



# NYS Kinship Navigator

## **2012 KINSHIP NAVIGATOR GUIDE:**

### **THE “CHILD ONLY” GRANT AND OTHER BENEFITS FOR NON-PARENT CAREGIVERS**

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### **Purpose of this Booklet**

The purpose of this booklet is to provide information about laws and resources related to benefits for kinship caregivers and also for the professionals who serve kinship families. While most guidebooks do not contain citations to law, in developing this guide, the authors recognized that in order to successfully advocate, both caregivers and professionals should have access to applicable laws. Their best tool is to know the legal authority (citation). Therefore, this guide contains many references to laws that relate to kinship care and is current as of November 2011.

Because laws change, the authors caution that the citations herein are not legal advice, and readers should talk to an attorney to obtain up to date legal information and advice.

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# The “Child Only” Grant and Other Benefits for Non-Parent Caregivers

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*For information on how to research statutes, regulations, agency publications, and case law, see the Legal Assistance section at the end of this Guide.*

## **Definition of the “Child Only” Grant**

The “child only” grant is a monthly cash grant available by application to your local Department of Social Services (LDSS).<sup>1</sup> It is intended to help you meet the needs of children in your care. The “child-only” grant is available to anyone caring for children who are not a parent - (grandparents, other relatives, and friends). Children who receive the “child only” grant are also eligible for Medicaid.

You can find the application on-line at: <http://otda.ny.gov/programs/applications> It is available in five languages. Use the form called the “common application form.” The NYS Kinship Navigator publishes a simple guide to making out the application, see “How to Apply for Public Assistance, visit <http://www.nysnavigator.org/legal/documents/Publicassistanceguide2.pdf>. Also, for information on government benefits, see <https://www.mybenefits.ny.gov/>.

Depending on where you live, the “child only” grant may also be called the “non-parent” grant, or the “OTG” grant.

In determining whether the child is eligible for this grant, the local social services district may not take the income or resources of the caregiver into account. Under New York Law, only parents and step-parents are legally responsible for children in their care.

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<sup>1</sup> In New York City, the LDSS is called the Human Resource Administration. For additional information on benefits in New York City. See <http://www.mfy.org/wp-content/uploads/Kincare-Benefits-Brochure.pdf>

### Amount of the “Child Only” Grant

The size of the grant varies by county.

The grant is divided into several parts – one for basic living expenses, one for shelter and one for fuel. The living allowance portion of the grant is the same in every county:

Household size	Living allowance
1	166.10
2	264.50
3	353.00
4	454.70
5	561.70
6	648.20
7	743.70
8	823.20
PLUS 1	87.50

There are additional amounts that can be added to the living allowance portion for shelter and fuel costs, but these amounts vary on a county by county basis.

A relative caregiver will receive a grant for shelter and fuel costs only if she tells the local DSS that she “charges” the child for rent and fuel costs. While a caregiver may not consider that a child living in their home is renting from them, in order to maximize the monthly Child Only grant, it is important that caregivers “charge” rent and fuel costs!

The regulations set a maximum shelter and fuel allowance. If the caregiver undercharges, that is if he or she charges an amount less than the maximum amount allowed, that lesser amount is the amount that the caregiver will be paid. *See* examples in 05 INF-24, pp 5-7.<sup>2</sup>

Fuel costs can also be included, as long as the non-parent caregiver pays for the fuel separately and is the customer of record in the household.

Charts of the maximum grant by county, including the shelter and fuel grants, can be found at: <http://www.empirejustice.org/issue-areas/public-benefits/cash-assistance/standard-of-need-by-county.html>

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<sup>2</sup> INFs are statements of state policy that can be found on the internet at: <http://otda.ny.gov/policy/directives/2012>  
The first two numbers indicate the year that the INF was issued. *See* Legal Assistance section at end of this Guide.

## **Application Process**

Non-parent caregivers *do not* need court ordered custody or guardianship to be eligible for a “child only” grant on behalf of the children in their care. 05 INF-24, p. 3.

Relative caregivers cannot be required to participate in work activities as a condition of receiving the “child only” grant. 05 INF-24, p. 3.

Local districts may not require relative caregivers to be finger-printed as a condition of receiving a “child only” grant. 05 INF-24, p. 3.

Relative caregivers are not required to participate in the drug and alcohol screening that is required for other applicants for temporary assistance. 05 INF-24, p.4.

Application can be made for cash assistance (including the “child only” grant), food stamps and medical assistance and child care on one form at the same time.

