The Rights of the Disabled in the Food Stamp Program

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I. Introduction

The Food Stamp Act provides preferential treatment for disabled and elderly recipients, in recognition of the higher expenses and other unusual challenges that they may face. Special provisions for these recipients include an exemption from the gross income eligibility test, an excess medical deduction, an uncapped shelter deduction, a more liberal definition of who must be considered part of the same household, and a resource exemption for any vehicle needed to transport a physically handicapped recipient. Narrow regulatory interpretations by the Department of Agriculture (USDA), however, deny full benefits to many disabled food stamp recipients and potential recipients.

At the heart of the problem is the definition of disability itself. The language of the Food Stamp Act suggests a definition that would allow more people to receive earlier recognition of their disabled status than the USDA now permits and would allow others to receive retroactive benefits following delayed disability determinations.

Only recipients receiving certain federal or state disability benefits are deemed disabled for food stamp purposes. The Hunger Prevention Act of 1988 expanded the list of acceptable benefit programs, but the USDA's narrow reading of the statute renders the legislation practically meaningless.

SSA disability determinations may take months or even years, but are usually effective as of the date on which a Supplemental Security Income (SSI) or social security application was first filed. The USDA, however, refuses to grant retroactive food stamp benefits to individuals whose disability determinations have been delayed, unless they are part of a categorically eligible household. The USDA claims to grant restored benefits if the disabled individual is a member of a categorically eligible household, but few states appear to be following this mandate. What little guidance the USDA has provided states is, at best, ambiguous.

The medical deduction is granted only to disabled or elderly food stamp recipients. Present USDA policy requires many of those incurring medical expenses to wait for verification that the expense will not be reimbursed before taking the deduction. It is far from clear that Congress intended food stamp recipients to be forced to wait to take the deduction.
Moreover, recent legislation substantially liberalizes the procedures for claiming excess medical deductions. /15/

In addition, many disabled as well as elderly persons may not be obtaining the benefit of USDA policies allowing deductions for unusual medical expenses, /16/ granting resource exclusions for any vehicles needed to transport physically handicapped household members, /17/ making the application process more accessible, and requiring that agencies help elderly and disabled recipients obtain their food stamps through mail issuance or authorized representatives. /18/ Finally, many advocates may be unfamiliar with the extremely protective rules on the rights of handicapped persons in USDA programs generally, and the Food Stamp Program specifically. /19/ This article seeks to highlight several areas in which disabled persons are frequently denied food stamps to which they are entitled under law. /20/

II. The Definition of Disability

A. Application of the "Stringency Test"

Prior to 1988, disabled individuals were defined under the Food Stamp Act as those persons who received disability benefits from SSI, social security disability (title II), Railroad Retirement, veterans' programs under some circumstances, or one of a few other small programs. /21/ The Hunger Prevention Act of 1988 expanded the Food Stamp Program's definition of disability to include individuals receiving disability-based Medicaid, federal or state interim assistance pending SSI disability determinations, and disability-related general assistance. /22/ The legislation was designed to ensure that disabled people receive quick recognition of their actual conditions, rather than waiting months or years for SSA determinations. /23/ The USDA interpreted this statute, however, to mean that recipients of any of those benefits would only be regarded as disabled if eligibility were based on blindness or disability criteria at least as stringent as that used by SSA to make SSI disability determinations. /24/ This interpretation needlessly hinders Congress's attempt to expand the disability definition. Only GA disability determinations should have to meet the stringency requirement that the USDA seeks to apply to the entire list.

At first blush, the USDA's interpretation might appear tenable. Both the House and Senate committee reports specifically mention the stringency requirement in connection with all of the additional benefit programs. /25/ The House-passed bill, in particular, may be read to incorporate a stringency requirement into the disability definition for all of the programs. The original House bill granted disabled status to recipients of "interim assistance benefits," "disability-related medical assistance benefits," or "disability based State general assistance benefits" if "such benefits" met the stringency requirement. /26/ Changes in the final wording of the bill, however, plainly show that only state GA disability determinations need meet the "stringency" test. The final legislation deleted the word "benefits" in relation to supplemental and interim assistance and Medicaid. Only GA was called a benefit, and only "such benefits" were to meet the stringency test. /27/ Changes in legislative language generally imply a change in the intended result. /28/
The original Senate bill did not refer to interim assistance or Medicaid as "benefits." The final law is only one word off from the original Senate bill: the word "benefit" was deleted from the description of yet another program, further clarifying that only GA benefits need meet the stringency test. In addition, Senate debate focused exclusively on GA benefits when describing the stringency requirements.

Moreover, limiting the application of the stringency test to one particular program about which Congress had special concerns also would be consistent with Congress's past practice in expanding the definition of disability in the Food Stamp Program. As in those cases, applying the stringency test to additional programs would serve little purpose, especially in the case of disability-based Medicaid, since federal regulations already establish the SSI disability test as the one applicable to Medicaid disability determinations. Therefore, the stringency test and questions concerning its interpretation should only be read as applying to GA recipients.

**B. How Stringent Is the "Stringency Test"?**

Many recipients of state GA benefits should now receive disabled status under the Food Stamp Act, because many state GA programs should be regarded as having disability standards as stringent as those used by SSA. A GA program that provides benefits only to disabled persons is obviously such a program if it meets the stringency test, and recipients of such GA benefits should be regarded as disabled for food stamp purposes. But a GA program that conditions benefits on meeting a work requirement while exempting disabled recipients from that work requirement may also be such a program (with regard to such disabled recipients) if disability is evaluated against a standard that meets the stringency test.

State food stamp agencies do not need to review individual GA determinations case-by-case; they need only compare the state statute or regulation defining disability with SSA's disability definition. SSA's requirement that disabilities last or be expected to last for 12 continuous months also does not apply. For example, Senator Harkin, the Chairman of the subcommittee that wrote this bill, cited Oregon and Pennsylvania as two states whose GA programs Congress was seeking to cover. The Oregon program requires only 60 days’ duration. The Pennsylvania program is set up under rules that echo the Social Security Act as to severity, but have no durational component at all. Furthermore, the standards of verification under the Pennsylvania program are much less stringent than those used by SSA: a simple form signed by a doctor is the only documentation required.

Although the statute speaks of a determination by the Secretary of Agriculture concerning the equivalence of the disability test, it does not require that the state agency apply to the USDA for such a determination. The regulations also do not mandate an application to the USDA: they give state agencies the power to make stringency determinations themselves.

Advocates with clients receiving state GA benefits may need to press the state for a decision on whether their states’ GA benefits meet the stringency requirements. Those clients receiving state or federal interim assistance or disability-based Medicaid should be immediately eligible for the disability preferences of the Food Stamp Program.
III. Retroactive Food Stamps for Recipients Receiving Retroactive Disability Determinations

SSA may take months, or even years, to determine whether an applicant for benefits under the SSI or Old Age Disability and Survivors Insurance (OASDI) Programs (titles XVI and II of the Social Security Act) is in fact disabled. When the determination is finally made, SSA issues a lump-sum check to cover the period during which the applicant should have been receiving benefits. An applicant may, for example, receive disability benefits for 23 months through a single check issued two years late, because it took SSA almost two years to decide that the applicant was, indeed, disabled at the time of application.

For food stamp purposes, disabled individuals are defined as those persons who "receive" certain federal or state benefits. The problem, then, is to define "receive." According to the USDA, individuals "receive" benefits when they are certified for benefits by SSA. While waiting for a determination by SSA, individuals may receive fewer food stamps than they are entitled to as disabled recipients because they cannot take the excess medical or shelter deductions. Some may not qualify for food stamps at all because their gross income exceeds the eligibility limit or because they live with other relatives and cannot be considered a separate household. With the exception of those living in categorically eligible households, USDA policy denies retroactive food stamp benefits reflecting their disabled status to disabled persons whose determinations are delayed, even though the recipients eventually "receive" disability payments for the entire determination period. Even categorically eligible households entitled to retroactive benefits under current regulations may not be receiving them due to misinterpretations of the USDA's vague regulations and its failure to clarify this policy.

