



**NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY
ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NY 12243-0001**

David A. Paterson
Governor

David A. Hansell
Commissioner

Informational Letter

Section 1

Transmittal:	08-INF-16
To:	Local District Commissioners
Issuing Division/Office:	Center for Employment and Economic Supports
Date:	September 24, 2008
Subject:	Non-parent Caregivers and Good Cause
Suggested Distribution:	Temporary Assistance Directors Food Stamp Directors Medicaid Directors Staff Development Coordinators Child Support Coordinators Child Care Workers Domestic Violence Liaisons
Contact Person(s):	Temporary Assistance Policy Questions: Temporary Assistance Bureau at 1-800-343-8859 extension 4-9344 Medicaid: Upstate Regional representatives at (518) 474-8887 New York City representatives at (212) 417-4500 FS Questions: Food Stamp Bureau (518) 473-1469 Child Care Questions: (518) 474-9454
Attachments:	None

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
05 OCFS ADM-03 03 ADM-05 03 ADM-02 99 ADM-08 99 ADM-05 98 ADM-03 91 ADM-40 06 INF-11 05 INF-24 02 INF-36 01 INF-12		347 351.2(e)(2)(i) 351.2(I) 351.26 369.2(b)(4)(v) 370.2(b)(3)(i) 415.3 (c)	SSL 101 SSL 111-g SSL 132-a SSL 158 SSL 349-a SSL 352 SSL 352-a	TASB Chap 9 – R	LDSS 4279 - Notice of Responsibilities and Rights for Support OCFS LDSS 7013- Child Support Requirements Notification Letter

Section 2

I. Purpose

The purpose of this Informational Letter (INF) is to reiterate to local social services districts that non-parent caregivers have the right to claim good cause for failure to cooperate with child support enforcement and to provide clarification on when “special considerations related to emotional harm” should be applied in non-parent caregiver situations. It is also to emphasize to districts that non-parent caregivers can seek a domestic violence waiver if complying with child support requirements would result in physical or emotional harm to themselves or the child.

II. Background

Parents whose children are recipients of temporary assistance are usually financially responsible for their children until the age of 21, even if the children do not live with them. Every applicant for or recipient of Temporary Assistance (TA), including non-parent caregivers, must be informed of their responsibility to cooperate with the paternity establishment and support enforcement processes. The current policy (99 ADM-05) for cooperation with child support would apply to non-parent caregivers as it does to parents when applying for TA on behalf of a child in their care. They may attest to no knowledge or claim good cause and/or seek a domestic violence (DV) waiver from cooperation where there are safety concerns.

A child support sanction must be imposed (01 INF-12) If the non-parent caregiver fails to cooperate with child support requirements and does not complete an attestation of lack of knowledge, or a DV waiver or a good cause claim is not approved. Such a sanction would result in a 25% reduction in the needs of the child (ren). Additionally, the child support program may also provide services without the involvement of the non-parent caregiver in certain circumstances.

III. Program Implications

A. Temporary Assistance

1. Opportunity to Claim Good Cause

An applicant for, or recipient of, TA has the right to claim good cause for not actively pursuing child support. The right to claim good cause also applies to non-parent caregivers who apply for TA on behalf of a child in their care.

Good cause must be granted when cooperation in establishing paternity or seeking support would not be in the best interest of the child. Good cause must be granted when the applicant’s or recipient’s cooperation in establishing paternity or securing support is reasonably anticipated to result in any of the following:

- physical harm to the child for whom support is to be sought; or
- emotional harm to the child for whom support is to be sought; or

- physical harm to the parent or caretaker relative with whom the child is living which reduces such person's capacity to care for the child adequately; or
- Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces such person's capacity to care for the child adequately.

Other instances in which good cause must be granted include:

- the child for whom support is sought was conceived as a result of incest or forcible rape; or
- legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or
- the applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption, and discussions have not gone on for more than three months.

Special Consideration for Emotional Harm

While physical harm and emotional harm must be of a serious nature in order to justify a finding of good cause, the circumstances under which good cause can be claimed and granted include special considerations related to emotional harm.

The majority of non-parent caregivers are related to the parent (grandparent, aunt, sibling, etc.) and the relationship between the caregiver and the parent may be a factor in the reason the caregiver is claiming good cause. Non-parent caregivers may not want to cooperate with child support because they fear retaliation from the child(ren)'s parents. Often, the non-parent caregiver must balance meeting the child's physical and emotional needs against not exacerbating the behavior that led to the parent's inability to care for the child in the first place. Therefore, 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.

