

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

TRANSMITTAL: 95 ADM-20

TO: Commissioners of
 Social Services

DIVISION: Economic
 Security

DATE: October 18, 1995

SUBJECT: Food Stamps: Stipulation and Order of Settlement In
Huberman, et al. v. Espy, et al.

SUGGESTED DISTRIBUTION: Food Stamp Staff
 Public Assistance Staff
 Staff Development Coordinators
 CAP Coordinators

CONTACT PERSON: Food Stamp County Representative
 at 1-800-342-3715, extension 4-9225

ATTACHMENTS: None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		387.1	7 USC	FSSB	
		387.10(a)	2014(e)	V-A-6.1(h)	
			7 CFR	XI-C-5.1	
			271.2		
			7CFR		
			273.9		
			(d)(5)(ii)		

I. PURPOSE

The purpose of this Directive is to inform social services districts of the Stipulation and Order of Settlement ("Stipulation") in Huberman et al. v. Espy et al. (hereinafter referred to as Huberman), a class action brought in the United States District Court for the Southern District of New York, on behalf of all applicants for and recipients of food stamps in New York State during the period between December 23, 1985 and August 1, 1986, whose household during that time included a person who received disability retirement benefits from a governmental agency because of a disability considered permanent under the Social Security Act.

II. BACKGROUND

The Food Security Act of 1985 amended section 5(e) of the Food Stamp Act of 1977 (7USC 2011-2032) to expand the definition of disabled persons to include those receiving disability retirement benefits from a federal, state or local governmental agency because of a disability considered permanent under the Social Security Act (hereinafter referred to as a disability retiree). A household containing a disabled member is eligible for an uncapped shelter deduction when determining food stamp eligibility and benefit levels. As a result, food stamp households containing a disabled member may have become eligible for increased benefits and certain other households not receiving food stamps may have become eligible for food stamps even though they were previously ineligible.

The issue in Huberman concerned the effective date of the provision of the Food Security Act of 1985 amending the definition of disabled persons. Plaintiffs claimed that this provision was effective December 23, 1985, the date the Food Security Act of 1985 was enacted. The United States Department of Agriculture (USDA) asserted that the provision was effective in accordance with the effective date of the implementing regulations, August 1, 1986. The United States District Court held for USDA. However, the United States Court of Appeals reversed the District Court decision and held the effective date to be the date of enactment. Although the Department was not a party to the appeal, the Department was extensively involved in negotiating a settlement having minimal impact on social services districts. It is anticipated that a small number of households will apply statewide and only a very few of those will be eligible.

III. PROGRAM IMPLICATIONS

The Stipulation in Huberman will not change current procedures as the Department has used the amended definition of disabled in accordance with the Food Security Act of 1985 since August 1, 1986.

As a result of the Stipulation in Huberman, social services districts are required to recalculate food stamp benefits utilizing the current definition of disabled for households determined to be eligible for restored benefits for the period December 23, 1985 through August 1, 1986.

IV. REQUIRED ACTION

1. NOTICE OF HUBERMAN STIPULATION:

The Stipulation in Huberman provides for notice to be given to the plaintiff class as follows:

- A. Within 30 days of the issuance of this Directive, the Department will issue a press release to specified newspapers statewide informing the public of the Huberman Stipulation. The press release will instruct households who believe that they may qualify for restored food stamp benefits under the Huberman Stipulation to contact their local Food Stamp Office if residing in New York City or their social services district if residing outside New York City for information.
- B. Within 30 days of the issuance of this Directive, the New York City Human Resources Administration (HRA) will reproduce and post the notice required by the Huberman Stipulation in conspicuous places at all Food Stamp Offices, Income Support Centers and Medicaid offices in New York City.
- C. Subsequent to the issuance of this Directive, the Department will send written notice to current New York City food stamp recipients where the information contained in the WMS/NYC computer database indicates that the recipients are coded as receiving income under code 24 (pensions/retirement benefits) and are coded as aged/disabled (indicated by an X in the aged/disabled indicator).

2. IMPLEMENTATION BY ALL SOCIAL SERVICES DISTRICTS INCLUDING NEW YORK CITY:

- A. Households who believe that they may be eligible for restored benefits under Huberman must apply to the district to have their eligibility determined.

Upon application, districts must determine the food stamp eligibility and benefit level for any household that applied for or received food stamps between December 23, 1985 and August 1, 1986 and included during that period at least one disability retiree. If the district determines a household to be eligible for restored benefits under Huberman, such benefits are to be calculated as follows:

- 1) Applicants Previously Determined Financially Ineligible for Food Stamp Benefits for the period between December 23, 1985 and August 1, 1986:

Districts must calculate the household's restored benefit amount by using the uncapped shelter deduction when calculating the household's net monthly income. The household would then be eligible for benefits commensurate with household income as recalculated reduced by any outstanding food stamp overpayment claims.