Any adult member of the family or a person acting in his/her behalf may file an application. 18 NYCRR 350.3(a).

After the application is submitted, interviews must be held within 7 working days unless there is an emergency (no food, eviction or homelessness, utility shutoff), in which case the interview must be held at once. 18 NYCRR 350.3(c).

The applicant in an emergency should receive a same day written acceptance or denial notice. 18 NYCRR 350.3(a); 18 NYCRR 351.8(b).

## **Verification Issues**

The local district may require a social security number for the child receiving public assistance. When the non-parent caregiver cannot get a copy of the child’s social security card and does not know the child’s social security number, the relative caregiver may be required to apply for a social security number on behalf of the child. In such case the assistance to the child cannot be denied, delayed or discontinued because the relative caregiver does not have or does not know the child’s social security number. *See* the NYS Kinship Navigator legal fact sheets for information on how to apply for a social security card.

The income and resources of relative caregivers do not count when determining the financial eligibility of the children for a “child only” grant. However, caregivers **do** have to provide information as to their income and resources, but they **do not** have to verify this information with pays stubs or other documentation, so long as they are not receiving assistance themselves. They do not have to provide their social security number, date of birth, citizenship/alien status, education level or veteran’s status. 05 INF-24, p. 4.

Proof of relationship is required. 00 INF-6. Unless primary documentation is available (birth or marriage records), the district can require two of the following: school records, an attestation from the caregiver, a statement from a third party such as a landlord, neighbor, day care worker or doctor.

If you have trouble locating documents that are requested by the local social services district, the district is required to assist you in obtaining documents and paying a fee if necessary. 18 NYCRR 351.5(a). *Matter of L.G.*, fh# 2971335L (12/14/98); *Matter of J.M.*, fh # 2690814M

(9/3/97).<sup>3</sup>

If the non-parent caregiver is not a relative, the adult does not have to provide any information on income or resources. 05 INF-24, p. 4.

### **Eligibility Determinations**

A decision must be made on the application within 30 days. 18 NYCRR 351.8(b).

Effective date of payment is the date that eligibility is established or 30 days after the date of application, whichever is earlier. 18 NYCRR 351.8(b)(3).

The “date of application” is the date that the social services district receives a completed, signed application. 18 NYCRR 350.3(b).

### **Budgeting: When One Sibling Child has an Adoption Subsidy**

Where a relative caregiver is raising two siblings (siblings are brothers or sisters of a child, and includes half-siblings who are brothers and sisters with one common parent, not two) and has adopted one, but not the other, and receives an adoption subsidy for the adopted child, that income may not be counted as income to the other child receiving a “child only” grant. *Matter of E.L.*, fh # 4647562Y (10/15/07); 07-INF-14.

### **Budgeting: What if the teenage child has a job?**

**The “child only “grant:** As long as the child is a student, the child’s earned income will not count to reduce the child only grant or food stamps. The exclusion applies during school breaks and continues until the child is 19 for the “child only “grant (there are some special rules that extend this exemption to age 21 – ask your worker if your older student can be considered an “essential person.” Usually that will be allowed if there is another child in the household).

### **Food Stamps**

The exemption for earned income of students continues until the end of the month in which the child turns 18, for food stamps. School includes higher education including college and vocational training.

### **Section 8 Housing**

Student earnings for a child under the age of 18 does not count as income for purposes of calculating the amount of rent due under the Section 8 Housing Program. There are also special rules disregarding the earned income over \$480/ year for students age 18 and older if they are not the head of the household.

### **Child Support Assignment and Pass Through**

As a condition of eligibility for public assistance, the caregiver must assign the child’s right to child support to the social services district. SSL §158(5)(6) (Safety Net Assistance), SSL §349-b (Family Assistance); 99 ADM-5.

This means that the social services district will have the right to sue the absent mother or father to obtain child support for that child, and can collect and retain child support collected on the

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<sup>3</sup> Fair Hearings are posted on the Online Resource Center at <http://onlineresources.wnyc.net/welcome.asp?index=Welcome> There is no charge to use the Fair Hearing Bank of the Online Resource Center, but you must register to use it.

child's behalf to pay itself back for cash public assistance paid to the family.

However, the first \$100 of support collected (\$200 if there is more than one child in the household – even if the other child has a different parent and no support order) in any month that the support is due, is “passed through” to the family and does not count to reduce the public assistance grant. Social Services Law 131-a((8)(a)(v).

