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DEPARTMENT OF LAW LETTER OPINION NO. 73-39-L (R-53)

REQUESTED BY: WILLIAM J. MAYO
Director
Department of Economic Security

QUESTION: May state employees who receive their second July paycheck on August 1 qualify for food stamp coupons for the month of July?

ANSWER: No.

Administratively, the Arizona Department of Finance altered its payroll schedule so that state employees who would ordinarily receive their second July paycheck on the 31st day of July would receive this check on the 1st day of August. This results from the mechanics of transition to a bi-weekly payroll with a five working days reserve. The net effect by the end of 1973 will be conversion to a bi-weekly payroll with full payment of the year's salary less an amount equal to five days pay withheld in reserve.

Relying on the language of Food Stamp Manual Section III I 4, requiring that eligibility for food coupons be determined on the basis of income received during the calendar month certification period, the question of eligibility of some state employees whose second July paycheck will not be received until August 1 has been raised. Households with a breadwinner falling into this category are not eligible for food coupons on this basis for the following reasons:

1. The Food Stamp Program was established to eliminate hunger and malnutrition in America's lower income households. United States Department of Agriculture, et al. v. Murry, et al., United States Supreme Court, No. 72-848, June 25, 1973, 41 U.S.L.W. 5099, concurring opinion of Mr. Justice Stewart, 41 U.S.L.W. 5101; United States Department of Agriculture, et al., v. Jacinta Moreno, et al., United States Supreme Court, No. 72-534, June 25, 1973, 41 U.S.L.W. 5105; 7 U.S.C., § 2011.

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Allowing individuals to qualify for food coupons on the basis of a paycheck arriving a day later than it would ordinarily be received (August 1, as opposed to July 31), where no loss or diminution of income is realized, is pure sophistry. This calendar theory of eligibility is not based on need and, therefore, frustrates the intent of the program.

2. Viewing situations of the sort encountered here with growing trepidation, the United States Department of Agriculture promulgated amendments to 7 C.F.R. § 271.3(c)(2)(iv) to the effect that income received at a time other than when it is earned or received only during certain parts of the year shall be averaged over the full year for the purposes of eligibility determination.

The intent is to prevent eligibility from being created synthetically based on the non-receipt of income during a calendar month rather than actual need. Clearly, applying the year's average technique mandated by 7 C.F.R. § 271.3(c)(2)(iv) to regularly paid state employees prevents manufacturing eligibility for food stamps on the basis of being paid one day later than usual.

Respectfully submitted,

GARY K. NELSON
The Attorney General

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