

## LEGAL FACT SHEET

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# Public Benefits and Non-Parent Caregivers: A Review of Financial Support

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## LEGAL FACT SHEET

### Public Assistance and Relative Caregivers: A Review of Financial Supports

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### I. Temporary Assistance

A. Children who live with non-parent caregivers are eligible for a special public assistance grant in New York State. This grant varies in size from county to county and is known by various names: the “child only” grant; OTG (other than grantee) grant, the non-parent grant, PACO (public assistance child only), the NPC (non-parent caretaker) grant and the kincare grant. These are some of the many names for the one grant that is provided to support a child in the care of a relative who is not financially responsible for the child. For purposes of this guide, we will use the term “non-parent grant.”

B. Cash public assistance in New York falls into two categories – Family Assistance, which is 100% funded by the federal Temporary Assistance to Needy Families (TANF) block grant and Safety Net Assistance (SNA) which is funded with state (29%) and local (71%) dollars.

Most non-parent grants are paid in the Family Assistance category. In order to be eligible for Family Assistance, there must be a child in the household who is related to the caregiver. 18 NYCRR 369.1(b) defines “caretaker relative” broadly. Includes step-parents, step-siblings, and “great-great” aunts, uncles and grandparents “of whole or half-blood.”

If the caregiver is not related to the child within this definition, the non-parent grant is provided as Safety Net Assistance.

Family Assistance has a five-year time limit. Adults may only receive for 5 years and then must transfer to Safety Net Assistance. However, the 5-year time limit does not apply to children or child-only cases which are available to non-parent caregivers who are relatives of a child.

### C. Safety Net Assistance (SNA)

Single individuals, childless couples and non-parent caregivers who are not related to the child are not eligible for Family Assistance but are eligible for Safety Net Assistance. 05 INF-24, p.4.<sup>1</sup> Adults who have reached their 5-year FA/TANF time limit are also eligible for SNA.

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<sup>1</sup> Informational Letters (INF) and Administrative Directives (ADMs) are policy documents promulgated by a state agency. Those promulgated by the Office of Temporary and Disability Assistance can be found at: <https://otda.ny.gov/policy/directives/2020/>. Click the box labeled “Archives” to see policy directives for years before 2020.

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### D. Eligibility

Non-parent caregivers do not need court ordered custody or guardianship to be eligible for a Family Assistance grant on behalf of the children in their care. 05 INF-24, p. 3; Temporary Assistance Sourcebook, Chapter 3, Section I available at <https://otda.ny.gov/programs/temporary-assistance/TASB.pdf>. Even when there is a court order giving custody to another person, the nonparent caregiver will be eligible for the nonparent grant if they can show that they are in fact the primary caretaker of the child. *Matter of Anonymous*, fh# 7793015R (Madison County, 8/18/18).

As long the relative caregiver is not a recipient of temporary assistance, the caregiver's income and resources will not be counted as income when determining the child's eligibility for the grant. This is because under New York Law, relative caregivers are not responsible to financially support the children in their care. Social Services Law 101; Temporary Assistance Source Book, Chapter 3, Application Processing, Non-parent Caregiver Cases. *Matter of Anonymous*, fh# 7856115K (NYC 1/29/19). *Matter of Anonymous*, fh# 6857464Q (NYC 11/17/14) (*Agency erroneously denied child only grant because grandmother had \$7000 in a bank account*).

### E. The Size of the Grant

The size of the grant varies by county. 18 NYCRR 352.3(a). Charts of grant levels in New York City, Albany, and Erie counties are attached to these materials. Charts of all of the counties can be found at: [https://empirejustice.org/resources\\_post/standard-need-charts/](https://empirejustice.org/resources_post/standard-need-charts/)

Grant levels have not been updated since 2012 - the numbers in these charts are correct!

The relative caregiver will only receive a grant for shelter and fuel costs if they "charge" the child for rent and fuel costs at or above the regulatory maximums. See examples in 05 INF-24, pp 5-7. If the caregivers charges an amount less than the regulatory maximums, that is the amount that the provider will be paid.

In order to add fuel costs to the standard of need, the non-parent caregiver must be the customer of record in the household.

Counties may also calculate the non-parent grant using a room and board calculation. The most that can be charged for room and board is the total of the living allowance and the SNA shelter allowance (which is usually lower than the FA shelter allowance). The room and board calculation does not include a fuel for heating allowance. However, when room and board is charged, each child gets a personal needs allowance of \$45.00. To see which is better, individual calculations should be done. As a rule of thumb, as the number of children in the household increases, the room and board calculation is likely to be more advantageous. See 05 INF-24, pp. 5-7.