### **Eligibility Requirements: Child Support Cooperation**

Relative caregivers are required to cooperate in establishing paternity, establishing, modifying and enforcing support orders for the children in their care, regardless of whether they are applying for public assistance for themselves. 18 NYCRR 369.2(b). Cooperation includes:

- Providing verifiable information to locate the absent parent or putative father;
- Appearing as a witness in court;
- Providing information or attesting to a lack of information under penalty of perjury;
- Submitting herself and her child to genetic testing.

### **Exception to Support Cooperation: Good Cause**

An applicant may claim good cause for failure to cooperate with child support enforcement if 18 NYCRR 369.2(b)(4):

Cooperation would result in physical or emotional harm to the child or to the caretaker relative such that it would reduce the caretaker's ability to care for the child (This exception is especially important to relatives who are applying for the “Child Only” Grant);

- The child was conceived as a result of incest or rape;
- Legal proceedings are pending for the adoption of a child;
- The mother is being assisted by a social agency to determine whether or not to give up a child for adoption (not more than three months).

Good cause must be shown by documentary evidence such as sworn statements from others, medical records or court documents.

The Office of Temporary and Disability Assistance has made clear that “special consideration related to emotional harm is especially important in determining good cause for failure to cooperate with child support requirements for the non-parent caregiver. 08-INF-16.

The penalty for failure to cooperate with child support enforcement is a 25% penalty in the household's grant. SSL §131(16). **THE LOCAL DISTRICT CAN NOT DENY AN APPLICATION FOR A CHILD ONLY GRANT IF THE CAREGIVER DOES NOT WANT TO COOPERATE IN PURSUING CHILD SUPPORT.**

### **What If Parent Lives in the Household?**

In general, when the parent resides with the child, the income available to the parent and child is determined by special rules for three generation households. 18 NYCRR 352.30(c)).

If the relative caregiver is not applying for assistance and the minor parent is under the age of 18, the minor parent and child will be considered one household and the income of the relative caregiver will be “deemed” available to the minor parent and their child, unless the relative caregiver's income is Supplemental Security Income (SSI). I 18 NYCRR 352.14 (a)(3) for the deeming rules.

If the relative caregiver is not applying for cash assistance and the minor parent is 18, 19 or 20, the income of the relative caregiver will be “deemed” available to the minor parent, but not to the grandchild.

Who is the payee (person who receives the grant payment) of the grant if the parent is 21 or more and lives in the household? It depends who is “exercising parental responsibility.” 91 INF-12.

Example 1: Aunt cares for nephew because the mother is a substance abuser and leaves the house at will, sometimes for extended periods. The aunt is the person who cares for the child on a daily basis and makes decisions concerning the child. There is no order of custody. As long as the aunt can document the fact that she makes the decisions for the child (i.e. school records) or that the mother is frequently absent, the aunt can be the payee.

Example 2: A disabled man lives with his mother and his daughter. The man is unable to physically care for the child, but makes most of the decisions regarding her schooling and other activities and provides her with emotional support. In this case the father of the child would be the payee.

### **Overpayments**

The general rule regarding repayment of public assistance overpayments is that they are repaid by a 10% recoupment imposed on the household’s public assistance grant. However, there is a **special rule for Child Only cases**. If a child was a member of an overpaid public assistance household, but then moves in with a relative that receives a Child Only grant, the child’s grant may not be reduced to recover that overpayment. 18 NYCRR §352.31(d).

**Example #1:** Mrs. Lee is caregiver for her 10 year old granddaughter, Lisa. Mrs. Lee applies for a “Child Only” grant for Lisa. Before moving in with her grandmother, Lisa lived with her mother and they were both on public assistance. While Lisa was living with her mother, the case was overpaid.

The social services district can **NOT** pursue recovery from Mrs. Lee’s Child Only case.

Example #2: Mrs. Smith receives a Child Only grant for her two grandchildren. Mary, age 8 and Rose, age 10. Rose returns home to live with her mother, but Mrs. Smith does not tell DSS until two months later resulting in an overpayment of public assistance.

The social services district **CAN** recover the overpayment from Mary’s grant.

### **Camp Fees**

When funds cannot be obtained from other sources, camp fees may be paid for children receiving cash public assistance. The total cost allowable is \$400 per year or \$200 per week. 18 NYCRR 352.7(i); GIS 02 TA/DC010.

### **Food Stamps**

Food Stamp budgets are based upon the concept of “household.” The same number of people will usually get more food stamps if they constitute more than one household. For example, four people will usually get more food stamps if they apply as two households of two instead of one household of four.