A. Categorically Eligible Households

Households are categorically eligible for food stamps if all members of the household are receiving public assistance in the form of AFDC or SSI. They may receive food stamps without meeting the gross and net income tests, the resource limitations, or several other eligibility requirements.

Under current regulations, households denied food stamps but later found to be categorically eligible are entitled to retroactive benefits, including a recalculation of medical and shelter deductions, if warranted by the presence of an elderly or disabled person in the household. If a household receives food stamps without being categorically eligible, and later becomes categorically eligible because of a delayed SSI disability determination, that household is entitled to a recalculation of restored benefits using the excess medical deduction and uncapped shelter deduction.

For example, a disabled person living alone may be eligible for food stamps, even without a determination of disability from SSA. Without such a determination, however, that person would not receive the special preferences accorded disabled people. Following an SSI
disability determination, a recipient is considered to have been categorically eligible from the beginning of the period covered by the lump-sum check. The food stamp agency would have to recalculate the recipient's past food stamp allotments, taking into account the medical and uncapped shelter deduction, and any other special rules governing disabled recipients. The recipient would then be given an extra allotment of food stamps to make up for the coupons that he or she would have been receiving all along had his or her disabled status been promptly recognized at the time of application.

Although the regulations speak only of recalculating benefits based on the excess medical and shelter deductions, the USDA has indicated that all preferences given to disabled recipients will be calculated retroactively:

"FNS promulgated an interim regulation implementing the categorical eligibility rule which permits retroactive recalculations of food stamp benefits under the rules for households with a disabled member for a period covered by a lump-sum retroactive SSI disability payment received by a member of a categorically eligible household."

Thus, for example, exemption from the Food Stamp Program's mandatory household composition rules should also be applied retroactively. Although it vigorously fought the idea of providing retroactive benefits to all disabled food stamp recipients, the USDA, in its appellate brief in West v. Bowen, affirmed its commitment to providing "retroactive food stamp benefits covering a household member's disability determination period," for all categorically eligible households.

The wording of the regulations, however, is convoluted and subject to misinterpretation. It is likely that many or most states are not following these guidelines. The preambles to the regulations, however, clearly state that retroactive benefits, including recalculation of deductions, are to be granted to all categorically eligible households:

"Because categorical eligibility is considered to have started at the beginning of the period for which the SSI benefits are authorized or the date of the food stamp application, whichever is later, entitlement to the special deductions should also begin at that time. . . . [P]ersons entitled to the special deductions would be eligible to receive them from the beginning of the period for which their SSI was authorized or the date of their food stamp application, whichever comes later. In addition, any denied household that becomes categorically eligible will also have its benefits restored based on entitlement to the special deductions."

Advocates should ensure that all categorically eligible households receive the retroactive benefits to which they are entitled, including recalculation of deductions. Because some disabled people may be considered separate households for food stamp purposes even if they live with other people, they, too, should be considered categorically eligible and thus entitled to restored benefits. Just as an SSI recipient living alone is a categorically eligible household of one, a disabled person living with others but considered a separate household should also be deemed categorically eligible.
B. Retroactive Benefits for Other Disabled Recipients

All disabled food stamp recipients, even those who are not categorically eligible, may be eligible for retroactive benefits. Although a divided panel of the Third Circuit declined to require the USDA to change its policy, another court might easily reach a different result, particularly in light of Judge Mansmann's forceful dissent in West v. Bowen.

The claim is simple. Disabled individuals are those who "receive" certain benefits. /57/ The statute says nothing about when those benefits should be received. Thus, a disabled person who receives a lump-sum payment covering 18 months of disability should be considered as disabled for each month during that period, even if the check is only received in hand a year and a half after the first of those months. The individual has still received SSI disability benefits for the entire period. /58/

The USDA originally granted disabled status only to those individuals who physically received an SSI or social security disability check during the month in question. Later, this interpretation was changed to include three classes of recipients who did not physically receive a check:

"(1) where the disability determination had been adjudicated but where disability payments had not been received; (2) where a disability payment for a particular month was not made because of previous disability benefit overpayments; and (3) where retroactive payments were made to "categorically eligible" beneficiaries." /59/

Indeed, both disability and categorical eligibility are defined in terms of benefits that individuals "received," /60/ yet the USDA recognizes that categorically eligible households "receive" their benefits for the entire authorized period, while other disabled individuals only "receive" their benefits after the determination has been finalized. There is no statutory basis for this distinction. Congress mandated the use of categorical eligibility for the same reason that it defined disability in terms of other benefit programs: to simplify program administration. /61/

In West v. Bowen, the Third Circuit deferred to the Secretary of Agriculture's interpretation of the statute, relying heavily on its prior decision in Commonwealth of Pennsylvania v. United States, /62/ which would not, of course, be controlling in any other circuit. Dissenting, Judge Mansmann explained that the USDA's interpretation of "receive" is due little deference, because it is "sharply inconsistent" and "contrary to the intent and purpose of Congress in providing food stamps to disabled low income persons." /63/

Judge Mansmann also pointed out that Congress apparently believes that disabled food stamp recipients do receive retroactive benefits following SSA determinations, and that the 1988 definition expansions were only necessary to get persons their benefits more quickly. /64/ In fact, the Hunger Prevention Act of 1988 affirmed Congress's belief in the importance of retroactive benefits by codifying regulations requiring that underissuances be corrected through restored benefits. /65/

For those disabled food stamp recipients who live alone or in categorically eligible households, the only issue is whether the state food stamp agency is following the USDA's regulations. A more difficult--but still potentially victorious--challenge faces advocates whose disabled clients
live in noncategorically eligible households: overturning the USDA's interpretation of the meaning of the word "receive" in the definition of disability on the strength of the language and intent of the Food Stamp Act.

IV. Medical Expense Deductions

Realizing that elderly and disabled people may have above-average health care costs that would consume money that might otherwise be available for food, Congress created a special medical deduction for them. /66/ Elderly and disabled food stamp recipients may deduct all nonreimbursed medical expenses exceeding $35 per month when calculating net income to determine eligibility and benefit levels. /67/ This section analyzes the problem of when a household may take a deduction for an expense whose reimbursability is uncertain, /68/ explores the range of expenses for which the medical deduction may be claimed, /69/ and examines recent legislation allowing households to base medical deductions on estimates of their likely expenses. /70/

A. Current USDA Policy on the Timing of Medical Deductions

Under the USDA's regulations, if there is a possibility that the medical expense will be reimbursed, the recipient must wait until he or she knows that the expense will not be reimbursed before deducting it, even if this takes a long time and even if the bill has already been paid. /71/ For example, a recipient who has applied for Medicaid could not take any medical deductions while waiting to find out whether the application was approved, because those expenses might be covered retroactively by Medicaid. Thus, an individual with high medical expenses may be forced to choose between eating and paying the doctor's bill; failure to pay the bill might make it more difficult to secure treatment for future health problems.

