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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 93 ADM-13

TO: Commissioners of
 Social Services

DIVISION: Economic
 Security

DATE: June 22, 1993

SUBJECT: Public Assistance Alien Sponsor Deeming Modified by the
 Minino and Ruiz v. Perales Decision

SUGGESTED

DISTRIBUTION: Income Maintenance (IM) Staff
 Food Stamp (FS) Staff
 Medical Assistance (MA) Staff
 Staff Development Coordinators

CONTACT

PERSON: Call 1 (800) 342-3715, ask for
 ES: Charles Giambalvo, extension 4-3231
 FS: County Representative, extension 4-9225
 MA: County Representative, extension 3-7581; in
 NYC (212) 417-4853

ATTACHMENTS:

Attachment A - "Notice Language" - available on-line
 Attachment B - "DSS-548 Reverse" - not available
 on-line

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
81 ADM-55		349.3(b) 352.33 Part 351	SSL 131-k (3) and (4)	PASB Section XVI-Q-All XXI-E-2.1 XXIII-E-2.1 XXIII-E-3-all FSSB Section XII-D-1,2,3	GIS 92 IM/DC 017

1.0 PURPOSE

This ADM directs social services districts not to presume the availability of an alien sponsor's income and resources in Home Relief (HR) and PG-ADC and PG-ADC cases. This change in alien sponsor deeming requirements was mandated by the decision in Minino and Ruiz v. Perales, et al., 79 N.Y. 2d 883 (1992).

1.1 EFFECTIVE DATE

July 1, 1993, retroactive to February 18, 1992.

2.0 BACKGROUND

Federal law and regulations provide that a portion of the sponsor's income and resources must be counted as available to an alien applying for or receiving Aid to Dependent Children (ADC) for three years from the alien's date of entry into the United States. This is known as alien sponsor deeming. The New York State Social Services Law was amended to extend this requirement to the HR program.

The New York State Court of Appeals ruled that the alien sponsor deeming provision can no longer be applied to applicants or recipients (A/Rs) of the HR program because to do so is a violation of Article XVII of the New York State Constitution which requires the state and localities to care for the needy.

3.0 SUMMARY OF POLICY AND PROCEDURE

Alien sponsor income and resources can no longer be deemed to HR/PG-ADC A/Rs. However, social services districts must pursue and budget actual contributions from sponsors. A/Rs whose sponsors refuse to cooperate, or whose sponsors' whereabouts are unknown must be evaluated for eligibility for HR/PG-ADC benefits. This would include those A/Rs who were denied ADC benefits because of federal alien sponsor deeming requirements. However, A/R's who are determined eligible for an ADC grant of any amount must not be evaluated for eligibility for HR/PG-ADC benefits.

Notice language for affected A/Rs is included as Attachment A.

4.0 REQUIRED ACTIONS

4.1 Public Assistance

4.1.1 Applicants

4.1.1.1. The worker must first determine whether the applicant is exempt from alien sponsor deeming. Deeming does not apply to an applicant who is a sponsored alien in the U.S. more than three years from the date of entry, or if the applicant is:

- a) admitted as a conditional entrant refugee to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 203(a)(7) of the Immigration and Nationality Act;
- b) admitted as a refugee to the United States as a result of the application, after March 31, 1980, of the provisions of section 207(c) of the Immigration and Nationality Act;
- c) paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;
- d) granted political asylum by the Attorney General under section 208 of the Immigration and Nationality Act;
- e) a Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980;
- f) the dependent child of the sponsor or sponsor's spouse;
- g) granted lawful permanent resident status under IRCA; or
- h) permanently residing in the U.S. under color of law (PRUCOL).

4.1.1.2. If the applicant is exempt from deeming, the worker must follow normal public assistance (PA) budgeting. If the applicant is not exempt, the worker must determine the category of assistance (ADC, HR or PG-ADC).

4.1.1.3 ADC Cases

If, the applicant is categorically eligible for ADC and the sponsor provides the information necessary to deem income and resources, the worker must use current deeming budgeting methodology as detailed on the reverse of the budget worksheet (DSS-548 Attachment B). Further information on alien sponsor deeming is contained in the PA Source Book, Section XVI-Q-All.

If, using the current deeming budgeting methodology, the worker determines the applicant is eligible for any ADC grant, then the applicant is not eligible to receive HR/PG-ADC.

If the applicant is ineligible for ADC because the deemed income or resources are sufficient to meet the applicant's needs or

because the sponsor cannot be found or refuses to cooperate, the worker must determine the applicant's eligibility for HR/PG-ADC without deeming. Such applicants must be evaluated for ADC after the 3 year alien deeming period ends.

NOTE: WMS upstate has requested establishment of a new Anticipated Future Action (AFA) Code to track when the three year alien deeming period has expired. Until the new code is instituted, workers can track the three year alien deeming period by using AFA Code 999, "Other".

NYC HRA has published directions on how to control the three year alien deeming period (FAX Flash #048\921 April 22, 1992 and IS Changes May 1992).

If the sponsor actually contributes the deemed amount and it is equal to or greater than the applicant's needs, the contribution is budgeted to meet the applicant's needs and the applicant is ineligible for HR/PG-ADC.

NOTE: The ADC eligibility of non-sponsored applicants in the household is not affected by the status of the sponsored applicant.

Any adult applicant who is categorically eligible for ADC, but who will receive HR/PG-ADC because of federal alien sponsor deeming requirements, continues to be federally-related for Medical Assistance (MA) purposes.

