

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



CESAR A. PERALES
 Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 84 ADM-34
 [Family & Children Services]

TO: Commissioners of Social Services

SUBJECT: Ruiz v. Blum

DATE: September 19, 1984

SUGGESTED DISTRIBUTION: All Child Welfare Services Staff

CONTACT PERSON: Any questions regarding this release should be directed to Samuel S. Fisher, Division of Family and Children's Services, by calling 1-800-342-3715, Extension 4-9606.

I. PURPOSE

The purpose of this release is to advise social services districts of the decision in Ruiz v. Blum (549 F. Supp. 871; USDC:SDNY). The court in this case held that children are the primary beneficiaries of day care benefits and that a child who is otherwise eligible for day care benefits cannot be denied such benefits because the parents of the child are aliens who are unlawfully residing in the United States or because the parents fail to furnish evidence that they are lawfully residing in the United States. In addition, the release discusses an issue related to the Ruiz decision. The issue concerns the ability of social services districts to require that persons who apply for a social service must disclose their Social Security numbers before such service can be provided. This requirement is contained in 18 NYCRR 404.1(c)(4).

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
80-ADM-42	Item F of Part IV of 80-ADM-42	403.7 404.5 416.2 352 369.3(a) 417 404.1(c)(4)	42 USC 1397 SSL 410 SSL 410a-c	195, §III.C. 3.d.i.	Policy Statements of New York City Department of Social Services III, c.12(b)

DSS-296 (REV. 8/82)

II. BACKGROUND

The case of Ruiz v. Blum was instituted as a result of a decision made after a fair hearing which affirmed a determination of the Human Resources Administration that day care services which were provided to a child should be discontinued because the child's mother was unable to prove that she was a lawful resident of this country, as required by 18 NYCRR 403.7(b). The child was born in the United States. At the time that the child's mother applied to the Human Resources Administration for day care services for the child, she was residing in the United States illegally since her visitor's visa had expired. The application was granted but approval was given for only a six-month period, subject to proof that she was a lawful resident in this country. Upon her failure to submit such proof, the child's day care services were terminated.

18 NYCRR 403.7(b) provides that an alien who is unlawfully residing in the United States or who fails to furnish evidence that he or she is lawfully residing in the United States, shall not be eligible for any social services except information and referral services and protective services for adults and children.

The court in the Ruiz case decided that the child was the primary beneficiary of day care services and the denial of such services based solely on his mother's status was an impermissible condition of eligibility and was inconsistent with an underlying purpose of Title XX of the Social Security Act which provides that eligible children should receive day care services. The denial of services also contravenes and tends to defeat the programmatic purpose relevant to the day care program of achieving or maintaining economic self-sufficiency to prevent, reduce or eliminate dependency. The court held that 18 NYCRR 403.7(b) and a policy statement issued by the New York City Department of Social Services which is comparable to this regulation were unlawfully applied in denying services to the child.

III. PROGRAM IMPLICATIONS

As a result of the decision in Ruiz, social services districts can no longer deny employment-related day care services or any other day care services to an otherwise eligible child, solely on the basis that the person applying for such services on behalf of the child is an alien who is unlawfully residing in the United States or such person is unable to furnish evidence that he or she is lawfully in this country.

In addition, the decision in Ruiz must be read in conjunction with the provisions of 18 NYCRR 404.1(c)(4) which provides:

"(4) A person making application for social services shall disclose the social security number of any person for whom a service is requested. Failure to disclose the social security number of any person for whom service is requested shall not be a basis for a determination of ineligibility for service if the person makes immediate application for a social security number. A person receiving a service while awaiting the issuance of a social security number shall, upon receipt of a social security number, disclose the social security number to the social services district. A person shall not be redetermined eligible for a service if he has not disclosed his social security number to the social services district unless he can demonstrate that he has satisfied all requirements of the Social Security Administration for issuance of a

social security number but that such a number has not yet been assigned by the Social Security Administration."

The Ruiz decision provides that the child who is receiving the day care services is the primary beneficiary of such services. Pursuant to this decision, the child is the person for whom day care services are requested. Therefore, a social services official cannot require the person who is an applicant for day care services on behalf of a child to disclose the applicant's Social Security number. If the child does not have a Social Security number, the applicant can be requested to obtain a Social Security number for the child. However, failure of the applicant to disclose the child's Social Security number or apply for such a number can have no effect on the ability of the child to receive day care services if the child is otherwise eligible for such services.

A social services official can ask the applicant for his or her Social Security number but such request must be made in a manner which is consistent with the applicable provisions of the Federal Privacy Act (P.L. 93-579). Section 7 of that Act provides that it shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his Social Security number. This provision does not apply if a Federal law requires the disclosure of the number or if there was a statute or regulation adopted prior to January 1, 1975 which required the disclosure of the number for purposes of identification of an individual.