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As a general rule, persons who receive public assistance and SNAP are considered automatically eligible for **HEAP benefits** and their HEAP benefits are automatically issued without the need for a separate application. However, when non-parent grants are budgeted using the room and board calculation, the case may be overlooked in the auto issuance system because the computer does not process that the family is paying rent, a prerequisite for HEAP. These room and board households are nevertheless eligible for HEAP and should contact the agency each HEAP season to confirm that they are in the system. FH #7512979Z (Schenectady, 6/17/17).<sup>2</sup>

### F. Application Process

A printable copy of the public assistance application is available on line <https://otda.ny.gov/programs/applications/2921.pdf> in English and Spanish <https://otda.ny.gov/programs/applications/2921-SP.pdf>. This application can be printed out and mailed or hand delivered to the local department of social services. You can find the location of your local department of social services here: <https://otda.ny.gov/workingfamilies/dss.asp>

Beginning October 6, 2020, public assistance applications can be made on line at: <https://www.mybenefits.ny.gov/mybenefits/NewAccountCreation!input.nysmybw>

Non-parent caregivers who ask for financial assistance must be given the opportunity to apply and may not be simply told they are not eligible. They do not need to ask for the grant by name. See *Matter of Yarde v. Roberts*, 60 Misc. 3d 686 (Albany Co., 2017).

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

There must be an immediate (same day) interview for those with immediate needs (no food, no shelter, no utilities), and the applicant should receive a written acceptance or denial notice. 18 NYCRR 350.3(a) also, 18 NYCRR 351.8(b).

Otherwise, interviews must be held within 7 working days. 18 NYCRR 350.3(c).

Relative caregivers are exempt from two pre-interview requirements that apply to other applicants: employment activities and finger imaging (05 INF-24, p. 3) and 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, SNAP and medical assistance and child care on one form at the same time.

<sup>2</sup> Fair hearing decisions issued after November 1, 2010 can be found at the OTDA Decision Archive at <https://otda.ny.gov/hearings/search/> Fair hearings establish administrative precedent and can be used in advocacy and litigation. The principle of administrative stare decisis requires state agencies to follow the holdings of prior administrative hearing decisions, unless the decision provides justification for departing from prior precedent. *Matter of Field Delivery Service*, 66 NY2d 516 (1985).

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### G. Verification Issues

The Local Department of Social Services is required to assist applicants and recipients in obtaining documents and paying a fee if necessary. (Birth certificates, immigration papers) 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>

As a general rule, an applicant for public assistance must provide a social security number. 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. 07 INF-14, Q. 7 (benefits are provided as Safety Net Assistance until social security number is obtained). Further, the agency has a duty to assist in locating the social security number, particularly if the child may have been on assistance previously and the information is in the agency files. FH # 6472939H (Warren Co. 9/12/13).

Relative caregivers who are not applying for assistance for themselves are exempt from many of the verification requirements that apply to most applicants for Temporary Assistance. Federal TANF law requires that the household income and resources be reported, but as long as the caregiver is not receiving a grant, the caregiver does not have to verify this information with pays stubs or other documentation. 01- ADM-4.

Caregivers do not have to provide their social security number, date of birth, citizenship/alien status, education level or veteran's status. 01 ADM-4, 05 INF-24, p. 4. *Matter of Anonymous*, fh# 60605176N (Monroe, 3/11/14) (*Relative Caregiver cannot be required to go to Tenant Accountability Training*).

Proof of relationship is required. See 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, or a statement from a third party such as a landlord, neighbor, day care worker or doctor.

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.

<sup>3</sup> Selected Fair Hearings, including those cited in this outline dated prior to November 1, 2010 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 by clicking on the "login button and choosing a user name and password."

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### **H. Eligibility Determinations**

A decision must be made on the application within 30 days from the date of application for FA and 45 days from the date of application for SNA. 18 NYCRR 351.8(b).

For FA cases, payment is made effective as of 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).

### **I. Budgeting: Relative Caregiver on Assistance**

If the relative caregivers receive or apply for Family Assistance, the children will be considered part of the assistance unit and FA grant will be for the entire family.

### **J. Resource Rules: When the Caregiver is on Public Assistance**

The home is exempt as a resource [18 NYCRR 352.23(b) (1)], but a Social Services District can take a mortgage against it to recover the cost of public assistance paid.

The refusal of the applicant or recipient to sign a mortgage will result in the needs of the owner being taken off the grant. 18 NYCRR 352.27(a). All children in the household are still eligible for a grant. Automobile resource limit is \$12,000. Social Services Law 131-n. Only the equity value of the vehicle can be deemed available, which means that the value of any outstanding car loans must be deducted from the value. 20 ADM-08, available at <https://otda.ny.gov/policy/directives/2020/ADM/20-ADM-08.pdf>

General resource exemption is \$2000, or \$3000 if there is a household member over the age of 60. 18 NYCRR 352.23(b).