Having to file a support petition can be the source of great emotional stress for a relative non-parent caregiver when a disgruntled parent(s) retaliates and threatens to remove the child from the non-parent caregiver's home, even though the caregiver knows the parent is not ready to properly care for the child. Such stress for the non-parent caregiver is not in the best interest of either the caregiver or the child. The threat of having to leave the stability of the caregiver's home for the unstable, and possibly unsafe, home of the parent, can also result in emotional harm to the child. For example, emotional harm of a serious nature could result if the removal of the child results in a change of school districts, health care services or access to established friendships that would substantially limit the child's emotional ability to continue to function in their normal capacity.

Local districts must ensure that non-parent caregivers are made aware of their ability to claim good cause based on emotional harm to the child or caregiver when appropriate. If a non-parent caregiver claims good cause due to the threat of removal or other inappropriate interference on the part of the parent(s), local districts must explore the possibility that this would cause emotional harm of a serious nature to the child or the caregiver.

Documentation for Special Consideration for Emotional Harm

For every good cause determination which is based in whole or in part upon the anticipation of emotional harm to the child or the non-parent caregiver, the TA worker should consider the following documentation:

- (1) medical records which indicate emotional health history and present emotional health status of the non-parent caregiver or the child, or written statements from a mental health professional licensed to practice in New York State, indicating a diagnosis or prognosis concerning the emotional health of the non-parent caregiver or the child, for whom support would be sought, or
- (2) Sworn statements* from individuals, other than the applicant or recipient, with knowledge of the circumstances that provide the basis for the good cause claim.

*The definition of a sworn statement for purposes related to a claim of good cause is:

A document that contains facts pertinent to the good cause claim and is signed before, and witnessed and signed by, a person who is empowered to administer an oath to the testifier. Persons authorized to administer oaths include notaries public, commissioners of deeds, judges, town justices and justices of the peace.

Examples of Special Consideration for Emotional Harm

- A.** Mrs. Green's 6-year-old nephew, James, lives with her and her family. The Greens do not have custody or guardianship of James, but took him in when his mother, an alcoholic, dropped him off at their house 10 months ago. When his mother dropped James off he had lice infestation, was malnourished and had only the clothes he was wearing. Since that time his mother has not seen James, has been in and out of in-patient facilities and although she is now employed, continues to abuse alcohol. Mrs. Green has applied for TA for James and has asked to claim good cause due to emotional harm. The good cause claim is being requested because Mrs. Green fears that because she does not have custody that James' mother will remove him from her home and he would be put in an unstable environment.

The local district must determine good cause due to emotional harm to James. Mrs. Green provides sworn statements from James' teacher and also from her minister that the information that she provided is true. The documented facts of this good cause claim due to emotional harm are enough for the district to grant a good cause exemption because the threat of the child's removal from a stable environment would cause extreme emotional harm.

- B.** Mr. Johnson's 10-year-old grandson has lived with him since his mother, Mr. Johnson's deceased daughter, overdosed on heroin two months ago. The child's father who is also a heroin addict has not seen the child for over a year. Mr. Johnson applies for TA for his grandson and claims good cause due to emotional harm because the child's father has threatened in the past to pursue custody if support was ever pursued. Mr. Johnson provides

a statement from his grandson's mental health counselor that the child could not emotionally cope with the threat of his father gaining custody.

The local district must grant a good cause exemption due to emotional harm based on the statement from the mental health counselor.

2. Domestic Violence (DV) Waiver

Non-parent caregivers may also request consideration for a DV waiver from child support cooperation when there are safety concerns due to domestic violence. When a non-parent caregiver applies for TA, he/she should be screened for DV as part of the application process. It is a voluntary process on the part of the applicant. When the non-parent caregiver indicates there may be a DV issue, he/she would be referred to the domestic violence liaison (DVL) for an assessment. The DVL would conduct an assessment interview and decide if the applicant is credible based on written documentation or at a minimum, a sworn statement along with other information provided at the assessment.

If the applicant is credible, the DVL would then discuss the need for a waiver. A waiver is a temporary suspension of one or more TA program requirements (e.g., child support cooperation) for an initial period of at least four months and may be extended. Waivers must be reviewed at the end of the waiver period and at least every six months. Waivers may be granted by the DVL where compliance with program requirements would make it more difficult for the non-parent caregiver and/or the child to escape from DV or subject them to further risk of DV.

