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Brian J. Wing
Commissioner

INFORMATIONAL LETTER

TRANSMITTAL: 00 INF-18

DIVISION: Temporary Assistance

TO: Commissioners of
Social Services

DATE: September 20, 2000

SUBJECT: Clarification of the Relationship between the
Standard Utility Allowance (SUA) and Receipt of HEAP

SUGGESTED

DISTRIBUTION: Temporary Assistance and Food Stamp Staff
Staff Development Coordinators
CAP Coordinators
HEAP Liaisons

CONTACT PERSON: ODA Eastern Team at 1-800-343-8859, ext. 3-1469

ATTACHMENTS: I - ABEL FS SUA Table (10/1/00)
II - SUA Questions and Answers
III - Attestation of Intent to Apply for HEAP
(All available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
92 ADM-47		387.12(f)(3) (v)	CFR 273.9(d)(6)	FSSB XI-D-ALL v.3.1 to 3.2	GIS 00 TA/WMS12 98 TA/DC002 96 TA/DC051 ABEL TRANS. 00-2 USDA NERO Reg. Ltrs 92-50,99-09

OTDA-329EL (Rev. 11/98)

"providing temporary assistance for permanent change"

The purpose of this Informational Letter is to provide clarification regarding the policy relationship between receipt of Home Energy Assistance Program (HEAP) payments and receipt of a Food Stamp (FS) Heating/Cooling Standard Utility Allowance (HT/AC SUA).

BACKGROUND

Section 2605(f)(2) of the Low Income Home Energy Assistance Act of 1981 (42 U.S.C. 8624(f)) provides that for purposes of determining any excess shelter expense deduction under section 5(e) of the Food Stamp Act of 1977 the full amount of energy assistance payments or allowances shall be deemed to be expended by such household for heating or cooling expenses. Section 5(e) of the Food Stamp Act of 1977 states "...the standard utility allowance shall be made available to households receiving a payment, or on behalf of which a payment is made, under the Low-Income Home Energy Assistance Act of 1981 ...". Prior to 1992 New York State did not allow use of the SUA for FS households based solely on receipt of a HEAP payment. In June of 1992, USDA released Regional Letter 92-50 providing extensive clarification on using LIHEAA (Low-Income Home Energy Assistance Act) payments as a basis for granting the FS SUA. In that correspondence USDA established that the SUA should be granted based not only on literal receipt of a LIHEAA payment, but also on "reasonable anticipation of receipt". USDA has consistently maintained this position since that time and even reiterated it in Regional Letter 99-09. From 1992 until 1996, New York State aligned its HEAP program and Food Stamp policy by making automatic HEAP payments to all PA and FS households residing in HEAP eligible residences. This ensured that it was reasonable to anticipate that those households would receive a HEAP payment and were therefore entitled to the FS HT/AC SUA.

Due to funding cuts in HEAP, beginning in 1996 the automatic payments were limited to only those households containing a vulnerable individual. This ended the ability to reasonably anticipate a payment based solely on the PA or FS household's type of shelter and thus ended the ability to automatically give all households in HEAP eligible residences the FS HT/AC SUA.

Currently, households residing in HEAP eligible shelter situations with their heat included in their rent are given the HT/AC SUA only upon verification of receipt of HEAP or incurrence of air conditioning costs. Once such a household has been authorized a HEAP payment, they are granted the SUA for 12 months. Provided they continue to reside in the same (or another HEAP eligible) residence, they are also included in the next year's HEAP automatic payment, thereby continuing their SUA. However, nearly one percent of the Upstate FS error rate is attributable to misapplication of the policy association between receipt of HEAP and the FS HT/AC SUA. In an attempt to improve application of the current policy, WMS case processing edits were changed effective 05/22/00 so that authorization of a HEAP payment first requires that the HT/AC SUA is granted in the FS ABEL (Automated Budgeting and Eligibility Logic) budget for the case (see 4/26/00 WMS Coordinator, Attachment I, #8 on page 4).

REINTERPRETATION OF EXISTING POLICY and NECESSARY ACTION

Consistent with a clarification of existing USDA policy, effective October 1, 2000 Local Districts must grant the FS HT/AC SUA based upon reasonable anticipation that a household will be in receipt of HEAP within 12 months. It is expected that this change in practice will simplify application of correct policy, help reduce the upstate FS error rate, and increase FS benefits to NY residents.