In addition, this "wait and see" policy causes recipients in some states to lose the deduction altogether, because it contradicts the normal rule on billed expenses, which allows a deduction only in the month in which an expense is billed (rather than in some other, later month, such as the month in which it is paid). /72/ Apparently, some state agencies do not allow recipients to deduct medical expenses in the month in which they are incurred (because they may be reimbursed) and then deny the deduction again when it becomes apparent that the expense will not be fully reimbursed (because it is too late--the expense was not incurred in that later month). Advocates in these states should ensure that, at the very least, recipients are allowed the deduction once its nonreimbursable status has been verified. The preamble to the medical deduction regulation clarifies that all allowable medical expenses can eventually be deducted, even though there might be some delay while waiting for a decision on reimbursements. /73/

There are three possible time frames for taking the medical expense deduction: when the expense is incurred, when the bill is actually paid, or when verification of nonreimbursement is received. The relevant statute states that expenses paid by a third party are not deductible; it says nothing directly about when the deduction should be allowed. /74/ Although present USDA regulations force a recipient to wait for verification of nonreimbursement before taking
the deduction, Congress probably intended to allow the deduction much sooner. Recipients should be able to take the deduction when the bill arrives, or at least when it is paid. Recipients would almost always be better off if deductions were allowed when the bill was paid. An "as paid" rule would generally provide faster deductions than waiting for verification of nonreimbursement, but would deny any deduction at all for bills that are not paid.

**B. Taking Medical Deductions on an "As Paid" Basis**

Under the old Food Stamp Act of 1964, a recipient could deduct medical expenses as he or she paid them. /75/ The medical deduction was eliminated in the Food Stamp Act of 1977, but a modified deduction was reinstated in 1979. /76/ At that time, the USDA rewrote the regulations to require a recipient to wait for verification of the unavailability of reimbursement before claiming the deduction. /77/ The USDA cited no legislative history, however, to justify the switch.

Legislative history suggests that Congress intended to reinstate the medical deduction as it had been prior to 1977, including using the quicker "as paid" method for figuring the deduction. /78/ The old medical deduction had been eliminated because Congress was seeking to eliminate itemized deductions in general, not because of any specific problems with accounting for reimbursement. /79/ Statements on the floors of both the House and the Senate continually referred to "reinstituting" or "restoring" medical deductions lost in 1977. /80/ The USDA relied on this congressional intent in deciding to follow the 1964 guidelines in determining the scope of allowable medical expenses for the reinstated deduction. /81/

The House Agriculture Committee's report specifically anticipated the use of the quick "as paid" method for figuring deductions. /82/ The Senate report, however, recommends that deductions only be allowed after verification of nonreimbursements. /83/ The legislative history of the 1979 Authorization and Appropriations for the Food Stamp Act of 1977 is somewhat less than straightforward, but it may support an argument that the House Report should be controlling. /84/ No mention was made in the conference reports of the reimbursement problem, /85/ so floor statements would have to be relied upon to show that the House view should take precedence. /86/

**C. Taking Medical Deductions on an "As Billed" Basis**

A more difficult but potentially rewarding argument is that medical expenses should be deducted at the time that they are incurred. Currently, all deductions other than medical expenses are taken in the month in which the expense is incurred, rather than when the bill is actually paid. /87/ This method is obviously better for the recipient, because it allows him or her to take the deduction sooner, and, thus, get more food stamps earlier. Medical expense deductions should be treated like any other deduction and be allowed on an "as billed" basis.

Shortly before the Food Stamp Act of 1977 was implemented, the USDA began using the "billed" rather than "paid" method to calculate deductions, but only for utility costs. At that time, the "billed" method was substituted for the "paid" method to help recipients, because it
allowed the deduction to be taken more quickly. When the Food Stamp Act of 1977 was implemented, the USDA continued its policy of allowing deductions on an as-billed basis, maintaining that paying and billing were "virtually synonymous" and that the "billed" method "is more convenient for program participants and administrators alike" because it is easier to verify bills than payments. At this time, the only deductions were for shelter and dependent care. Recipients should be able to take medical deductions as quickly as other deductions: the whole purpose of the medical expense deduction was to recognize that money needed for medical expenses is not available to buy food.

An alternative strategy, at least for households that are prospectively budgeted, might be to argue that computing the medical deduction is part of the process of anticipating income. For purposes of determining both eligibility and the level of benefits, state agencies may only count anticipated income that is "reasonably certain." This is in accord with congressional intent. Congress did not want nonexistent or doubtful sources of income counted against recipients. "The goal is to smooth the way for participation by the needy, not to place obstacles in their path by making them out to be less needy than they in fact are." The Mickey Leland Memorial Domestic Hunger Relief Act of 1990, which sought to simplify and improve access to the medical deduction, also appears intended to apply the rules for anticipating income to questions of the possible reimburseability of medical costs.

If the anticipation rules apply to computing net income (i.e., income net of deductions), a deduction should be allowed if an expense is not "reasonably certain" to be reimbursed. Net income is used to figure benefit levels, so the "reasonably certain" rules should apply. It is especially logical to apply the "reasonably certain" standard to net income after medical deductions have been taken, as households with elderly or disabled members have to meet only the net income eligibility standards to get food stamps, not the gross income standards.

Under the Food Stamp Act and USDA regulations, "income deductions" include the excess medical deduction. Additionally, the section on calculating deductions specifically allows a household to anticipate expenses, which are based on recent bills "unless the household is reasonably certain a change will occur." The statute includes deductions in its definition of income.

Net income to determine program eligibility for elderly and disabled people definitely means income after deductions, including the medical expense deduction. Thus, an argument could be made that Congress intended deductions to be included in the definition of income, so that the "reasonably certain" standard would apply. The House Report on the Food Stamp Act of 1977 specifically mentions income and deductions together.

According to a House Committee Report, households are not to be prohibited from taking a shelter deduction because of the possibility of vendor payments for energy in those cases in which the amount of those vendor payments cannot be reasonably anticipated. By analogy, households should not be prevented from taking a medical deduction because of the possibility of future reimbursement.

In sum, when a food stamp recipient has a medical expense that may be reimbursed, regulations and current USDA policy allow the recipient a deduction, but require him or her to
wait for verification of nonreimbursement before claiming the deduction. The deduction should not then be denied because it is being claimed later than it was incurred. This "wait and see" policy is contrary to congressional intent. The medical deduction should be allowed at the time that the expense is paid or billed, even though there is a possibility of third-party reimbursement.

D. The Deductibility of Unusual Medical Expenses

With the exception of special diets, almost all nonreimbursed medical costs may be deducted by elderly or disabled food stamp recipients. /105/ Although the regulations spell out allowable expenses in some detail, USDA policy memos have clarified and expanded the list of allowable deductions. Local food stamp offices and recipients, however, may not be aware of all of the allowable expenses.

Special telephone equipment for handicapped people, including amplifiers, warning signals, and typewriter equipment, may be deducted as a medical expense. /106/ Contact lens costs may be deducted, even though the regulation uses the words "eye glasses." /107/ Transportation and lodging necessary to obtain medical care are deductible, and attendant care that is necessary for medical reasons can be claimed under the medical deduction without regard to the $160 monthly limit that applies to the dependent care deduction. /108/

Medical insurance premiums are deductible medical expenses; recent increases in Medicare premiums have created a situation in which recipients who have these premiums withheld from their disability checks should approach the $35 monthly threshold with that expense alone. The cost of insurance premiums may be deducted even if the policy will pay benefits directly to the recipient, rather than to the doctor or hospital, as long as the policy states that benefits are for the purpose of covering medical costs. /109/ Premiums for nursing home care or cancer treatment insurance are also allowable deductions, if they are intended to cover medical costs. "The distinguishing characteristic is the intent of the insured in taking out the insurance policy." /110/ A pro rata share of an insurance premium will be deducted for eligible recipients if the policy also covers household members not eligible for the medical deduction. Even when the policy holder is not eligible for the medical deduction, a pro rata share can still be deducted for coverage of disabled or elderly household members. /111/

The costs of securing and maintaining a "seeing eye" or hearing guide dog are allowable medical deductions. /112/ Some states make direct payments to households to cover the costs of these guide dogs. These direct payments may be excluded from income calculations. /113/ Excluding the payments from income may be more advantageous than deducting the costs later.