If a full waiver is granted, all child support enforcement (CSE) activities must be suspended during the waiver period. If a partial waiver is granted, CSE would continue CSE activities but with specific safeguards in place. The applicant also has the option of declining a waiver. As part of the assessment interview, the DVL would explain what cooperating with CSE entails, as well as the potential impact of a waiver. The DVL would explain that safety risks may occur from cooperating with CSE requirements, as well as after an order is filed, enforced or suspended. The DVL is required to provide and discuss an informational sheet called "Notice Regarding Child Support Requirements: LDSS-4930" to address any safety concerns. This notice will provide the individual with general background information on child support services and requirements, good cause exemptions, CSE waivers and possible implications of complying with these requirements. It is important that the DVL have access to current information on CSE arrears and court orders which will impact the applicant.

As part of the assessment, the DVL also will make referrals for DV services for the non-parent caregiver. Again, it is voluntary on the part of the applicant to participate in these referrals.

B. Child Care

Eligibility for child care services is dependent on a number of factors. The non-parent caregiver must need child care in order to participate in an activity required or approved by the district and, depending on his/her circumstances, may be required to cooperate with child support enforcement.

If the non-parent caregiver is applying for or receiving TA and is participating in a district required activity, the non-parent caregiver has a guarantee of child care even if the non-parent caregiver refuses, without good cause, to cooperate with child support enforcement. The same is true if the non-parent caregiver is receiving TA and is engaged in work as required by the district.

Non-parent caregivers who are receiving TA only on behalf of the child(ren) in his/her care, do not have a child care guarantee. In order to receive child care services, he/she must be involved in an activity approved by the district and must comply with child support enforcement unless they have a good cause exception or a DV waiver.

C. Food Stamps

A child under 18 years of age who lives with and is under the parental control of a member of that household who is not his/her parent cannot participate in the Food Stamp Program independent of the other members of the household. Likewise, children placed in the home of relatives or other individuals by a governmental foster care program may not participate independently in the program. This means that the income, needs and expenses of other members of the household must be considered when determining eligibility for the program and, if eligible, the amount of benefits to be received by the household.

D. Medicaid

For the determination of Medicaid, the eligible parent or non-parent caregiver of a child under the age of 21 whose parent(s) is/are absent from the home must meet the following IV-D requirements, for medical support/paternity establishment only:

- cooperate in good faith with the State and the local social services district to establish the paternity of a child born out of wedlock,
- to locate any absent parent(s) or putative father,
- to establish, modify and enforce medical support orders.

The term “cooperation” includes providing information for the worker to complete the DSS-2860, or the DSS-4882 when it replaces the DSS-2860, form and if required, appearing at the local Child Support Enforcement Unit (CSEU) to be interviewed. A Medicaid applicant who is not pregnant or in the 60-day post-partum period or otherwise exempt must assist in completing the Child Support Application and Referral form, appear at the CSEU, as necessary, and cooperate with the CSEU unless good cause exists.

The applicant/recipient (A/R) may refuse to meet any or all of the IV-D requirements when s/he has good cause to do so. The following circumstances are considered good cause:

- (1) When cooperation may be against the best interests of the child. Cooperation in establishing paternity or seeking support is deemed to be against the best interest of the child only if the A/R's cooperation in establishing paternity or securing support is reasonably anticipated to result in:
 - physical harm to the child for whom support is sought;

- emotional harm to the child for whom support is sought;
 - physical harm to the parent, non-parent caregiver or caretaker relative with whom the child is living;
 - emotional harm to the parent, non-parent caregiver or caretaker relative with whom the child is living.
- (2) The child for whom support is sought was conceived as a result of incest or forcible rape;
- (3) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or, the A/R is currently being assisted by an authorized agency (LDSS or a voluntary agency) to resolve the issue of whether to parent the child or place him/her for adoption, and discussions have not gone on for more than three months.

An A/R's failure, without good cause, to cooperate with MA IV-D requirements renders such person ineligible for Medicaid. Their children under the age of 21, however, are authorized to receive Medicaid if they are otherwise eligible.

Documentation: An A/R who claims good cause must provide corroborative evidence within 20 days from the day the claim was made. A district may extend this 20-day period when the A/R has difficulty obtaining evidence.

Issued By

Name: Russell Sykes
Title: Deputy Commissioner
Division/Office: Center for Employment and Economic Supports