4.1.1.4 HR/PG-ADC Cases

If the applicant is categorically eligible for HR/PG-ADC or becomes an applicant for HR/PG-ADC because of federal alien sponsor deeming requirements, the worker must treat the sponsor as a potentially available resource and determine whether actual support is available from the sponsor, sufficient to eliminate the applicant's need for public assistance. The worker must either contact the sponsor or ask the applicant to contact the sponsor to secure such support. It is the responsibility of the applicant to cooperate in this effort or to give a reasonable explanation of why this is not possible (for example, oral or physical threats by the sponsor which have been reported to the police).

If the sponsor cannot be located, refuses to cooperate or refuses to contribute or provide sufficient support, the worker must only budget the actual contribution, if any, the sponsor makes.

4.1.2 Recipients

For a recipient who currently has alien sponsor deeming income that is budgeted, whenever the worker determines that the

sponsor cannot be located or is refusing to cooperate, or that deeming makes the recipient ineligible for ADC, the worker must evaluate the recipient's HR/PG-ADC eligibility or rebudget the case if the recipient is already receiving HR/PG-ADC.

4.2 Medical Assistance

The Minino decision does not change current procedure for federally-related MA-Only A/Rs. There are no alien sponsor deeming requirements for such A/Rs. The actual contribution the sponsor makes to the A/R is used to determine eligibility.

The Minino decision does change current procedure for HR-related MA-Only A/Rs. There are now no alien sponsor deeming requirements for such A/Rs. The worker must follow the procedures outlined in section 4.1.1.4 for such A/Rs and budget the actual contribution, if any, made by the sponsor to the A/R.

4.3 Food Stamps

The Minino decision does not change current food stamp procedure (see Food Stamp Source Book XII-D-1) which deems a portion of a sponsor's income to be unearned income for the A/R's household, unless the A/R is exempt from food stamp deeming provisions (see FSSB XII-D-2 and D-3).

5.0 Systems Implications

5.1 WMS Upstate

A new individual categorical code will be added to identify an A/R receiving HR/PG-ADC because of federal alien sponsor deeming requirements as FP for MA. Workers will be notified later.

For ABEL budgeting purpose, use of Unearned Income Source Code "76-Deemed Income From a Sponsor" should be limited to ADC case types. Unearned Income Source Code "83-Contribution from a Sponsor" can be used with HR/PG-ADC case types, if applicable.

5.2 WMS NYC

A new individual categorical code will be added to identify the A/R receiving HR/HR-PG because of federal alien sponsor deeming requirements as FP for MA. Workers will be notified later.

Oscar R. Best, Jr.
Deputy Commissioner
Division of Economic Security

Notice Language

DEEMED INCOME OF ALIEN SPONSOR (USE FOR ADC ONLY)

a. Individual Sponsor

This is because in many cases a part of the income and resources of an alien sponsor must be counted against the public assistance allowance under the Aid to Dependent Children Program of the alien(s) for three years from the date the alien(s) entered the United States.

But this is not always so. Aliens not affected by the deeming requirement are those who:

1. Were admitted as a conditional entrant refugee to the U.S. under Section 203(a)(7) of the Immigration and Nationality Act (INA) prior to April 1, 1980;
2. Were admitted as a refugee to the U.S. under Section 207(c) of the INA after March 31, 1980;
3. Were paroled into the U.S. as a refugee under Section 212(d)(5) of the INA;
4. Were granted political asylum by the Attorney General under Section 208 of the INA;
5. Are Cuban and Haitian entrants as defined in section 501(e) of the Refugee Assistance Act of 1980 (P.L. 96-422);
6. Are the dependent child or spouse of the sponsor;
7. Were granted lawful permanent resident status through IRCA;
8. Are permanently residing in the U.S. under color of law-PRUCOL.

You (other names) entered the United States on _____ and the income and resources of (Sponsor's name) must be counted against the public assistance allowance under the Aid to Dependent Children Program for three years from that date. We believe you are affected by the deeming requirements.

Choose the appropriate sub-paragraph.

- a.1. The income available from your sponsor is more than the public assistance allowance.

a.2. The resources available from your sponsor are more than the public assistance resource limit. Please look at the Resource Section on the calculation page to see how we counted your resources.

b. Public or Private Organization Sponsor

This is because in most cases income available from the alien sponsor organization must be counted against the public assistance allowance under the Aid to Dependent Children Program of the alien(s) for three years from the date the alien(s) entered the United States.

This is not always so. If the sponsoring organization no longer exists or if the sponsoring organization submits to the social services agency an affidavit that they have no funds budgeted or available to meet the alien's needs the alien(s) could get public assistance under the Aid to Dependent Children Program if otherwise eligible.

You (Other names) entered the United States on _____ and we believe (Sponsor Organization) can meet your needs. We have not received any verification that they cannot.

This decision is based on Department Regulation 352.33

(ALIEN) Eligible for HR/PG-ADC-Ineligible for ADC

Your public assistance will be provided in the (insert case category) category because you are a sponsored alien in the United States less than three years and either:

- o You do not know where your sponsor is, or;
- o Your sponsor will not give you the income or resource information that we need; or,
- o Your sponsor was deemed to be able to meet your full needs but is not contributing some or all of that money.

The sponsor agreed to help with your support for three years from (date), the date you came to this country. Sponsored aliens, whose sponsors are deemed to be able to meet the aliens full needs, cannot get public assistance in the Aid to Dependent Children (ADC) category.

You may be able to get ADC after your have been in this country three years, or before then, if we decide that your sponsor is deemed unable to meet your full needs.

This decision is based on Department Regulation 352.33.