E. Estimates for Persons with Recurring Medical Expenses

Both the Hunger Prevention Act of 1988 /114/ and the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 /115/ included provisions designed to simplify the calculation of the excess medical deduction for elderly and disabled persons with recurring medical expenses.
According to the House Conference Report, the 1990 amendment requires states to rely on reasonable estimates of expected medical expenses for the food stamp certification period (based upon verified costs and available information). The household's medical deduction would then be based on these estimates and the state could not require further reporting or verification of a change in medical expenses if such a change had been anticipated. /116/

The 1990 amendments were clearly intended to require states to develop estimates of the medical expenses that elderly or disabled household members would be likely to incur based upon their conditions, medical coverage, and so forth. /117/ Legislative history suggests that these estimates may be based on general information available on the expenses typically incurred by persons with particular diseases or conditions. /118/

V. Transportation for Physically Disabled Recipients

Any vehicle necessary for the transportation of a physically disabled household member is to be excluded from resource calculations in determining food stamp eligibility. /119/ The person transported does not have to meet the usual food stamp disability definition, /120/ but need only appear physically disabled to an eligibility worker or provide a statement from a doctor stating that he or she is disabled. /121/ Even those who are temporarily disabled qualify for this resource exclusion. /122/

Since 1980, the Food Stamp Act has excluded "any licensed vehicle . . . necessary for transportation of a physically disabled household member," /123/ but in the past the USDA attempted to limit such excluded vehicles to those with special features uniquely suited to the transportation of handicapped people: cars with hand controls or vans large enough to accommodate wheelchairs, for example. /124/ In addition to contravening the Food Stamp Act, /125/ this policy ignored the many disabled people who could not easily walk or take public transportation--even if it is only because distances are too great and the area is not served by public transportation--but who did not need a special kind of vehicle. The USDA has recently changed its policy and now allows a resource exclusion for disabled individuals who can be transported in normal vehicles. /126/

The regulation, however, remains confusing, /127/ and many local food stamp offices probably are still applying some version of the USDA's obsolete, overly restrictive policy. Although the regulation specifically states that the vehicle in question "need not have special equipment," it also states that such a vehicle will be excluded if it is "specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle." /128/

Some households may have been wrongfully denied food stamps because they were not able to exclude the cost of the vehicle needed to transport handicapped household members. Advocates should urge them to reapply for benefits and compel state agencies to follow the new USDA guidelines for all handicapped food stamp applicants. /129/ Every household with a physically disabled member is entitled to exclude one vehicle (even a normal car) for use in transporting that individual.
VI. Special Application and Issuance Procedures for Elderly and Disabled Households

The regulations governing the acceptance and processing of food stamp applications and the issuance of food stamps also contain several provisions that may be especially important to households containing elderly or disabled members.

Household members do not need to visit food stamp offices to obtain or submit food stamp applications: a food stamp office must mail an application the same day it receives a telephone or written contact from a household "express[ing] interest in obtaining food stamp assistance." /130/ The application is considered filed, and the deadlines for the food stamp office to act take effect, when the food stamp office receives a signed application form that contains at least the household's name and address. /131/ Households may also complete the entire food stamp application process through an authorized representative. /132/

A household in which all of the adult members are elderly or disabled is entitled to have the mandatory application interview conducted over the telephone or in the home if a member of the household cannot readily visit the food stamp office or if the household cannot appoint an authorized representative. /133/ Other households also are entitled to waiver of the in-office interview if they would face "hardship" in appearing for an interview in the food stamp office. /134/ If the household misses its first interview for any reason, the food stamp office must, at its own initiative, schedule another interview; no showing of good cause is required. /135/ The food stamp office must "assist each applicant household in obtaining appropriate verification and completing the application process." /136/

Moreover, state agencies must offer assistance to elderly and disabled recipients who have difficulty reaching an issuance office to obtain their food stamps. /137/ This may involve issuing the coupons by mail or assisting the household in finding an authorized representative. In promulgating this regulation, the USDA emphasized that issuance offices that are easy to reach for other recipients may present special difficulty for elderly and disabled individuals. For example, a disabled person may be unable to travel two miles by subway across a major city to obtain the food stamp allotment that he or she badly needs and an elderly person may be fearful of making that same trip to an unfamiliar neighborhood. /138/

Preambles to the regulation discuss households comprised "solely" or "entirely" of elderly or disabled recipients, but the regulations do not use the word "entirely." /139/ Certainly households comprised entirely of children and elderly or disabled individuals should be eligible for these special issuance services. /140/ In addition, since state agencies are "responsible for the timely and accurate issuance of benefits to certified eligible households" in general, /141/ they should offer these issuance services to all households with elderly or disabled members if other household members may also have problems reaching the issuance office (e.g., if other household members work or have child care responsibilities during the issuance center's hours). Moreover, agencies may not discriminate against handicapped recipients, whether or not they are defined as "disabled" under the Food Stamp Act. /142/ All programs should be accessible to handicapped individuals. /143/
VII. Rules Requiring Accommodation of Disabled Persons

The Food Stamp Program, like all other USDA programs, is subject to section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against the handicapped in federally funded programs. /144/ It goes further, however, to place an affirmative duty on the administrators of those programs to modify their normal procedures to accommodate handicapped persons.

The USDA's regulations implementing section 504 /145/ provide extremely broad protections to disabled persons, including persons not meeting the Food Stamp Program's usual definition of disability. The regulations protect "handicapped persons," a term broadly defined to include any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. /146/

Because this definition extends to persons whom others believe to be handicapped, a recipient or potential recipient need not establish--or even assert--that he or she is in fact suffering from a physical or mental impairment. For example, recipients who are discriminated against because the food stamp office considers them stupid are entitled to relief under these regulations, since stupidity is a mental impairment that substantially limits learning--a "major life activity." /147/

Section 504 reaches the discriminatory effects of facially neutral policies. /148/ Section 504 also may prohibit actions that otherwise would be clearly within an administrative agency's discretion. /149/ Once a claim of discrimination has been established under section 504, an agency administering a federal program may be required to take reasonable affirmative steps to accommodate the disabled persons and ensure that they have an equal opportunity to obtain the benefits of the program. /150/ Even accommodations that might appear burdensome or onerous if viewed in isolation may be ordered because of their relatively minor impact on enormous state welfare departments' budgets. /151/

VIII. Conclusion

The Food Stamp Program is designed to "safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households . . . by increasing food purchasing power for all eligible households who apply for participation." /152/ Elderly and disabled people may be in special need of a nutritious diet and may have more difficulty than others in obtaining it. They have many expenses that young healthy adults do not have and are more vulnerable to the ravages of poverty. The special preferences accorded them by the Food Stamp Act are necessary to assure their access to an adequate diet.

Advocates should ensure that all disabled clients are granted the special preferences that are their due and that they receive all of the food stamps to which they are entitled under federal law. In those cases in which the USDA's regulations defining disability, limiting the retroactive recognition of disability, or delaying households' medical deductions deny benefits to eligible
clients, those regulations can and should be challenged. Advocates should also ensure that the USDA's many beneficial policies are actually carried out at the state and local levels.

**footnotes**

1. The Food Stamp Act defines "elderly" household members as persons 60 years of age or older. 7 U.S.C. Sec. 2012(r)(1); 7 C.F.R. Sec. 271.2 (definition of "elderly or disabled member").

2. 7 U.S.C. Sec. 2014(c)(2); 7 C.F.R. Sec. 273.9(a).

3. 7 U.S.C. Sec. 2014(e)(A); 7 C.F.R. Sec. 273.9(d)(3).

4. 7 U.S.C. Sec. 2014(e)(C); 7 C.F.R. Sec. 273.10(d)(5).

