

August 5, 2005

Subject: Maine's Request to Allow Residents of "Waiver Homes"
To Qualify for Food Stamp Benefits

To: Mary Ann Ferris, Regional Director
Food Stamp Program
Northeast Region

This is in reply to Frances E. Zorn's April 27, 2005, memorandum to Deputy Administrator Carter concerning the potential eligibility for food stamp benefits of residents of facilities approved for operation under the State's Medicaid Section 1915(c) Home and Community Based Services waiver ("waiver homes"). The memorandum transmitted a waiver request from the Maine State Agency to waive 7 CFR 273.11(f) to allow residents of such facilities to participate in the Food Stamp Program if otherwise eligible. The issue arose because residents of the "waiver homes" pay for and receive meals as part of the normal services provided.

After reviewing the material the State agency provided and after further discussion with your office, we have determined that a waiver of the regulations is not necessary. The regulations at 7 CFR 271.2 "group living arrangement (GLA)" allow certification of GLA status under Section 1616(e) of the Social Security Act or under standards comparable to the 1616(e) requirements. In as much as the State agency has represented to us that the certification requirements for the GLAs and "waiver homes" are indistinguishable and the population served is essentially the same, the "waiver homes" meet the GLA definition. Based on information provided by your office, "waiver homes" with three or more beds are licensed and satisfy the regulatory criteria in the regulations. Since the "waiver homes" with three or more beds do qualify as a GLA, the residents of these "waiver homes" are entitled to have their eligibility for food stamp benefits evaluated because they satisfy one of the exemptions to institutional ineligibility found at 7 CFR 273.1(b)(7)(vii).

The Maine State Agency has stated that one and two bed "waiver homes" are not formally licensed as GLAs by its Office of Elder Services although they do satisfy the same criteria as the three and above bed "waiver homes" that are licensed. If the Office of Elder Services will certify in writing that the one and two bed "waiver homes" do in fact satisfy the same licensing criteria as the licensed three or more bed "waiver homes," the residents of these unlicensed one and two bed "waiver homes" may have their eligibility for food stamps evaluated.

Our above response is limited in its application to the Maine State Agency only, since it is based on the specific circumstances peculiar to the State of Maine. Eligibility of residents of "waiver homes" in other States must be examined on a case by case basis. We do note that in most other States, residents of "waiver homes" do not come under the "residents of institutions ban" because meals are not provided as part of the normal services provided to residents.

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

If you have any questions, please contact Joe Shea of my staff at 703-305-2513.

/s/

Arthur T. Foley
Director
Program Development Division