Since Federal statute does not require that an applicant for day care services or any other service disclose his or her Social Security number before such services can be provided and since this State did not, prior to January 1, 1975, have a law or regulation which required that an applicant for day care services or any other service disclose his or her number before services can be provided, social services officials cannot require applicants for services to disclose their Social Security numbers as a condition of receiving services on behalf of themselves or their children.

However, nothing in Section 7 of the Privacy Act prevents a social services official from asking an applicant for day care services or any other service to disclose his or her Social Security number. If an official does ask for the number, the Privacy Act requires the official to inform the applicant whether the disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited and what use will be made of the number.

IV. REQUIRED ACTION

1. Social services districts are to establish procedures to ensure that no children who are United States citizens or who are lawfully residing in the United States are denied day care services based upon the residency status of their parents or custodial relatives.

2. Social services districts should also identify those children who were denied day care services or had their day care services discontinued on the basis of the residency status of their parents or custodial relatives since the date of the decision in Ruiz (October 27, 1982). The parents or custodial relatives of such children should be notified that their children may now be eligible to receive day care services and that if such service is desired, application should be made to the appropriate social services district. Where a waiting list exists, such children should be placed in the

position on the list which they would have occupied had they been determined eligible for day care services at the time the application was first made or had their day care services discontinued.

3. In addition, social services officials cannot, as a condition of providing day care services to otherwise eligible children, require such children or the person applying for such services on behalf of a child to disclose their Social Security numbers. If day care services are provided to applicants or recipients of public assistance and care, the official should have obtained the Social Security number of all members of the household on whose behalf the application was made at the time of the application, as permitted by 18 NYCRR 351.2(c).

4. Children should be designated as primary recipients of day care services.

Note: The Foster Care Maintenance Payment Program and the Adoption Assistance Program established pursuant to Title IV-E of the Social Security Act require disclosure of Social Security numbers.

V. ADDITIONAL INFORMATION

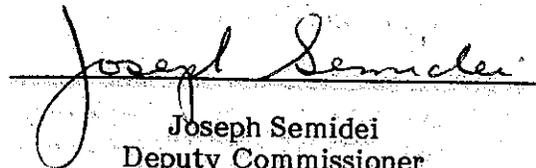
As was stated previously, nothing in the Federal Privacy Act prevents a social services official from asking an applicant for services to disclose his or her Social Security number, providing that the applicant is given notice of the restrictions stated in Section 7 of the Federal Privacy Act. These restrictions require giving the applicant notice of the following conditions:

1. Revealing the person's Social Security number is voluntary, and no penalty may be assessed for failure to comply with this request;
2. The authority under which this request is being made; and
3. The use to which the Social Security number will be put.

This notice may be given orally or in writing. A sample of a written notice in English and Spanish is attached as an appendix. It is recommended that this notice or another which includes the requisite information be given to applicants for services, and a copy be retained in the case folder should an applicant claim that a proper notice was not given.

VI. EFFECTIVE DATE

This Administrative Directive will be effective immediately and will have retroactive application back to October 27, 1982, the date of the decision on Ruiz v. Blum.



Joseph Semidei
Deputy Commissioner
Division of Family and
Children Services

Attachment

NOTICE TO BE GIVEN APPLICANTS FOR OR RECIPIENTS OF SERVICES WHEN REQUESTING SOCIAL SECURITY NUMBERS

In order to determine whether you have in the past received or are currently receiving services or other benefits through this or any other social services district, we are requesting that you give your interviewer your Social Security Number. Your Social Security Number may also be used to verify the information, including any employment information, contained in your application for services. You do not have to reveal your Social Security Number and no penalty will be imposed if you choose not to disclose your Number.

This notice is being given to you in accordance with the provisions of Section 7 of the Federal Privacy Act (P.L. 93-579).

NOTIFICACION PARA LOS SOLICITANTES O BENEFICIARIOS DE SERVICIOS CUANDO SE LES SOLICITA SU NUMERO DE SEGURO SOCIAL

Para poder determinar si usted ha recibido o está recibiendo servicios u otros beneficios a través de este o cualquier otro distrito de servicios sociales, le rogamos que provea a su entrevistador(a) su Número de Seguro Social. Su Número de Seguro Social también puede ser utilizado para verificar la información, incluyendo cualquier información sobre su empleo, contenida en su solicitud para la obtención de servicios. Usted no está en la obligación de dar a conocer su Número de Seguro Social, y no se le impondrá ninguna penalidad si usted desea no revelar su Número.

Esta notificación se le está proveyendo a usted de acuerdo a las provisiones de la Sección 7 de la Ley Federal de Privacidad (P.L. 93-579).

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