5. 7 U.S.C. Sec. 2012(i)(3); 7 C.F.R. Sec. 273.1(a)(2).

6. 7 U.S.C. Sec. 2014(g); 7 C.F.R. Sec. 273.8(h)(1)(v). Unlike most of the Food Stamp Program's preferences for disabled persons, this exclusion is limited to physically handicapped individuals. It does not apply to elderly food stamp recipients, although the resource limit for households including one or more elderly persons is $3,000 (instead of the $2,000 limit applicable to other households).

7. 7 U.S.C. Sec. 2012(r)(2)-(7); 7 C.F.R. Sec. 271.2 (definition of "elderly or disabled member"). Statutes limiting preferences for the disabled to recipients of benefits under specified disability programs have been challenged as unconstitutional. Ranschburg v. Toan, 709 F.2d 1207 (8th Cir. 1983), held that a Missouri statute violated the equal protection clause by denying energy assistance to handicapped persons receiving disability-related medical assistance (as opposed to the benefits listed in the statute), because there was no rational basis for the distinction between various types of disability benefits. See also Medora v. Colautti, 602 F.2d 1149 (3d Cir. 1979) (striking down a regulation requiring elderly, blind, and disabled general assistance applicants to apply for SSI and disqualifying them under some circumstances if their applications were rejected).


9. See part II, infra.

10. See part III's introduction and part III.C, infra.

11. Id.

12. 7 U.S.C. Sec. 2014(e)(A); 7 C.F.R. Secs. 273.9(d)(3) and 273.10(e)(1)(i)(D).
13. 7 C.F.R. Sec. 273.10(d)(1)(i).


16. See part IV.D, infra.

17. See part V, infra.

18. 7 C.F.R. Sec. 274.2(a). See part V, infra.

19. See part VI, infra.


22. Pub. L. No. 100-435, Sec. 350, amended 7 U.S.C. Sec. 2012(r)(2) to include in the definition of disabled any individual who receives . . . interim assistance pending receipt of SSI, disability-related medical assistance under title XIX of the Social Security Act (42 U.S.C. Secs. 1396 et seq.), or disability-based state general assistance benefits, if the Secretary determines that such benefits are conditioned on meeting disability or blindness criteria at least as stringent as those used under title XVI of the Social Security Act, 42 U.S.C. Secs. 1381 et seq.


"The Social Security Administration often takes months or years to approve applications for disability payments. Although getting retroactive benefits late is better than not getting them at all, several states have recognized that getting benefits on a current basis does a better job of meeting disabled people's needs with interim assistance or disability-based Medicaid. In very much the same spirit, the Committee wishes to recognize these earlier decisions as meeting the definition of disability."

24. 7 C.F.R. Sec. 271.2 (definition of "elderly or disabled member"); 54 Fed. Reg. 24519 (June 7, 1989).


26. H.R. 4060, Sec. 351, 100th Cong., 2d Sess., 134 CONG. REC. H6549 (daily ed. Aug. 8, 1988) (emphasis added). Even with the original House language, however, USDA's interpretation flies in the face of the "doctrine of the last antecedent," which "states that
qualifying words, phrases, and clauses are to be applied to the words or phrases immediately preceding them and are not to be construed as extending to and including others more remote." Wilshire Westwood Assoc. v. Atlantic Richfield Corp., 881 F.2d 801, 804 (9th Cir. 1989). See United States v. Ven-Fuel, Inc., 758 F.2d 741, 751 (1st Cir. 1985); First Charter Fin. Corp. v. United States, 669 F.2d 1342, 1350 (9th Cir. 1982); Quindlen v. Prudential Ins. Co. of Am., 482 F.2d 876, 879 (5th Cir. 1973); Mandina v. United States, 472 F.2d 1110 (8th Cir. 1973), cert. denied, 412 U.S. 907 (1973); United States v. Pritchett, 470 F.2d 455, 459 (D.C. Cir. 1972); Azure v. Morton, 514 F.2d 897 (9th Cir. 1975); Mandel Bros. v. Federal Trade Comm'n, 254 F.2d 18, 22 (7th Cir. 1958), rev'd on other grounds, 359 U.S. 385, 79 S. Ct. 818, 3 L. Ed. 2d 893 (1959).


29. S. 2560, Sec. 350, 100th Cong., 2d Sess. (June 23, 1988).

30. S. 2560, supra note 27. There was no conference committee and hence no conference report. Representatives from the two chambers met informally, and worked out a compromise. Subsequently, both chambers passed the compromise as a substitute for their own versions on August 11, 1988. The compromise was a substitute for the Senate bill, which both chambers passed in lieu of the House bill.

31. Senators Leahy and Harkin both discuss the stringency requirement in connection with state GA benefits, but not in regard to any of the other benefit programs. According to Senator Leahy, the expanded disability definition

"covers people receiving state interim assistance pending the Social Security Administration's consideration of their SSI applications and people getting disability-based Medicaid coverage. The provision also relies on state and local disability determinations made in connection with general assistance programs, where those programs apply a disability standard comparable to that used for SSI benefits."

134 CONG. REC. S11743, S11746 (Aug. 11, 1988).

Senator Leahy's floor statement is in lieu of a conference report, according to Senator Tom Harkin, Chairman of the Senate Agriculture Committee's Subcommittee on Nutrition and Investigations, which drafted the Senate bill. Id. at S11745 (Aug. 11, 1988).

32. See Pub. L. No. 99-198, Sec. 1504 (adding five new categories of benefit programs whose recipients are to be considered "disabled," only one of which is subject to a stringency requirement).

33. 42 C.F.R. Sec. 435.540(a). The merits of applying a stringency test to interim assistance benefits are less clear-cut from a policy point of view, but no coherent reading of the statute
would apply the stringency test to interim assistance and disability-based GA but not to Medicaid. USDA does not suggest otherwise.

34. Floor statements by Senators Leahy and Harkin indicate that both forms of GA disability determinations are acceptable. Senator Harkin explained, "The decision could be made for the purpose of establishing eligibility in a program limited to the disabled or for the purpose of exempting an individual for work requirements or durational limits in broader programs." 134 CONG. REC. S11746 (daily ed. Aug. 11, 1988).


37. OR. ADMIN. R. 461-05-313. (Oregon's disability test apparently was originated by the administrative agency and does not seem to be authorized anywhere in the state's statutes.)

38. 62 PA. CONS. STAT. Sec. 432(3)(i)(C); 55 PA. CODE Sec. 141.61(d)(1)(iii).


41. 7 U.S.C. Sec. 2012(r)(2), (3), and (7); 7 C.F.R. Sec. 271.2 (definition of an "elderly or disabled member").

42. USDA Policy Memo 89-16 (Aug. 21, 1989).

43. See 7 C.F.R. Sec. 273.1(a)(2)(C) and (D).

44. West, 879 F.2d at 1125; 54 Fed. Reg. 24512 (June 7, 1989).

45. 7 U.S.C. Sec. 2014(a); 7 C.F.R. Sec. 273.2(j). But see 7 C.F.R. Sec. 273.10(d)(7).

46. 7 C.F.R. Sec. 273.8(a) and 273.9(a).

47. Id. at Sec. 273.2(j)(1)(iv) and 273.10(d)(7).

48. Id. at Sec. 273.10(d)(7).
49. Only SSI and AFDC recipients are categorically eligible under current law; some GA recipients will become categorically eligible when the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 is implemented. See Pub. L. No. 101-624, Sec. 1714. An SSA determination of OASDI eligibility gives a recipient disabled status but does not, in the absence of SSI (or AFDC) eligibility, make the recipient's household categorically eligible.

