



Food and
Nutrition
Service

Park Office
Center

3101 Park
Center Drive
Alexandria
VA 22302

JUN 26 2015

SUBJECT: Supplemental Nutrition Assistance Program – Able-Bodied Adults without Dependents (ABAWD) Questions and Answers – June 2015

TO: All Regional Directors
Supplemental Nutrition Assistance Program

Section 6(o) of the Food and Nutrition Act of 2008 limits able-bodied adults without dependents (ABAWD) eligibility for the Supplemental Nutrition Assistance Program (SNAP) to 3 months in any 36-month period, unless the individual meets the ABAWD work requirement or is otherwise exempt. The Food and Nutrition Service is providing the attached guidance in response to recent questions from State agencies concerning ABAWD policy.

Please distribute the attached questions and answers to your respective States and contact Casey McConnell at casey.mcconnell@fns.usda.gov with any additional inquiries.

Lizbeth Silberman
Director
Program Development Division

Attachment

- 1. A Supplemental Nutrition Assistance Program (SNAP) household consists of a mother age 40 and son age 17. At the time of certification, both members are exempt from the SNAP able-bodied adults without dependents (ABAWD) time limit solely because the son is under 18. Neither household member is unfit for work, pregnant, or meets exemption from the general SNAP work requirements under 7 CFR 273.7(b). The State agency assigns the household a 12-month certification period under simplified reporting. Therefore, the only mid-period (outside the periodic report and recertification) reporting requirements are that the household must report if its income exceeds the gross income limit for its size, and for an ABAWD to report when his or her work hours fall below 20 hours per week. The household is not required to report when a minor becomes an adult. In this example, the case is certified in April and the son turns 18 in June. When the son turns 18, both he and his mother become ABAWDs and are subject to the time limit, but the periodic report is not due until September. When the case is reviewed in September, the State discovers that both the mother and the son are ABAWDs and have been since July 1, yet the State has not properly informed the household of the ABAWD work requirement and time limit. Since July, August, and September would be 3 countable months, would the State close the case effective October? What can States do to avoid a situation like this?**

If neither the mother nor the son is fulfilling the ABAWD work requirement or otherwise exempt¹ from the time limit, both would become subject to the time limit when the son turns 18 and both would accrue their 1st countable month² for July. Simplified reporting does not allow the State agency to ignore the statutory time limit for ABAWDs. While simplified reporting does not require the household to report the son's 18th birthday mid-period, the projected change is already known to the State agency at certification. Unless the mother and son report and verify that they have begun fulfilling the ABAWD work requirement, report a change that qualifies them for exemption from the time limit, are granted individual 15 percent exemptions by the State agency, or are covered by waiver of the time limit, both the mother and son would enter their 3rd countable month in September and the State must send an adequate notice of adverse action (NOAA). However, the Food and Nutrition Service (FNS) strongly advises State agencies to consider the following policy options and best practices in order to avoid the above described scenario:

¹ Individuals are exempt from the time limit if they meet criteria listed at 7 CFR 273.24(c), are covered by a waiver under 273.24(f), or are granted a 15 percent exemption under 273.24(g).

² A countable month is a month in which the full benefit amount is received. A month in which the individual is exempt for part of the month or in which the benefit amount is prorated is not a countable month.

- a) States should consider the time limit in assigning reporting systems and certification period lengths to existing and potential ABAWD households, as advised at 273.10(f)(3)³. If a State chooses to place all households on simplified reporting, it could assign 4-month certification periods to households with an existing ABAWD member or potential ABAWD member, which includes those who can be reasonably anticipated to become an ABAWD during the certification period. At the time of certification, if the State agency can anticipate when a household member will lose his or her exemption from the ABAWD time limit, the State agency should set the household's certification period length accordingly.
- b) States are responsible for identifying existing and potential ABAWD households at certification, periodic report, and recertification and informing them of the time limit, exemption criteria, and how to fulfill the ABAWD work requirement. An existing ABAWD household includes an individual who is clearly an ABAWD at the time of certification. A potential ABAWD household includes an individual who can be reasonably anticipated to become an ABAWD at some point within the certification period. A household composed of a 40 year old, able-bodied mother and her 17 year old, able-bodied son is a good example of a potential ABAWD household. States should advise such a household that both members will become subject to the time limit when the son turns 18, at which point each household members' eligibility for SNAP will be limited to three months if they are not fulfilling the ABAWD work requirement or otherwise exempt. States should also emphasize that the household can and should contact its eligibility worker if a household member starts fulfilling the ABAWD work requirement or experiences a change that would exempt them from the time limit. 273.12(a)(5)(ii) requires that the State agency provide households assigned to simplified reporting with a written and oral explanation of the reporting requirements, which must include the requirement that ABAWDs report whenever their hours drop below 20 hours per week, averaged monthly. Under simplified reporting, the onus is on the household to report changes that may exempt them from the time limit mid-certification period.
- c) States should consider granting 15 percent exemptions to ABAWDs such as the mother and son in the provided scenario. States have discretion to grant 15 percent exemptions as they see fit. In addressing the provided scenario, the State might grant the mother and son 15 percent exemptions for the months of July, August, and September. When the case arrives at the periodic report, the State would inform the household of the time limit, exemption criteria, and fulfillment of the of the ABAWD work requirement. For Quality Control purposes, the exemption must be documented prior to monthly sample selection.
- d) The NOAA that is used prior to enforcing the time limit must explain, at a minimum, that the case is being closed because the ABAWD is subject to the time limit and has failed to fulfill the ABAWD work requirement for the NOAA to be considered

