

Subject of this

Informal Opinion: Whether verification of sponsor's income and resources is needed to determine indigency.

To: Ed Mars, WRO
From: Arianne Steed, CBP
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Summary

The State agency is not required to verify a sponsor's income or resources when determining if a sponsored immigrant meets the indigence exception. The State agency may estimate the cash or in-kind assistance received to determine whether the immigrant is indigent. If the immigrant is indigent, the State agency would count the amount of cash support received from the sponsor in addition to any other household income.

The client remains indigent even if the secondary SAVE returns with sponsor's information within the certification period. Each indigence determination is effective for 12 months from the date of eligibility and may be renewed for an additional 12 months. The State agency must also notify the U.S. Citizenship and Immigration Services of each indigence determination, including the names of the sponsor and the sponsored immigrant involved.

If the immigrant is not indigent and sponsor deeming applies, then the State agency must verify the total amount of the sponsor's income and resources to determine program eligibility and benefit amount.

Authority

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104 – 193) – Section 423

Final regulations published by FNS on November 21, 2000 – “Food Stamp Program:

Noncitizen Eligibility, and Certification Provisions (NCEP) of Pub. L. 104-193 as Amended by

Public Laws 104-208, 105-33 and 105-185” (65 FR 70134-70212).

Food and Nutrition Service - Eligibility Determination Guidance: Non-Citizen Requirement in the Food Stamp Program at:

http://www.fns.usda.gov/fsp/rules/Legislation/pdfs/Non_Citizen_Guidance.pdf

Federal Regulations

7 CFR 273.4(c)(3)(iv)

Background

The California State agency submitted an all county information notice indicating that it is necessary to examine sponsor’s income and resources in order to determine indigency.

State’s Analysis

California maintains that the State may not simply accept a non-citizen’s verbal confirmation of indigency. To the contrary, the State asserts that it must make a determination of indigency. Although non-citizens exempt from deeming are not required to provide information about the sponsor’s income and resources, in the case of an indigence exemption, indigence must be determined first using the sponsor’s income and resources. In order for the State to determine indigence, the State agency asserts that it must know if the non-citizen is unable to obtain food and shelter taking into account the non-citizen's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s). The phrase “is unable to obtain food and shelter” means that the sum of the eligible sponsored non-citizen's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind

assistance the sponsor and others provide, does not exceed 130 percent of the poverty income guideline for the household's size.

Region's Analysis

MWRO was unable to find any clear guidance in the regulations on how to determine indigency. However, based on the below excerpts from the November 11, 2001 Non-citizen Eligibility and Certification Provisions (NCEP) rule, it appears that States may establish their own standards for determining indigency. With regard to whether the State's indigency determination standards can require the non-citizen to provide information about the sponsor's income and resources remains unclear. The regulations at 7 CFR 273.4(c)(3)(iv) refer to an "indigent non-citizen that the State agency has determined is unable to obtain food and shelter taking into account the non-citizen's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s)". This would suggest that the State would need to know what assistance has been provided by the sponsor. What is unclear is whether this information can be obtained without asking about the sponsor's income and resources.

Question #1

May a sponsored immigrant who is unable to provide sponsor information self-declare that he or she is indigent and therefore exempt from deeming?

Response #1

Yes. The client may self-declare that he or she is not being supported by the sponsor. The final NCEP rule at 65 FR 70136 under the title "Determination of Indigence" states "Under the final rule, an eligible sponsored alien is indigent if the sum of all the sponsored alien's household's income and any assistance the sponsor or others provide (cash or in-kind) is less than or equal to 130 percent of the poverty income guideline. To comply with the statute, and unlike a normal determination

of income for food stamp eligibility purposes, the indigence determination includes an **estimation** (emphasis added) of the value of in-kind assistance the sponsor and others provide.”

If the client states he or she is not receiving any cash or in-kind assistance from the sponsor, then there is nothing to estimate except the sponsored immigrant household’s income and any other income received from others when determining indigency. The State agency does not need to verify from the sponsor that he or she is not providing cash or in-kind assistance. Requiring such verification would create a barrier to program access, particularly in cases when the sponsor cannot be located. Even in situations where the sponsor can be located, it is highly unlikely that the sponsor would provide verification of failure to support an immigrant when the sponsor signed a legally binding affidavit of support.

Page 70136 of the final rule also estimated the burden on the household would not change, and the burden to the State agency “to be approximately 10 minutes for collecting additional information to determine the value of in-kind assistance provided by the sponsor and/or others and to determine the indigence of the applicant household.” If a State agency were to pend the case for verification of the sponsor’s income and resources, this would clearly take longer than 10 minutes.

Question #2

In the process of the State determining indigency, may the State require the sponsored non-citizen to provide information about the sponsor’s income and resources?

Response #2

No. A sponsored non-citizen’s eligibility for indigence exemption from deeming should not depend upon the receipt of verification of sponsor’s income and resources. This action would render the indigence exemption meaningless and would be inconsistent with the intent of rule.

The preamble of the final rule at 65 FR 70168 discusses at length commenters' suggestions that FNS establish national standards for State agency use in making determinations of indigence. Consequently, FNS determined it had the authority to mandate such standards and adopted the suggestion. Page 70168 provides: "If the sponsored alien is indigent, then the normal food stamp budgeting process would begin. The State agency would count in the food stamp budget whatever actual cash contributions the sponsor and others make. The Department believes the procedure for determining indigence would work as follows:

- A. The eligibility worker (EW) would inquire about sponsored alien status if an alien is a LPR.
- B. If the LPR is an eligible sponsored alien, then the EW would make an indigence determination.
- C. If the alien is indigent, then the EW processes the case as normal, counting only the actual amount of cash support from the sponsor. If the alien is not indigent, then the EW would require the sponsored alien to collect information on the total amount of the sponsor's income and assets and deem appropriate amounts to establish eligibility and benefit amount."

Although immigrants who are exempt from sponsor deeming do not need to provide information about the sponsor's income and resources, if the immigrant receives cash contributions from the sponsor, that the amount of cash given should be verified in the month of application. This would comport with the provisions at 7 CFR 273.4(c)(3)(iv) and the rules on verification of income and ensure the benefit amount is correct.

If the immigrant is not indigent, then sponsor deeming applies and the State agency must verify the sponsor's total income and resources.