Since USDA has been consistent in their broader interpretation of how to define "receipt" of LIHEAA payments, New York recently initiated correspondence with USDA to obtain a better understanding of what is required to establish 'reasonable anticipation of receipt'. There are four criteria that must be satisfied on an individual household basis in order to provide a SUA based on the reasonable anticipation of receipt of a HEAP payment:

- * The household will receive automatically, or indicates its intention to apply for, HEAP within 12 months;
- * The State anticipates that HEAP funds will be available within 12 months;
- * The household is categorically (income) eligible for HEAP; and
- * The household resides in a HEAP-eligible living situation.

It was determined that existing conditions in New York allowed for all but one of the criteria to be ascertained - that of the household's intention to apply for HEAP if not in receipt of an automatic payment. In order to facilitate households in expressing the intent to apply for HEAP and to establish reasonable anticipation, we are revising the initial and recertification applications to include the following language:

"I understand that Public Assistance and Food Stamp recipients are categorically income eligible for the Home Energy Assistance Programs (HEAP). If I am not included in the annual automatic HEAP payment process for certain PA and FS recipients, I intend to apply for a benefit within the next 12 months. If I decide not to apply for HEAP within the next 12 months I will let my worker know."

The applicant's signature on the application, will document on an individual case basis, their intention to apply for HEAP within the next 12 months (if not included in the automatic payment). Since Congress advance-appropriates LIHEAA funding a year prior to the program year, the State can anticipate the availability of funding. Because Food Stamp recipients are categorically (income) eligible for HEAP, the change will allow the ABEL subsystem to implement strong edits enforcing the proper SUA determination based on the recipient's shelter type code.

MODIFICATIONS AND TIMEFRAMES

Households that incur separate heating/cooling expenses or have actually literally received a HEAP payment continue to be granted a HT/AC SUA on that basis and do not need to express intent to apply for HEAP. For other HEAP eligible households, until districts receive the revised application and recertification forms, districts should reproduce Attachment III locally and request applicant/recipient households that do not incur separate

heating/cooling expenses to sign the attestation. The signed attestation will be retained in the case record. If an applicant/recipient states that they do not want to apply for HEAP, the worker should note this on the attestation and file the annotated form in the case record. When modified application and recertification applications are available, there is no need to specifically discuss this statement with the applicant/recipient unless they express some objection to it. If the household volunteers a statement that they do NOT want to apply for HEAP, the worker should cross this language out on the form and make a notation that the household does not want to apply for HEAP. This refusal should be reaffirmed at each recertification if the household maintains that position. Such households may be listed as exceptions in future HEAP MRB/A auto-payment actions even if normally they would have been automatically authorized a HEAP payment. In the absence of any stated objections it is assumed the applicant/recipient has read the attestation and by signing is expressing its intent to apply for HEAP as stated.

DOWNSTATE WMS / ABEL Implications - NYC ABEL currently already performs a determination of SUA based upon the household's type of residence and will not require any changes.

UPSTATE WMS / ABEL Implications - ABEL logic for FS budgets was changed August 14, 2000 for budget Effective FROM dates of October 1, 2000 and beyond. Edits will require that heat included, HEAP eligible households with shelter expenses be provided with an appropriate HT/AC SUA, unless the household indicates they refuse to apply for HEAP. In most instances, the worker must enter an "X" in the HT/AC IND to budget the SUA. If the household refuses to apply for HEAP the worker must enter a new HT/AC Indicator code of "R" that will result in FS budgeting without the SUA. Districts are reminded as mentioned in GIS Message 2000 TA/WMS 012 that receipt of any type or amount of HEAP payment qualifies a household to receive the HT/AC SUA for one year. This includes Emergency HEAP payments made to households residing in shelter types 01, 03, 05, or 20 which have \$0 shelter costs, or shelter types 02 - Rent Public, 38 - Subsidized Housing, 39 - HUD Certificate Program, without earnings, or 40 - HUD Certificate Program With Earnings which have a Fuel Type of "0 - Heat Included in Shelter Costs". To provide a FS HT/AC SUA to these cases, the FS budget HT/AC IND entry must be equal to 'H', 'I', or '2 - 9' and a SUA End Date must also be entered. For budget Effective FROM dates of October 1, 2000 and later these cases will be the only legitimate use of the "H" HT/AC Indicator and SUA End Date. Please see ABEL Transmittal 00-2 for more details.