³ 7 CFR 273.10(f)(3) advises States to assign certification periods as appropriate for households with unstable circumstances or an ABAWD member, generally between 3 to 6 months.

adequate under 273.13(a)(2). The NOAA should also include the criteria for exemption from the time limit, fulfillment of the ABAWD work requirement, and explain the opportunity to regain eligibility as per 273.24(d). Please also note that although the NOAA must be sent at least 10 days prior to case closure, the State has flexibility to send it sooner to provide the household more time to respond.

- 2. Given the same scenario as Question 1, what would happen if the State has verified that both the mother and the son are working 20 hours per week at the time of certification and assigns the household to simplified reporting? How would the State treat the change in ABAWD status?**

ABAWDs subject to the time limit are required to report a whenever their work hours fall below 20 hours per week, averaged monthly, following 273.12(a)(5)(iii)(E). The mother and son would not accrue countable months when they reach ABAWD status unless their work hours fall below the 20 hours per week threshold. Please note, households assigned to simplified reporting cannot be required to report the hours they have worked each and every month.

- 3. Can State agencies assign shorter certification periods to households that contain ABAWDs? Can States shorten the certification period for ABAWDs on simplified reporting?**

State agencies have flexibility regarding the length of the certification periods they assign to potential ABAWD households, and may find that assigning ABAWDs certification periods of 6 months or less helps to simplify administration of the time limit. Moreover, 273.10(f)(3) encourages States to assign 3 to 6-month certification periods to households with an ABAWD member. If a State chooses to place potential ABAWD households on simplified reporting, it could assign 4-month certification periods, at minimum. Alternatively, the State could assign 4-month certification periods to only certain ABAWDs (e.g. those who are not fulfilling the work requirement at the time of certification or those who are projected to lose exemption from the time limit during the certification period), but assign longer certification periods to ABAWDs with more stable circumstances (e.g. those who are fulfilling the work requirement at certification and are anticipated to continue to do so). For ongoing households, States must wait until the next recertification to adjust certification period length.

- 4. Do individuals who are working over 30 hours per week at certification, and are therefore not considered ABAWDs subject to the time limit, have a responsibility to report if their hours fall below 20 hours per week mid-certification period?**

Following 273.7(b)(1)(vii), individuals who work a minimum of 30 hours per week or are earning weekly wages at least equal to the Federal minimum wage multiplied by 30 hours are exempt from the general SNAP work requirements, and are therefore also exempt

from the ABAWD time limit. If these individuals' work hours drop below 20 hours per week, they are required to report the drop in work hours, regardless of the reporting system to which they are assigned. Any months in which these individuals receive a full benefit allotment while not fulfilling the ABAWD work requirement or are not otherwise exempt would be countable months.

5. In the March 2015 memo *Expiration of Statewide ABAWD Time Limit Waivers*, FNS strongly encourages States to provide an additional notice to ABAWDs subject to the time limit at least 30-days prior to waiver expiration. What should such a notice include and who should it be sent to?

First, before sending the above described notice, States should review case file information to identify and assess individual ABAWDs and determine whether or not the ABAWD is subject to the time limit and will begin accruing countable months when the waiver expires. States should make this assessment prior to the expiration of their time limit waivers at certification, periodic report, recertification. Unless the ABAWD is fulfilling the ABAWD work requirement at 7 CFR 273.24(a)(1) or qualifies for an exemption from the ABAWD time limit under 273.24(c), or is granted a 15 percent exemption, the ABAWD is subject to the time limit and will begin accruing countable months when the waiver expires.

