

A.7486
S.4349

M. of A. Glick
Senator Meier

A.7639

M. of A. Glick

THESE BILLS ARE APPROVED

The Social Welfare Law Committee of the Association of the Bar of the City of New York supports the passage of two Assembly Bills intended to extend and expand the New York State Food Assistance Program (FAP), which is set to expire in September 2005. FAP provides food assistance to hungry immigrants who are either elderly or victims of domestic violence and who would otherwise be ineligible for the Federal Food Stamp Program.

A.7486/S.4349 would reauthorize FAP, while A.7639 would expand it by removing the 1996 residency requirement for the program. The expansion, along with reauthorization of the program, would go a long way toward restoring FAP to its intended purpose of meeting the nutritional needs of immigrants until they become eligible for regular Food Stamps.

Background

In the fall of 1997, the New York State Legislature established FAP to provide State and locally funded food stamps to two categories of immigrants who had been rendered ineligible under the 1996 federal welfare reform legislation. The State's food stamp program ensured, in those districts that participated, that elderly and disabled immigrants and children would not be left without food as a result of the anti-immigrant restrictions enacted by Congress in 1996. In 2001, New York added survivors of domestic violence who held qualified immigrant status to the list of groups eligible for FAP benefits.

Initially, FAP required applicants to reside in the same county in which they were applying. Unfortunately, this seemingly innocuous requirement barred most otherwise eligible needy immigrants from receiving benefits. Not surprisingly, a Justice of the New York State Supreme Court found this provision to be a violation of the Equal Protection Clause and, therefore, unconstitutional. See Teytelman v. Wing, 773 N.Y.S.2d 801 (N.Y. Sup. Ct. 2003)(FAP's residency and travel restrictions applied only to qualified aliens violate Equal Protection)(J.Diamond).

Federal Restorations Left Out Elderly and Abused Immigrants in Need

The Food Stamp Reauthorization Act of 2002 brought two of the groups initially eligible for FAP back into the federally funded food stamp program - children and disabled immigrants. These two groups are now eligible for regular federal food stamps without regard to their date of entry. Congress, however, did not extend the same protection to immigrants who were either elderly or victims of domestic violence. Rather, Congress imposed on these two groups a five-year residency requirement before they can obtain federal food stamp benefits. For them, FAP would be a critical resource but for the fact that they may still be barred by the current residency requirement.

Immigrants who are either elderly or victims of domestic violence would benefit tremendously should FAP be extended to them. Elderly immigrants often do not have the means to support themselves during a five-year waiting period. Similarly, immigrant domestic violence survivors are often most in need at the point at which they leave their abuser and begin the long process of petitioning for an adjustment of their legal status. Immigration and Customs Enforcement (ICE) restricts such individuals from working immediately, thus making it difficult for them to support themselves and their children in the period before their petitions are granted.

Although federal welfare rules hold that battered immigrants become eligible to apply for cash assistance once they file their self petition for status and ICE finds the petition to state a prima facie case, most other federal benefits, including food stamps, are not available until the battered immigrant has been in a qualified status for at least five years. Although the New York State Legislature designed FAP to fill gaps like this, the current travel and residency restrictions at issue here fundamentally interfere with that goal.

Accordingly, the Committee believes that support of the aforementioned bills is critical to ensure that there will continue to be a nutritional assistance program available to meet the needs of elderly immigrants and immigrant who are victims of domestic violence.