ADDITIONAL INFORMATION

Special circumstances with regard to surplus HEAP funds this year have resulted in virtually all eligible PA and FS recipients actually receiving HEAP. In particular, the most recent HEAP auto-pay in July was directed to all HEAP eligible households that had not yet received a HEAP payment during the current program year. Due to this factor, the existing practice of granting the SUA based on documented receipt of HEAP should result in the SUA being already budgeted for virtually all HEAP eligible households. As each HEAP auto-pay was processed, WMS produced lists of cases identified as in need of having the SUA rebudgeted based on HEAP receipt. Please see GIS Message 2000 TA/WMS 012.

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A handwritten signature in black ink, appearing to read "Patricia A. Stevens", written over a horizontal line.

Patricia A. Stevens
Deputy Commissioner
Division of Temporary Assistance

FOOD STAMPS STANDARD UTILITY ALLOWANCE (SUA) TABLE (10/1/00)
(REVISED 9/15/00)

LIVING SITUATION	BASIS FOR SUA	INDICATOR(S) ALLOWED FOR CASE				SUA DATE
		HT/AC	UTIL	PHONE		
01 03 05 20 02 38 39 40	1-9 INCUR HEAT COST	X I 2-9	BLANK	BLANK	BLANK	BLANK
01 03 05 20	0 INCUR AIR CONDITIONING COST OR ANTICIPATE RECEIPT OF HEAP (EXCEPT CASES WITH SHELTER AMOUNT = 0; SEE BELOW)	X I 2-9	BLANK	BLANK	BLANK	BLANK
01 03 05 20	0 HOUSEHOLD REFUSES HEAP (HH SHELTER AMOUNT MUST BE GREATER THAN ZERO)	R	X I A N 2-9	X I A N 2-9	OR BLANK	BLANK
01 03 05 20	ELIGIBLE FOR EMERGENCY HEAP	X I 2-9	X A N 2-9	X A N 2-9	OR BLANK	MMTY
01 03 05 20	SHLT AMT = 0 INCUR AIR CONDITIONING COST	X I 2-9	BLANK	BLANK	BLANK	9999 OR BLANK
02 38 39 40	0 NO HT/AC COST OR HE INCURS AN EXCESS CHARGE (UTILITY OR PHONE EXPENSE MAY BE INCURRED)	A N	X I A N 2-9	X I A N 2-9	OR	BLANK
01 02 03 20 02 38 39 40	INCUR AIR CONDITIONING COST OR IN A TA CASE SHARE HEATING COST WITH THE TENANT OF RECORD A THIRD PARTY OUTSIDE THE DWELLING PAYS THE HEATING BILL DIRECTLY TO THE VENDOR OR THE HOUSEHOLD FAILS TO VERIFY INCURRED HT/AC COST (UTILITY OR PHONE EXPENSES MAY BE INCURRED)	X I 2-9	BLANK	BLANK	BLANK	BLANK
11	BLANK Not HEAP eligible - Phone indicator denotes whether HEAP ineligible landlord charges a phone line fee.	N	N	X A N 2-9		BLANK
17	BLANK Not HEAP eligible - INCUR HEAT OR AC COST NO HT/AC COST OR HE INCURS AN EXCESS CHARGE (UTILITY OR PHONE EXPENSE MAY BE INCURRED)	X I 2-9	BLANK	BLANK	BLANK	BLANK
06 07 19 21 22 33 36 37	BLANK Not HEAP eligible - Phone indicator denotes whether landlord (or hotel, motel, or shelter operator) charges a phone line fee.	A OR N	X I A N 2-9	X I A N 2-9		BLANK
10 12 13 15 16 23	BLANK Not HEAP eligible. No SUA related expenses can be incurred.	N OR BLANK	N OR BLANK	N OR BLANK	N OR BLANK	BLANK

SUA Questions and Answers

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1. **Question:** Under the policy effective October 1, 2000, what entries do workers need to make on ABEL to grant the SUA?

Response: In most instances, whether the SUA is based on actual heating/cooling expenses or receipt of HEAP (actual or anticipated), workers will enter a HT/AC IND of "X", "I" or " 2-9" depending on the need for proration (Please see the SUA Table transmitted with ABEL Transmittal 00-2 and also included with this INF as Attachment I).

2. **Question:** What entries do workers make to budget a case without the HT/AC SUA?

Response: For HEAP eligible living situations (shelter codes 01, 03, 05, 20 with shelter expenses) HT/AC IND "N" will no longer be accepted. Workers must budget such households with the HT/AC SUA unless the household has informed the agency they do not intend to apply for HEAP. When such a household will not express intent to apply for HEAP, the worker must use HT/AC IND "R" to budget the case without the SUA. For HEAP ineligible living situations, workers may continue using HT/AC IND "N" to budget the case without a SUA.