- 2) Recipients of Food Stamp Benefits for the Period Between December 23, 1985 and August 1, 1986:

Districts must recalculate the household's restored benefit in an amount equivalent to the difference between (1) the allotment of food stamps the household would have received during that period if its food stamp benefit had been calculated based on the household's net monthly food stamp income using the uncapped shelter deduction and (2) the allotment of food stamps the household actually received, reduced by any outstanding food stamp overpayment claims.

- B. Within 90 days of a household's application for review of eligibility for restored food stamp benefits under Huberman, the district must determine whether the applicant/household member was denied the benefit of the uncapped shelter deduction. If so, the district must send the household notice stating:

- (1) The months that the underpayment occurred;
- (2) The amount of the restored benefit and the date the restored benefit will be available; and
- (3) Information of hearing rights consistent with federal and State law.

Districts will extend the time to make a determination by 30 days (for a total of 120 days) if an applicant demonstrates good cause for not submitting necessary verification within the 90 day period. In New York City, households serviced at Food Stamp Centers 15, 61 and 63 may submit their requests for restored benefits by mail.

- C. Procedures for processing applications for restored food stamp benefits, including standards for verification of information, documentation and assistance to the applicant, must be in accordance with established food stamp procedures unless otherwise set forth in this Directive. Districts must assist households which request assistance in filling out applications for restored benefits and obtaining, if possible, necessary verification and documentation.

An applicant's current ineligibility for food stamp benefits does not affect eligibility for restored benefits under Huberman.

- D. In the event the district has no record of whether an applicant for restored benefits applied for or received food stamp benefits between December 23, 1985 and August 1, 1986, an applicant's statement may constitute sufficient verification, if credible, of certain elements necessary to determine eligibility and benefit level. HOWEVER, UNDER NO CIRCUMSTANCES WILL AN APPLICANT'S STATEMENT ALONE BE ACCEPTED AS PROOF OF THE THE APPLICANT'S DISABILITY STATUS, DISABILITY PAYMENTS, AND RESIDENCE DURING THE APPLICABLE PERIOD. To assess an applicant's credibility, districts may adopt any reasonable method including, but not limited to the following:

- (1) Asking the applicant to provide a written, signed and notarized statement of relevant facts;
- (2) Inquiring of the applicant as to the following information:
 - (a) the date the application was submitted;
 - (b) the center at which the application was submitted;
 - (c) the member of the household who submitted the application;
 - (d) the outcome of the application;
 - (e) whether the household submitted later applications; and
 - (f) the outcome of any later applications;
- (3) Inquiries of persons other than the applicant.

Districts are to exercise prudent judgment in evaluating an applicant's statement of the outcome of the application the person claims that the household filed between December 23, 1985 and August 1, 1986.

- E. If an applicant claims to have been adversely affected by the application of the shelter deduction cap, but the information supplied by the applicant indicates that the shelter deduction cap would not have affected the eligibility or benefit level (because reported income or shelter costs were low) such applicant will not be eligible for a restored benefit.

If an applicant/household member is determined ineligible for a restored food stamp benefit, the district must provide notice to the household within 90 days, or 120 days if additional time is provided in accordance with Part IV.2.B. above. The notice will contain information on hearing rights consistent with federal and state law.

- F. All applications for restored benefits under Huberman must be submitted within one year and five days after the notices set forth in Part IV.1.C. of this Directive are mailed. Subsequent to the mailing of the notices, the Department will notify districts of the specific date after which no more applications may be submitted.

V. SYSTEM IMPLICATIONS

Downstate

1. Downstate WMS does not support the calculation of FS issuance amounts for the period covered by the Huberman litigation. Therefore, workers will be required to process an off-line calculation to determine the correct FS issuance amount for all affected cases.

Workers should follow current HRA procedures for the issuance methodology to be used to authorize restored food stamp benefits for the affected cases.

2. Upstate

Affected cases that were budgeted on ABEL without an AGED/DISABLED indicator entry can be rebudgeted with an "X" in the indicator and an Effective Date entry within the period December 23, 1985 to August 1, 1986 to determine eligibility and the allotment to which the household was entitled (These budgets cannot be stored on WMS. Screen prints must be used for documentation of calculation of restored benefits). Separate budgets should be calculated for each month within the specified period to incorporate several policy and table amount changes that occurred at various dates during the period.

For affected households that are currently receiving Food Stamps, restored benefits are to be issued on the active case. For affected cases that have been closed within 120 days, the restored benefits can be authorized on WMS using Closed Case Maintenance procedures. For cases that have been closed more than 120 days or for households that were denied, an application must be registered and a case established (with an open/close transaction) to authorize the restored benefits.

VI. EFFECTIVE DATE

This Administrative Directive is effective October 2, 1995.

Patricia A. Stevens
Deputy Commissioner
Division of Economic Security