50. See 7 C.F.R. Sec. 273.17(a). Both the Food Stamp Act and regulations limit the entitlement to restored benefits to underissuances occurring during the "year prior to the date the State agency receives a request for such restoration from a household or the State agency is notified or otherwise discovers that a loss to the household has occurred." 7 U.S.C. Sec. 2020(e)(11). See 7 U.S.C. Secs. 2020(p) and 2023(b); 7 C.F.R. Sec. 273.17(a)(1), (a)(2)(iii), (b), (c)(2), and (d). It could be argued, however, that the state agency becomes aware that the household may be suffering an underissuance whenever it becomes aware that the household has an SSI disability application pending with SSA. Most states will ask all food stamp applicants about pending applications for benefits under other programs as a matter of course. Those states that do not may become aware of these applications if they are properly implementing 7 U.S.C. Sec. 2020(e)(19), which calls for computer matching of food stamp agencies' files against SSA's files, and section 2025(e), which gives "[s]tate agencies . . . access to information regarding individual food stamp program applicants and participants who receive benefits" under the SSI Program to the extent necessary for determining households' eligibility for food stamps. Plaintiffs in West alleged that their state agency did in fact know of pending SSI applications in the great majority of cases and challenged the failure of state and federal agencies to share this information more systematically. After rejecting their other claims, discussed infra, the courts in that case did not feel obliged to reach these claims.

51. Affidavit of Bonny O'Neil, Director, Program Development Division, Food and Nutrition Service, USDA.

52. Some of the preferences for disabled persons are redundant in a household that is retroactively being recognized as categorically eligible. For example, vehicles that transport physically disabled household members do not count toward the food stamp resource limit, but categorically eligible households do not have to meet the resource test at all. Households that include an elderly or disabled member are exempt from the gross income test; categorically eligible households are exempt from both the gross and net income tests.

53. West, No. 88-1475, brief for federal appellees at 7 (3d Cir. 1989).

54. The regulation explaining categorical eligibility never uses the term "restored" or "retroactive" benefits. Instead, it states that "benefits shall be paid from the beginning of the period for which PA [public assistance] or SSI benefits are paid, the original food stamp application date, or December 23, 1985, whichever is later." 7 C.F.R. Sec. 273.2(j)(1)(iv). The regulations mandating recalculation of benefits using the medical and shelter deductions does use the word "restored." Id. at Secs. 272.1(g)(78) and 273.10(d)(7). The rest of the regulation, however, is so full of conjunctions and disjunctions that it is almost impossible to follow. Id. at Sec. 273.10(d)(7). The interim regulation was easier to understand, but was changed to explain that only categorically eligible disabled recipients are eligible for retroactive benefits. Compare 51 Fed. Reg. 28202 (Aug. 5, 1986), with 54 Fed. Reg. 24512-13, 24519 (June 7, 1989).
55. 51 Fed. Reg. 28198 (Aug. 5, 1986) (interim regulations). "Restored benefits, if appropriate, would be provided for cases found categorically eligible after their initial food stamp application was denied." Id. at 28197.

When the USDA published the final regulations, it explained that benefits should be recalculated retroactively following SSA disability determinations only for categorically eligible households, not for disabled individuals residing in noncategorically eligible households. 54 Fed. Reg. 24512-13 (June 7, 1989).

56. A disabled person may be granted separate household status from his or her children or siblings, even if they live together, as long as they do not customarily purchase and prepare meals together. 7 U.S.C. Sec. 2012(i); 7 C.F.R. Sec. 273.1(a)(2)(C) and (D). This may enable the disabled person to receive food stamps even if the people whom he or she lives with are not eligible or do not wish to apply for food stamps.

Although a household is usually defined as a group of individuals who live together and purchase and prepare meals together, an elderly person unable to purchase and prepare meals separately because of disability may be regarded as a separate household for food stamp purposes, as long as the other person's income does not exceed 165 percent of the poverty line. 7 U.S.C. Sec. 2012(i); 7 C.F.R. Sec. 273.1(a)(2)(ii).

57. 7 U.S.C. Sec. 2012(r)(2), (3), and (7); 7 C.F.R. Sec. 271.2 (definition of "elderly or disabled member").

58. "The Secretary of Agriculture has taken the position that noncategorically eligible persons are barred from recovering retroactive food stamp benefits even for periods determined by the Secretary of HHS to actually have been periods of disability." West, 879 F.2d at 1125.

59. Id. at 1127. See also USDA Policy Memo, supra note 42:

"A household member is considered disabled if the Social Security Administration has certified the member for one of these benefits or payments. Such certified persons include those who have been certified, but whose initial payments have not yet been received. Also considered as disabled are persons who remain certified for disability benefits or payments but whose checks are entirely recouped to recover a prior overpayment."

60. Compare 7 U.S.C. Sec. 2014(a), which provides that categorically eligible households may include a member who "receives . . . [SSI] benefits" with 7 U.S.C. Sec. 2012(r)(2), which provides that a disabled person is one who "receives [SSI] benefits."

61. "Categorical food stamp eligibility for AFDC and SSI recipients was recommended by the President's Task Force on Food Assistance, based on its finding that administrative simplification is needed in the food stamp program . . . . The Committee expects that the implementation of this provision will reduce the administrative time needed to handle their cases, thereby allowing administrative resources to be more efficiently allocated, without loosening food stamp eligibility requirements." S. REP. NO. 145, 99th Cong., 1st Sess. 224

While expanding the disability definition in the Food Security Act of 1985, the House Agriculture Committee noted that it had "constructed the definition so that it is simple to administer. Food Stamp eligibility workers need not administer a disability test, but can rely on information derived from Federal disability determinations." H. REP. NO. 271(I), 99th Cong., 1st Sess. 139 (Sept. 13, 1985), reprinted in 1985 U.S. CODE CONG. & ADMIN. NEWS 1103, 1243.

62. Commonwealth of Pa. v. United States, 752 F.2d 785 (3d Cir. 1984) (upholding SSA's interpretation of "receive" in a different statute to mean actual receipt of a benefit check for purposes of determining that the state was not entitled to a federal reimbursement for its share of the costs of AFDC benefits paid to a recipient who later received a lump sum SSI check).

63. West, 879 F.2d at 1132 (dissent).

64. Id. at 1142-43 (dissent). When Congress expanded the definition of disability to include those receiving interim assistance, the Senate Committee Report noted that "[t]he Social Security Administration often takes months or years to approve applications for disability payments. . . . [G]etting retroactive benefits late is better than not getting them at all," but this legislation was designed to get them out sooner. S. REP. NO. 397, at 29, reprinted in 1988 U.S. CODE CONG. & ADMIN. NEWS 2267, supra note 23.

65. After noting that the Food Stamp Act includes numerous provisions to prevent the overissuance of benefits, the Senate Report went on to declare that "The Committee is no less concerned, however, that eligible households receive the full measure of food stamps to which they are entitled because of their circumstances." S. REP. NO. 397, at 25, reprinted in 1988 U.S. CODE CONG. & ADMIN. NEWS 2263, supra note 23. Accordingly, the Hunger Prevention Act of 1988 amended 7 U.S.C. Sec. 2020 to require that "[w]hen a State agency learns . . . that it has improperly denied, terminated, or underissued benefits to an eligible household, the State agency shall promptly restore any improperly denied benefits." Pub. L. No. 100-435, 320.


67. 7 C.F.R. Sec. 273.9(d)(3).

68. See part IV.A, B, and C, infra.

69. See part IV.D, infra.

70. See part IV.E, infra.

71. 7 C.F.R. Sec. 273.10(d)(1)(i).
72. Id. at Sec. 273.10(d)(2). The regulations and USDA policy memos seek to carve out an exception for medical expenses. Food Stamp Policy Memo 80-63 (Aug. 13, 1980) explains that the recipient does not need to provide negative proof, i.e., proof of no reimbursement. The recipient's statement that the expense will not be reimbursed is sufficient, unless the eligibility worker has a specific reason to question the statement, e.g., knowledge that the recipient has a job that normally provides medical insurance. Nonetheless, if part or all of a medical expense may be reimbursed, no deduction may be taken until the amount of the reimbursement is determined.