The notice should explain that the waiver of the time limit is expiring and how its expiration will impact eligibility for ABAWDs who do not fulfill the ABAWD work requirement at 273.24(a)(1) or who do not qualify for an exemption from the ABAWD time limit under 273.24(c). The notice should also include the criteria for exemption from the time limit and how to fulfill the ABAWD work requirement. To be clear, this notice is not a request for contact described at 273.12(c)(3), and States cannot require ABAWDs assigned to simplified reporting to report becoming exempt or work hours as a part of this notice. The notice should be sent to all identified ABAWDs subject to the time limit.

6. If a State agency assigns a certification period of longer than 4 months to an ABAWD who is not fulfilling the work requirement at the time of certification, would the State automatically stop benefits after the three countable months are exhausted or is the recipient entitled to a NOAA? When should the NOAA be sent?

The State agency must send a NOAA prior to enforcing the time limit. To be considered adequate under 273.13(a)(2), the NOAA must explain that the case is being closed because the ABAWD is subject to the time limit, has failed to fulfill the ABAWD work requirement, and has exhausted his or her 3 countable months. The NOAA should also include the criteria for exemption from the time limit, fulfillment of the ABAWD work requirement, and explain the opportunity to regain eligibility as per 273.24(d). The NOAA must be sent at least 10 days prior to case closure, but the State has flexibility to send it sooner to provide the household more time to respond.

- 7. ABAWDs are required to report if their work hours fall below 20 hours per week, averaged monthly. Does this imply there is no requirement to report each month and verify work hours, only to report if the hours go below that threshold? Could a state opt to require monthly reporting and verification?**

ABAWDs assigned to simplified reporting or quarterly reporting must report if their work hours fall below 20 hours per week, averaged monthly, following 273.12(a)(5)(iii)(E) and 273.12(a)(4)(vii). However, they cannot be required to report the hours they have worked each and every month. States must determine and verify ABAWD work hours at certification. States must also inform ABAWDs of the time limit and how to fulfill of the work requirement. ABAWDs that are not fulfilling the work requirement at certification would immediately begin accruing countable months toward the 3-month time limit. If such an ABAWD begins fulfilling the work requirement, the onus is on them to report the change to the State, lest they continue to accrue countable months. Please note, 273.24(b)(7) allows States the option to retrospectively consider hours worked in a job that was not reported according to the requirements of 273.12 in determining countable months. ABAWDs that are fulfilling the work requirement at certification or periodic report would not be accruing countable months, but they are required to report whenever work hours fall below 20 hours per week, averaged monthly. ABAWDs assigned to change reporting must report in accordance with 273.12(a)(1), which also includes the requirement to report changes in work hours that bring them below 20 hours per week, averaged monthly. Alternatively, a State could opt to assign ABAWDs to monthly reporting and could require them to report work hours each month. States should consider the time limit in assigning reporting systems and certification periods to ABAWD households.

- 8. The rules at 273.24(c)(4) exempt from the time limit individuals who reside in household where a household member is under age 18, even if the household member who is under 18 is not himself eligible for food stamps. Does “household” mean the physical structure or the SNAP household?**

The term household strictly means the SNAP household as defined at 273.1(a). The term household does not mean simply a group of people residing in the same physical structure. The phrase “even if the household member who is under 18 is not himself eligible for food stamps” refers to minors who would be members of the SNAP household but who are ineligible to participate in SNAP (e.g. an ineligible non-citizen, someone who has committed an intentional program violation or other circumstance as described in 273.1(b)(7)).

- 9. Under the regulations at 273.24(c)(2), individuals who are determined by the State agency to be ‘medically certified as physically or mentally unfit for employment’ are exempt from the time limit. Could the State agency follow 273.2(f)(4)(ii) and use a collateral contact in determining an individual as physically or mentally unfit for employment?**

Yes, in certain cases. If the mental or physical unfitness is not obvious, the eligibility worker should first request that the individual provide documentary evidence. The household has primary responsibility for providing documentary evidence, but the State agency must assist the individual in obtaining the documentary evidence provided the household is cooperating with the State agency. If documentary evidence is unavailable or insufficient, the State agency may follow the regulations at 7 CFR 273.2(f)(4)(ii) on collateral contacts in determining an individual's mental or physical unfitness. In this case, examples of acceptable collateral contacts include a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist, a social worker, or any other medical personnel the State agency determines credible to determine the individual as physically or mentally unfit for employment.

10. How should States handle countable months that occurred in another State?

What should States do when the other State's uses a different clock to measure the 36-month period?