3. **Question:** Do workers still need to calculate and enter a SUA End Date (SUA DATE) along with a HT/AC IND of "H" when the SUA is granted on the basis of HEAP receipt?

Response: Generally, no. With limited exception (see next question) the actual receipt of HEAP, or reasonable anticipation of HEAP receipt, will be renewed at least annually due to scheduled recertifications. There is no need to track the 12 specific months for budgets with Effective FROM dates of 10/01/00 or later. In fact, entry of a HT/AC IND of "H" with a SUA End Date will no longer be valid under most circumstances and will error out. (This makes several of the following questions & answers regarding the 12 month SUA eligibility period mute for future FS budgeting, with limited exception.) However, for the period from February 1, 1997 through September 30, 2000 it was necessary to track the 12 months (using the ABEL SUA DATE field) for households entitled to the SUA solely on the basis they had actually been authorized to receive HEAP.

4. **Question:** Tenants who have no shelter expenses (\$0 shelter on ABEL), or who reside in public or subsidized housing (shelter codes 02, 38, 39, and 40), are not eligible to receive regular HEAP benefits unless they directly pay an energy supplier for heat. Does this mean these households cannot receive the HT/AC SUA?

Response: Not necessarily. Such households may, in exceptional circumstances involving heat related utility emergencies, be authorized to receive an Emergency HEAP benefit, and they would then be eligible for the HT/AC SUA for 12 months. However, under the "reasonable anticipation of HEAP receipt" practice, these households would not be expected to receive HEAP again. Consequently, these circumstances are the only budgets requiring entry of a SUA End Date (SUA DATE) on ABEL. (Please see ABEL Transmittal 00-2, Information #2: HT/AC SUA Eligibility Revisions.)

5. Question: When eligibility for a SUA is based on the authorization of HEAP, does it continue until the end of the current HEAP year, or 12 months from the authorization of HEAP?

Response: A household is eligible for a SUA for 12 months following the month of HEAP authorization. This is true even if the household moves provided the household continues to live in a HEAP eligible shelter type.

6. Question: How is the 12 month period of SUA eligibility based on HEAP calculated?

Response: The 12 month period is calculated from the month the HEAP benefit is authorized. For example, if a household is authorized to receive HEAP in January, 1999, the household would be eligible for a SUA from February 1, 1999 until January 31, 2000. In this example, the SUA eligibility begins in February because the HEAP authorization in January is a change in circumstances and thus reflected in the following month's benefit calculation. Normal processing timeframes apply, meaning the district generally has ten days to effect the change. For example, if the household was authorized to receive HEAP on January 22, the first month of HT/AC SUA eligibility would be March because there was not sufficient time to change benefits for February. In this circumstance the 12 month period of SUA eligibility would be from March 1, 1999 through February 29, 2000.

7. Question: What if the district didn't update the FS Budget to grant the SUA until April even though HEAP was authorized January 2, 1999?

Response: This would mean there had been an underpayment for February and March and the district should issue a Restored Food Stamp benefit (Payment Type 95) to correct the situation.

8. Question: What happens if we give the HT/AC SUA based on reasonable anticipation of HEAP receipt and the household subsequently fails to apply for and receive HEAP? Has there been an overpayment? Is the district liable for a FS QC error? Is there any penalty to the household? Is the household barred from again receiving the HT/AC SUA based on reasonable anticipation?

Response: Eligibility for the HT/AC SUA continues as long as there is reasonable anticipation of receipt of HEAP. Other criteria remaining constant, unless the household has contacted the agency and specifically rescinded its expressed intent to apply for HEAP, the reasonable anticipation continues and there is no overpayment or FS Quality Control error. As clarified in USDA NERO Regional Letter 99-09: "If the household anticipates receipt of LIHEEA benefits this year and appears to be eligible, the Eligibility Worker should allow the use of the SUA even if the household said it was going to apply for LIHEEA benefits last year but did not." Therefore, there is no penalty to the household and they are not barred from again receiving the HT/AC SUA based on reasonable anticipation of HEAP receipt.

9. Question: What do we do if a recipient household (one without separate heating/cooling expenses and not included in the HEAP auto-pay) DOES notify the LSSD during the certification period the household has subsequently decided NOT to apply for HEAP?