However, children under 18 who are “under the parental control” of someone in the household cannot be a separate household. 7 CFR 273.1 (b)(iii). Therefore, in most cases, relative caregivers and the children in their care have to be in the same food stamp case. This means that for purposes of food stamps, the income of the caregiver will count when determining eligibility for food stamps.

For most food stamp households, resources do not count against eligibility. The exceptions are

1. If the household has more than one car for each adult household member;
2. The household contains an elderly or disabled household member with gross income higher than 200% of the federal poverty level.

Where a relative caregiver receives **kinship foster care benefits** for his or her grandchild, the relative caregiver has the right to choose whether to include or exclude that child from the food stamp budget and the food stamp household. 7 CFR 273.1(b)(4). Although the child does not have the right to be a separate food stamp household, excluding the child and the child’s income may result in greater overall benefits to the entire family.

### **Child Care**

Child care payment assistance is available in many circumstances. The key question is whether the caregiver is receiving cash public assistance?

- ▶ If yes, the relative caregiver is guaranteed child care if such care is necessary to work, look for work or participate in a work activity. SSL §410-w(4).
- ▶ If yes, the relative caregiver’s cost of child care is entirely subsidized. 18 NYCRR 415.3(e).

But when the relative caregiver is **not** in receipt of Family Assistance:

- ▶ There is no guarantee of child care even though the child is receiving cash public assistance. *Matter of A.C.* fh# 1774772R, (3/31/92).

- ▶ However, the income of the relative caregiver is NOT counted in determining eligibility.

This is because the regulation defining family excludes the income of adults who are not legally responsible for children in their care. 18 NYCRR 404.8(a)(1). This means that in most cases the copayment for child care is very small.

- ▶ The income of the child cannot exceed 200% of the state income standard (the poverty level adjusted as of June 1 each year). This year’s state income standard is at 11-OCFS-INF-04, on the OCFS website at: <http://www.ocfs.state.ny.us/main/policies/external>

- ▶ The relative caregiver is assessed a co-payment based on a complicated schedule which varies by county. The formula consists of a multiplier between 10% and 35% which is applied to the child’s income after subtracting the poverty level from the child’s income. To find out the copayment multiplier in your county, go to: <http://www.empirejustice.org/issue-areas/child-care/co-payments/co-payment-disparities-by.html>

- ▶ The relative caregiver may choose the provider and the county is responsible for payment to the provider at the amount charged by the provider up to a maximum of the “market rate.” 18 NYCRR 415.9. The market rate varies by geographic areas of the state, the type of child care (i.e center based, family based and the age of the child).

- ▶ The relative caregiver may apply for child care benefits even if the child’s parent resides in the household, so long as the parent is not able to care for the child. *Matter of B.D.*, fh #2800866J (1/2/98).

- ▶ Relative caregiver who works may not be denied child care because disabled spouse resides in the home. *Matter of L.W.*, fh # 3487988Q (5/8/01).

- ▶ The immigration status of the relative caregiver will not affect the eligibility of the child for child care, so long as the child is here lawfully. 18 NYCRR 403.7(d).

### **SSI Benefits for Children**

If the child in your care has a disability, the child may be eligible for Supplemental Security Income, also known as SSI. Most applications for SSI are initially denied and it is important that if you feel that the child in your care is disabled, that you file an appeal. The rules for SSI benefits are complicated, and if you are denied, free legal help is available at legal aid offices, which receive special grants to help people with their SSI appeals. To find the contact information for a legal aid program near you, go to: [www.lawhelp.org/NY](http://www.lawhelp.org/NY)

### **Preventive Day Care**

Relative caregivers who have medical conditions that make it difficult to care for young grandchildren may be eligible for preventive day care services. 18 NYCRR 415.2(b); *Matter of H. W.* fh # 1996552P (9/28/93).

### **Homemaker Services**

Relative caregivers with health problems may be eligible for homemaker services to assist with caring for children. 18 NYCRR 460.1; 460.2; *Matter of V. N.* fh # 1801868J (6/11/92).

### **Special Rent Subsidies: Children Leaving Foster Care**

Relative caregivers seeking to obtain the return of children from foster care but who lack adequate housing may be eligible for a rent subsidy of up to \$300 per month for three years or a repair subsidy of up to \$1800. SSL §409-a(5)(c); 18 NYCRR 423.2(b)(16).

This subsidy may be used to make repairs even if there is not a risk of “imminent harm,” and the agency may reimburse for expense incurred. *Matter of L. J.* fh# 1913407Z (4/9/93).