74. 7 U.S.C. Sec. 2014(e).

75. If the recipient later received a reimbursement, it was treated as a lump sum payment that was counted as a resource, not as income. The deduction for any on-going medical expenses covered by the reimbursement ended at that time. Food Stamp Certification Handbook, Secs. 2264.3 and 2253 (Mar. 1977), reprinted at H.R. REP. NO. 464, 95th Cong., 1st Sess. 633 (June 24, 1977).


77. 44 Fed. Reg. 55161 (Sept. 25, 1979). The preamble to the interim final rule specifically discusses the choice to switch from the old "as paid" method for deductions to the special "on verification of reimbursements" method for medical deductions. The old method was rejected because it was "administratively complex, confusing to both participants and workers and potentially error-prone." The report cites problems with the old approach, e.g., recipients did not always report reimbursements on time.

78. See Pub. L. No. 96-58, the relevant parts of which are codified at 7 U.S.C. Secs. 2014(e) and 2012(q).

79. H.R. REP. NO. 464, supra note 75, reprinted in 1977 U.S. CODE CONG. & ADMIN. NEWS 1978; S. REP. NO. 180, 95th Cong., 1st Sess. (May 16, 1977). The only specific problem with the medical deduction cited in the reports was the excessive work that it caused for food stamp offices' staff. The purchase requirement also caused problems for recipients, since medical expenses could not be planned in advance. (The purchase requirement, since eliminated, forced recipients to buy food stamps--an unexpected medical expense might mean that a family could not afford its stamps.) H.R. REP. NO. 464, supra note 75, at 56, reprinted in 1977 U.S. CODE CONG. & ADMIN. NEWS 2034. Otherwise, both the House and Senate reports focused on problems of itemized deductions in general: administrative complexity, risk of error, documentation problems, and program inequities (higher-income people spent more and had more deductions, and, thus, had more food stamps). S. REP. NO. 180, at 116-18, 131.

The medical deduction was finally enacted as part of Pub. L. No. 96-58, passed by both the House and Senate as H.R. 4057. Before passage of the 1979 Appropriations, the House had already passed H.R. 4303 (the subject of the committee report cited in note 82, supra), specifically to reinstate the medical deduction. Speeches in support of H.R. 4303, reported in the Congressional Record for June 25, 26, and 28, 1979, constantly use the word "restore." See note 80, supra. Representative Harkin emphasized the importance of providing the deduction "as soon as possible after the household is billed for the expense." 125 CONG. REC. E3316 (daily ed. June 28, 1979).

The committee report for this bill specifies using the old "paid" method for calculating medical deductions; the committee report for H.R. 4057 does not mention medical deductions at all, since the restoration of the medical deduction was not in the bill at that time.

Representative Kelly introduced an amendment to H.R. 4057 to restore the medical deduction. See 125 CONG. REC. H5739 (daily ed. July 11, 1979). This amendment was passed as part of H.R. 4057, and it was this amendment, not H.R. 4303, that was considered in the joint conference committee. Representative Kelly specified that the amendment restored "the medical deductions that were in the 1964 act." 125 CONG. REC. H5746 (daily ed. July 11, 1979). In determining legislative intent, special weight is given to a floor statement by the sponsor of a bill or amendment. See 2A SINGER, supra note 28, at Sec. 48.15.

In introducing the conference report to the House, Representative Foley, Chairman of the House Agriculture Committee, emphasized that the medical deduction section was, in part, taken from H.R. 4303. 125 CONG. REC. H7066 (daily ed. Aug. 2, 1979). The statements of the committee chairman presenting a report on the floor are also to be given special consideration. SINGER, supra note 28, at Sec. 48.14. Thus, the committee report and floor speeches concerning H.R. 4303 should be considered part of the legislative history of H.R. 4057, which eventually passed both houses and became Pub. L. No. 96-58.

86. Floor statements are especially valuable in proving legislative intent when they express "common agreement in the legislature." SINGER, supra note 28, at Sec. 48.13.

An additional argument might be that the House considered the problem more thoroughly than did the Senate; the House passed a separate bill specifically restoring the medical deduction, while in the Senate, the medical deduction was part of a very complex appropriations bill. Moreover, courts have held that legislation for the relief of the poor should be interpreted liberally. 3A SINGER SUTHERLAND STATUTORY CONSTRUCTION Sec. 72.01 (4th ed. 1986).

87. 7 C.F.R. Sec. 273.10(d)(2).

88. 42 Fed. Reg. 61241 (Dec. 2, 1977). If the household got a deduction for an expense that was never paid, it was not subject to a claim for overissuance.


90. 43 Fed. Reg. 18891 (May 2, 1978) (proposed rules for implementing Food Stamp Act of 1977, which were finalized on October 17, as noted above).

91. 7 C.F.R. Sec. 273.10(c)(1)(i).


96. See 7 C.F.R. Sec. 273.10(e)(2)(i)(A).

97. 7 U.S.C. Sec. 2014(c); 7 C.F.R. Sec. 273.9(a). Eligibility and benefits for these households are calculated by comparing net income (including medical deductions) to the income eligibility standards. 7 C.F.R. Sec. 273.10(e)(2)(i)(A). Only elderly and disabled people are eligible for medical expense deductions. 7 C.F.R. Sec. 273.9(d)(3).

98. 7 C.F.R. Sec. 273.9(d)(3).
99. Id. at Sec. 273.10(d)(4) (emphasis added).

100. 7 U.S.C. Sec. 2014.

101. Id. at Sec. 2014(c)(1). The section on deductions is entitled "Deductions in computing household income," and begins "In computing household income for purposes of determining eligibility and benefit levels for households containing an elderly or disabled member . . . ." Id. at Sec. 2014(e).

102. The USDA might respond that calculating deductions is not part of figuring income since its "definition of income" does not mention deductions, which are listed in the subsection following income definition and exclusions. 7 C.F.R. Sec. 273.9(b) and (d). Reimbursements for medical expenses, however, are listed as excludable income. Id. at Sec. 273.9(c)(5)(i)(C).

103. H.R. REP. NO. 464, supra note 75, at 24, reprinted in 1977 U.S. CODE CONG. & ADMIN. NEWS 2000. The shelter deduction and dependent care deductions are both noted as part of the computation of income. Id. at 67, 68, reprinted in 1977 U.S. CODE CONG. & ADMIN. NEWS at 2045-46. The shelter deduction is to be calculated in much the same way as income is, based on reasonable certainty:

"Because the shelter deduction is part of the income determination . . . it would be calculated in the same fashion as income by reasonably ascertaining on the basis of the prior months' shelter costs and of anticipated shelter costs for future months in the certification period what the shelter costs would actually be."

Id. at 67.

104. H.R. REP. NO. 788, 96th Cong., 2d Sess. at 123-24 (Feb. 27, 1980), reprinted in 1980 U.S. CODE CONG. & ADMIN. NEWS 956-57 (to accompany S. 1309, which, among other things, specifically excluded from consideration as income any federal, state, or local energy assistance benefits). Although energy expenses paid for with direct vendor payments are not deductible, "[s]tate agencies should take into consideration other sections of current regulations which affect the determination of net income . . . . If the amount of the vendor payment cannot be reasonably anticipated, the household should be allowed the full deduction."

105. 7 C.F.R. Sec. 273.9(d)(3).