When an ABAWD applies and there is an indication that the individual has participated in another State, the current State must verify the number of countable months in the other State in accordance with 273.2(f)(1)(xiv)(B). States have discretion concerning how they verify this information. States may choose to use established information exchange agreements, or may choose to develop special means by which to exchange information on an ABAWDs countable months. FNS understands that because different States can have different trackers (i.e. fixed vs. rolling) or tracking start dates, reconciling the number of countable months that would follow an ABAWD from State A to State B can be complex. When presented with such a scenario, States must maintain the integrity of their own tracking method and account for out-of-state countable months accordingly. For example:

In January 2016, an ABAWD applies in State A and reports past participation in State B from August through November 2015.

- If State A uses a fixed clock with the same 36-month time period for all ABAWDs (also called a universal fixed clock), it must only consider countable months that fall within that 36-month period: State A started its fixed clock on October 1, 2015. State A must disregard August and September participation because they occurred outside of its fixed 36-month period. However, State A must verify countable months for October and November in State B.
- If State A uses a fixed clock with individual 36-month time periods for its ABAWDs based upon date of certification or loss of exemption, it must only account for countable months that fall within the ABAWD's individual fixed clock in State A. If the ABAWD does not have an established clock in State A (i.e. has never participated in State A), then the out-of-State months must be disregarded because the ABAWD started his new clock in January 2016.

- If State A uses a rolling clock, it must account for any countable months that the ABAWD has accrued in the preceding 36-month period, including those that occurred in other states.

11. Following 7 CFR 273.24(c)(2), individuals who are determined by the State agency to be obviously physically or mentally unfit for employment are exempt from the ABAWD time limit. What happens when an individual is certified as an ABAWD, referred to an E&T program, then appears to be obviously unfit for employment at the E&T intake? Can the E&T provider make the determination regarding the individual's obvious mental or physical unfitness?

No, the E&T provider cannot make the determination regarding the individual's obvious mental or physical unfitness for employment. Section 11(e)(6)(B) of the Food and Nutrition Act and 273.24(c)(2)(ii) require that certification actions be performed by merit system personnel (e.g. State agency eligibility workers). Certification actions include determination of eligibility, the interview, and other decisions and actions made on the case at the point of application and during the certification period. Contracted staff, including E&T providers, cannot determine eligibility or take certification actions. Only State eligibility workers can determine an individual to be exempt from the ABAWD time limit based upon the criteria at 7 CFR 273.24(c).

The State agency is responsible for providing its eligibility workers with guidance and procedures that support effective screening for exemption from the ABAWD time limit. In the absence of documentary evidence, the certification interview is imperative in determining if an applicant meets exemption based upon being "obviously mentally or physically unfit for employment as determined by the State agency" as per 273.24(c)(2)(ii). If the State agency is not already doing so, it may consider providing its interview staff with detailed guidance concerning what might indicate obvious mental or physical unfitness for employment. The State might also consider referring all such potential cases to experienced staff for interview.

The State agency should work with the E&T provider to come up with an appropriate procedure in cases where an ABAWD is referred to the E&T provider but appears to be unfit for employment by the E&T provider during intake. For example, the State agency may request that the E&T provider assist the client in contacting his or her eligibility worker to pursue an exemption after the intake process. Supporting the State agency in this way may be particularly appropriate in cases of obvious developmental disability or mental illness.

12. Are States required to operate a mandatory E&T program for ABAWDs (assign all ABAWDs to E&T) when their Statewide time limit waiver expires?

No, State agencies are not required to assign all ABAWDs to a SNAP E&T program. State agencies may operate E&T programs where ABAWD participation is voluntary, mandatory, or a combination of voluntary and mandatory. If a State agency decides to

make participation in E&T mandatory for ABAWDs, the State must ensure compliance and act on a failure to comply without good cause.

For mandatory E&T participants, the E&T provider must notify the State of non-compliance within 10 days, the State must determine whether good cause exists, and within 10 days of establishing that the non-compliance with the E&T program was without good cause, the State agency must issue an NOAA. If E&T participation is mandatory for ABAWDs, the State cannot wait until the ABAWD exhausts the three months of benefits before acting on non-compliance. Rather, the State must act on non-compliance with E&T while also tracking countable months and applying the time limit, which can be administratively challenging.

For voluntary E&T participants, States are prohibited from disqualifying participants from SNAP based upon non-compliance with the assigned E&T activity. However, ABAWDs who are voluntarily participating in E&T but fail to comply would accrue countable months toward the 3-month time limit, unless they are otherwise exempt.

FNS encourages State agencies to consider what qualifying education, training, or work activities they might add to their E&T programs to support ABAWDs who are subject to the time limit. Job search and job search training alone are not qualifying activities for ABAWDs. However, these activities can count toward the 20 hour per week minimum as long as they comprise less than half of the total required time spent in the E&T program.