This subsidy can be used for security deposits, rent or mortgage arrears, and exterminator fees, finder’s/broker’s fees, household moving expenses, and essential repair of conditions creating substantial health or safety risks.

18 NYCRR 423.4 (b)(2).

This assistance is limited to the lesser of:

-\$300 per month, or the higher of;

-10% of the family’s gross monthly income, or;

-30% of the family’s monthly gross income after deducting \$40 per child and child care expenses.

Additionally a separate regional cap applies to the cost of the rental unit based on the number of bedrooms. 18 NYCRR 423.2(c).

### **Rent Subsidy for Children in Danger of Entering Foster Care**

Relative caregivers who lack adequate housing may be eligible for a grant similar to the one described above to improve their housing situation. SSL §409-a(7); 95 LCM-110.

### **Grandchild Eligibility for Social Security Benefits from Parent or Grandparent**

Grandchildren residing with their grandparent(s) may be eligible for Social Security dependency or survivor benefits from their eligible parent or grandparent.

If the child’s natural or adoptive parent(s) is deceased or receiving Social Security Disability benefits, the child may be eligible for benefits on the parent wage-earner’s account. 42 U.S.C. § 402(d); 20 C.F.R. §404.350.

If the natural or adoptive parent(s) is deceased or disabled, but not fully insured or eligible for a Social Security benefit, the child may be eligible for Social Security benefits on the grandparent's Social Security account. 42 U.S.C. §416(e)(3).

In order to be eligible for benefits from a grandparent's account, **either** the natural or adoptive parent(s) must be deceased or disabled at the time the grandparent became entitled to Social Security benefits **and** the grandparent provides at least one-half support before becoming eligible for benefits, **OR** the grandparent or surviving spouse legally adopts the child. (see discussion below).

### **Grandchild Eligibility for Benefits from Grandparent**

In order to be considered the child of a grandparent, the child must meet the following conditions:

-the natural or adoptive parent(s) must either be deceased or disabled at the time:

(i) the grandparent became entitled to old-age insurance benefits, disability insurance benefits or died, or

(ii) if the grandparent had a period of disability that continued until they became entitled to old-age or disability benefits, or died, at the time such period of disability began;

OR

The grandparent or surviving spouse of a deceased grandparent legally adopts the grandchild. 42 U.S.C. §416(e)(3); 20 C.F.R. §404.358(b).

*See* the NYS Kinship Navigator for more information about social security benefits.

### **Legal Assistance**

Legal assistance in applying for benefits and in appealing adverse rulings is sometimes available from local legal services providers. To find out about legal assistance, contact the NYS Kinship Navigator.

### **Legal Abbreviations for References to Statutes**

DRL = Domestic Relations Law

FCA = Family Court Act

SCPA = Surrogate's Court Procedure Act

SSL = Social Services Law

### **New York State Agency Abbreviations**

OCA = Office of Court Administration

OTDA = Office of Temporary and Disability Assistance

OCFS = Office of Children and Family Services

OFA = Office for the Aging

### **New York State Laws (Statutes)**

Available at <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

DRL (Domestic Relations Laws) are found by clicking on DOM

SSL (Social Services Laws) are found by clicking on SOS

FCA (Family Court Act, located at the end of the listing under COURT ACTS, are found by clicking on FCT.

### **New York State Regulations**

Called the NYCRR, New York Codes, Rules, and Regulations. Regulations are published by state agencies, they are also laws. The NYCRR primarily contains state agency rules and regulations adopted under the State Administrative Procedure Act (SAPA). Title 18 of the NYCRR contains codes, rules and regulations for social services.

Go to the state agency and look for a link to its regulations. Or visit <http://w3.health.state.ny.us/dbspace/NYCRR18.nsf/Full+Directory?OpenView>.

### **New York and Federal Case Law**

Case law refers to judicial decision that have the same effect as laws because they create precedents which courts must follow. Many cases are available at free sites. Often the case can be found by searching for it by name of parties.

Agency hearings are called Fair Hearings. Fair Hearings are posted on the Online Resource Center at <http://onlineresources.wnyc.net/welcome.asp?index=Welcome> There is no charge to use the Fair Hearing Bank of the Online Resource Center, but you must register to use it.

Also for other judicial decisions, visit: <http://law.justia.com/>  
<http://caselaw.findlaw.com/courts/New-York>  
<http://www.lexisnexis.com/partners/barassociations/modules/nysba/caselaw.asp>

Each count maintains a court library open to the public: Information is available at <http://www.nycourts.gov/lawlibraries/publicaccess.shtml>

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