107. USDA Policy Memo 80-72 (Sept. 18, 1980).

108. Id.

110. USDA Policy Memo 88-13, supra note 109.

111. USDA Policy Memo 80-55 (July 17, 1980).

112. 7 C.F.R. Sec. 273.9(d)(3)(vii).

113. USDA Policy Memo 90-3 (Nov. 29, 1989).

114. Pub. L. No. 100-435, Sec. 351 (codified at 7 U.S.C. Sec. 2014(e)).

115. Pub. L. No. 101-624, Sec. 1717 (codified at 7 U.S.C. Sec. 2014(e)), effective on the first day of the first month beginning 120 days after the promulgation of final regulations. These regulations are due by October 1, 1991. Id. at Sec. 1781(a).


118. See citations at id.

119. 7 U.S.C. Sec. 2014(g); 7 C.F.R. Sec. 273.8(h)(v).

120. 7 U.S.C. Sec. 2012(r)(2)-(7); 7 C.F.R. Sec. 271.2 (definition of "elderly or disabled member"). See part II, supra.

121. USDA Policy Memo 90-22 (July 12, 1990).

122. "Congress placed no durational requirements on the physical disability." USDA Policy Memo 81-3 (Oct. 15, 1980). A household is required, however, to report a change of circumstances if the disabled person loses the disability.

123. Pub. L. No. 96-249, 138 (codified at 7 U.S.C. Sec. 2014(g)).


125. The legislative history of this provision shows that Congress intended that a vehicle need only be suitable (necessary) to transport a disabled person. This would allow a standard automobile to be excluded if it was necessary to transport a disabled household member.

The Food Stamp Act of 1977 included as a resource any licensed vehicle other than one used to produce earned income. All other vehicles fell within one of two classes. Most vehicles were
included on an equity value basis or to the extent that the fair market value exceeded $4,500 (whichever was greater). A smaller number of vehicles, including those used to transport a disabled household member, were counted to the extent that their fair market value exceeded $4,500. The Food Stamp Amendments of 1980 transferred vehicles necessary to transport a disabled household member from the $4,500 category to the excludable resource category. In making this change, the Conference adopted the House amendment that exempts any vehicle used to transport a disabled household member "with a limitation that the disabled person be physically disabled so that such person requires a vehicle in order to be transported." H. CONF. REP. NO. 957, 96th Cong., 2d Sess. 20, reprinted in 1980 U.S. CODE CONG. & ADMIN. NEWS 1057, 1060. There was no requirement that a vehicle be either specially equipped or of a special type in order to be excluded as a resource.

The court in Jones v. Wisconsin Dep't of Health & Social Servs., No. FS-35/35226 (Wis. Dep't of Health & Social Servs. Feb. 19, 1987) (Clearinghouse No. 42,242) reached a similar conclusion. In Jones, the court reversed the state agency's decision to terminate petitioner's food stamps after she reported the value of a truck used to transport her physically disabled child. The state agency counted the truck as a resource because it was not specially modified or equipped to transport a physically disabled person. The court found the statute plain and unambiguous on its face, and upon reviewing the agency's action, held that the statute requires no more than that the vehicle be necessary to transport a physically disabled household member. See also Palermo v. Toia, 392 N.Y.S.2d 673 (App. Div. 1977).

126. "If a household has a disabled member requiring transportation, that household is entitled to a vehicle exclusion under the subject provision. The determining factor for a vehicle exclusion under the subject provision is the fact that a physically disabled household member requires a vehicle for transportation." USDA Policy Memo 90-11 (Apr. 6, 1990).

127. 7 C.F.R. Sec. 273.8(h)(1)(v). On July 8, 1980, the USDA issued an interim final rule meant to incorporate changes made by the 1980 amendments. The interim rule excluded the entire value of a vehicle necessary to transport a physically disabled household member. The rule specifically states that the vehicle "need not have special equipment." The current regulation, issued on August 25, 1981, substantially amended the interim rule.

128. 7 C.F.R. Sec. 273.8(h)(1)(v).

129. Households denied benefits under this policy within the previous year should receive retroactive food stamps. 7 U.S.C. Secs. 2020(e)(11), 2020(p), and 2023(b). Once it becomes aware that some of its eligibility workers are applying an overly restrictive policy, the state agency should take broad corrective action and seek to identify other households wrongfully denied. 7 U.S.C. Sec. 2020(p).

130. 7 C.F.R. Sec. 273.2(c)(2)(i).

131. Id. at Sec. 273.2(c)(1). See also id. at Sec. 273.2(i)(3)(iii).

132. Id. at Sec. 273.2(f)(1).
133. 7 U.S.C. Sec. 2020(e)(2); 7 C.F.R. Sec. 273.2(e)(2). This requirement has been in the Food Stamp Act since 1977, but was strengthened by the Hunger Prevention Act of 1988, Pub. L. No. 100-435, Sec. 330. For this right to be a meaningful one, households must be informed of it. See 7 C.F.R. Sec. 15b.4(b)(1)(iii) (prohibiting practices in administering federally assisted programs that are ineffective in providing equal opportunities for handicapped people to obtain the same result as nonhandicapped people).

134. Id.

135. 7 C.F.R. Sec. 273.2(e)(3).


137. 7 C.F.R. Sec. 274.2(a).

138. 44 Fed. Reg. 41076 (July 13, 1979). The USDA originally promulgated the regulation in connection with the Food Stamp Act's mandate to set "points and hours" for service. Id. at 41081. When the "points and hours" requirement was dropped, the USDA preserved these special issuance procedures for the elderly and disabled. 47 Fed. Reg. 53310 (Nov. 26, 1982). Although not cited specifically in the USDA's notices in the Federal Register, section 504 of the Rehabilitation Act of 1974 (29 U.S.C. Sec. 794) probably requires regulations along these lines. See part VII, infra.


140. See 7 U.S.C. Sec. 2015(c)(2)(B), mandating special procedures for filing procedures in those cases in which all adult members of the household are mentally or physically handicapped or illiterate. See also 7 C.F.R. Sec. 272.4(b)(1), defining a single language minority household as one in which no adult is fluent in English as a second language.

141. 7 C.F.R. Sec. 274.2(a).

142. Id. at Secs. 15b.3(i)-(o). See part VII, infra.

143. 7 C.F.R. Sec. 15b.18(a). "A recipient [of federal funds] shall operate each assisted program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by qualified handicapped persons."

144. "No otherwise qualified individual with handicaps in the United States, as defined by [29 U.S.C. Sec. 706(7)] shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subjected to discrimination under any program . . . receiving federal financial assistance or under any program . . . conducted by any Executive agency." 29 U.S.C. Sec. 794.

145. 7 C.F.R. Secs. 15b.1 et seq.

147. See, e.g., Elchediak v. Heckler, 750 F.2d 892 (11th Cir. 1985) (mental impairment may so limit claimant's ability to advocate for himself that application of doctrine of administrative res judicata may violate due process); Penner v. Schweiker, 701 F.2d 256 (3d Cir. 1983); Shrader v. Harris, 631 F.2d 297 (4th Cir. 1980).

"Major life activities' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, breathing, learning and working." 7 C.F.R. Sec. 15b.3(k). "Physical or mental impairment" is also broadly defined. 7 C.F.R. Sec. 15b.3(k).


149. Bartels v. Biernat, 427 F. Supp. 226, 231 (E.D. Wis. 1977) (U.S. Department of Transportation violated section 504 by approving grant application); see also Alexander, 469 U.S. 287 (deciding on the merits of a claim that state plan approved under the Medicaid Act by HHS violated section 504 but finding no discrimination); cf., Battle v. Commonwealth of Pa., 629 F.2d 269, 279 (3d Cir. 1980) (finding that local school officials enjoy wide discretion under the analogous Education for All Handicapped Children Act but that the Act authorizes the courts to limit that discretion).


151. Id.