Response: In the absence of any other basis for granting the HT/AC SUA, the worker must document the household's decision in the case record and rebudget the Food Stamps without the HT/AC SUA. The normal processing timeframes would apply to the change. The agency would be allowed 10 days to act on the notification and must (unless notified as part of the recertification) provide a 10 day notice of adverse action. For example, if the household notified the agency of their decision on April 11, 2001 the agency would have to change the benefits for the June 2001 issuance month. If the agency fails to act in a timely manner on the household's notification of its decision not to apply for HEAP, there would be an overpayment error. The household's decision not to apply for HEAP would need to be reaffirmed at each recertification as the recertification application will contain a statement of intention to apply for HEAP if not included in the HEAP automatic payment process.

10. Question: When addressing "Ineligible Living Situations" the HEAP Manual on pages 14 and 15 makes a distinction between two types of subsidized housing. It describes "Deep Subsidy Housing Programs" as including traditional public housing and Section 8 rent subsidies - either certificate or voucher programs. A second type is referred to as "Shallow Subsidy Housing Programs" under Sections 202 or 206 where project owners receive subsidies in the form of mortgage guarantees at the time of construction, and tenants derive little or no benefit. For HEAP purposes it is noted that a resident of a shallow subsidy housing project is not considered government subsidized and may be HEAP eligible unless they are also benefiting from one of the other "deep subsidy" programs. Is the interpretation of subsidized housing the same for Food Stamps?

Response: Yes, subsidized housing is housing funded by Public Housing authorities such as traditional public housing and HUD or Section 8 rent subsidies - either certificate or voucher programs. These living situations would be coded on ABEL using shelter type codes 02, 38, 39, or 40. This does not include "Shallow Subsidy Housing Programs" as described above nor church affiliated apartment buildings where everyone pays the same rent and the admittance criteria is "low income". These households are more properly coded as shelter code 01 - Private Rent.

11. Question: A PA applicant lives with a non-PA friend who is the fuel tenant of record. The PA applicant states he pays his non-PA friend an amount for rent which includes heating costs. For food stamps, the PA and non-PA friends are determined to share fuel costs. How do you provide the PA applicant an HT/AC SUA on ABEL?

Response: The PA budget should have a Fuel Type of "X - No Fuel Allowed". The PA/FS household is entitled to a prorated HT/AC SUA. A "2" is entered in the HT/AC IND field.

12. Question: A family is residing in a private rent apartment complex. Heat is included in the rent but utilities are not. What utility allowance is the family eligible for?

Response: Under normal circumstances, where the family will either be authorized an automatic HEAP payment or incurs a shelter expense and expresses an intent to apply for HEAP, the household should be budgeted with the HT/AC SUA. If the household will not be authorized an automatic HEAP payment, does not incur shelter expenses or refuses to express an intent to apply for HEAP, the family is eligible for a non-heating Utility allowance, (utility and phone allowances combined if client has a verified utility expense).

13. Question: Both GIS Message 2000 TA/DC006 and a WMS/BICS Coordinator Letter dated July 27, 2000 state that PA/FS and NPA-FS households that receive a HEAP payment are automatically entitled to a "full" Standard Utility Allowance (SUA) in the calculation of their FS benefit. Does this mean the SUA does not have to be prorated for households which reside in "shared living" situations or contain "ineligible individuals"?

Response: No. Households with "shared living situations" or "ineligible individuals" must still have the SUA prorated appropriately using a HT/AC indicator of "2-9" or "I". The intent of the statement was to explain that households are entitled to use of the highest SUA available, i.e. the HT/AC SUA, as opposed to the lesser non-heating Utility or Phone allowances.

14. Question: We have a client who is self-employed and documents with his tax returns that 25% of his home is used for his business. Should the HT/AC SUA be prorated?

Response: Local districts must either allow the heating/cooling business expenses as a deduction against the income and prorate the SUA, OR disallow the heating/cooling business expenses and grant the full SUA. Districts cannot both allow the heating/cooling business expenses AND grant the full SUA as to do so would at least partially duplicate a deduction against income. Districts may wish to compare the methods and offer the household the one that provides the most benefit.

Attestation of Intent to Apply for HEAP

"I understand that Public Assistance and Food Stamp recipients are categorically income eligible for the Home Energy Assistance Programs (HEAP). If I am not included in the annual automatic HEAP payment process for certain PA and FS recipients, I intend to apply for a benefit within the next 12 months. If I decide not to apply for HEAP within the next 12 months I will let my worker know."

Signed,

Signature:

Date:

Worker:
