, has requested an undue hardship conference on a proposed letter of reduction she received concerning a 10% reduction in her grant due to an advance utility allowance she received in the amount of \$400. Mrs. Jones resides in Suffolk County and pays \$275.00 per month in rent without heat and utilities. She uses gas to heat her apartment. The worker elicits the following information from Mrs. Jones:

Number in Family	=	2
Rent	=	\$275 heat and utilities not included
Utilities	=	\$ 50 (average of last three months bills)
Fuel	=	\$ 75 (average of last three months bills)
Verified Medical Expenses	=	\$ 40 month extra (Mrs. Jones shows doctor's statement requiring over the counter medicines; she also has receipts proving the amount she spends).
Unmet Food Needs	=	\$ 67 (food needs for 2 per Thrifty Food Plan (\$182) minus the value of food stamps received for 2 (\$115) = \$67)
Public Assistance Grant	=	\$549

Worksheet

<u>Expenses</u>		<u>Income</u>	
Unmet Food Needs	\$ 67	Public Assistance Grant and Needs	\$549
Rent	\$275	Exempt Income	\$ 0
Utilities	\$ 50	Other Income	\$ 0
Fuel	\$ 75	Liquid Resources	<u>\$ 0</u>
Clothing/Personal Incidentals for one Child @ \$25/Child	\$ 25		
Verified Medical Expenses	<u>\$ 40</u>		
TOTAL EXPENSES	\$532	TOTAL INCOME	\$549

Income is greater than expenses by \$17.00. Since \$17.00 represents 3.1% of the \$549.00 PA needs, the worker is limited to the minimum rate of 5% or \$27.45 per month.

Example 3

Mr. Adams, father of four, has requested an undue hardship conference on a proposed letter of reduction he received concerning a 10% reduction in his grant due to an advance for shelter expenses to avoid foreclosure. He has received \$700 to pay two months mortgage payments. His mortgage is \$350 per month. He resides in Erie County and uses oil to heat his home. The worker elicits the following information:

Number in family	=	6
Mortgage	=	\$350
Utilities	=	\$ 80 (average of last three bills)
Fuel	=	\$120 (average of last three bills)
Verified Medical Expenses	=	\$ 0
Unmet Food Needs	=	\$144 (food needs for 6 per Thrifty Food Plan \$472) minus the value of food stamps received for 6 (\$328) = \$144)
Public Assistance Grant	=	\$366
Other Income	=	\$300 (UIB)
	=	\$200 (NPA Contribution)

Worksheet

<u>Expenses</u>		<u>Income</u>
Unmet Food needs	\$144	Public Assistance Grant
Mortgage	\$350	
Utilities	\$ 80	Exempt Income
Fuel	\$120	
Clothing/Personal Incidentals for 4 Children @\$25/child	\$100	Other Income (Mr. Adams receives \$300 per month in Unemployment Insurance Benefits)
verified Medical Expenses	\$ 0	
Total Expenses	\$794	NPA Contribution
		Total Income
		(Public Assistance Needs are \$866)

Income is greater than expenses by \$72.00. Since \$72.00 represents 8.3% of the \$866.00 PA Needs, the worker may recoup at no more than 8.3% of the PA Needs or \$72.00 per month.