Burial plots and funeral agreements up to \$1500 are exempt.

### **K. Budgeting: When child has income – student earnings**

All earnings of full or part time students (high school or college), under the age of 21, who reside with their parent or other caretaker, are disregarded entirely. 18 NYCRR § 352.20 (a); 04-ADM-06.

### **L. Budgeting: When one sibling has income**

If a child in the household is in receipt of Supplemental Security Income (SSI) that income is considered “invisible,” and will not affect the grants of the other children in the household. Children with significant disabilities often receive SSI.



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However, if a child receives Social Security Survivor's benefits because they have a deceased parent or Social Security Disability Benefits because they have a disabled parent, that income will be budgeted against the entire child-only grant for the children. FH # 7724613N (Saratoga 5/18/18). Note: This rule does not apply to cousins – only “minor brothers and sisters.” Social Services Law 131-c.<sup>4</sup>

### **M. Budgeting: When one sibling grandchild has an adoption or KinGAP subsidy**

Where a relative caregiver is raising two siblings 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.

The Kinship Guardian Assistance Program (KinGAP) payments are treated the same as an adoption subsidy. As such, whether a child is included in the TA case depends upon whether the family benefits financially by including or excluding the child for whom the KinGAP payment is received. <https://otda.ny.gov/policy/directives/2011/ADM/11-ADM-05.pdf>.

### **N. What If Parent Lives in the Household (three generation households -18 NYCRR 352.30(c))?**

If a 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,” unless the relative caregiver's income is Supplemental Security Income (SSI). See 18 NYCRR 352.14 (a)(3) for the deeming rules.

If a 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 of the grant if the parent is 21 or more and lives in the household? It depends upon 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.

<sup>4</sup> A bill to allow relative caregivers to choose to exclude the income and resources of a child from the public assistance household was passed by both houses of the New York State legislature in the 2019-20 session: A.4256A (Hevesi)/S.4809A(Persaud), but was vetoed by the Governor.



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**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. Because the father is in the home making decisions regarding the child, the child's grandmother would not be able to be the payee.

### **O. Child Support Assignment and Pass through**

As a condition of eligibility for public assistance, the child's right to child support must be assigned 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 child's behalf to pay itself back for cash public assistance paid to the family.

However, the first \$100 of support collected (\$200 if more than one child in the household) 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). The second child does not have to be receiving child support for the higher "pass through" to apply.

### **P. Eligibility requirements: Child Support Cooperation [18 NYCRR 369.2(b)]**

Non-parent caregivers are required to cooperate in establishing paternity and establishing, modifying, and enforcing support orders for the children in their care, regardless of whether they are applying for public assistance for themselves. 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.

#### **Good Cause Exemption from Cooperation [18 NYCRR 369.2(b)(4)]**

An applicant may claim good cause for failure to cooperate with child support enforcement if:

- 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;
- 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).

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Good cause must be shown by documentary evidence such as sworn statements from others, medical record, 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.

**Penalty:** The penalty for failure to cooperate with child support enforcement is NOT DENIAL, but a 25% reduction in the household’s grant. SSL §131(16). 07 INF-14, Q 8. *Matter of Anonymous*, fh# 6913455R (Monroe County, 3/20/15)

**Practice Tip – Request a fair hearing:** Appellant was in receipt of a public assistance grant for herself and her two grandchildren, for whom she had court ordered custody. NYC Human Resources Administration (HRA) proposed to remove her from the public assistance grant for failing to cooperate with child support enforcement. Grandmother requested a fair hearing and at the hearing, HRA failed to present any documentation supporting its determination and so the Administrative Law Judge (ALJ) reversed the determination. *Matter of Anonymous*, fh #5855466Z (9/16/11).

To request a fair hearing see: <http://otda.ny.gov/oah/FHReq.asp>

### Q. Overpayments 18 NYCRR §352.31(d):

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.

This rule also prohibits the agency from recovering from the grandparent when the child has been overpaid. (*Matter of Anonymous*, fh# 6757800M (Onondaga, 9/30/14) (*Grandmother did not timely report the receipt of child’s Social Security Survivor’s benefits and agency tried to recover overpayment from grandmother*). (*Matter of Anonymous*, fh# 6252006J (Niagara, 9/19/13) (*Appellant received child only grant for his grandson. Grandson got a job, and reported it, and the agency forgot to budget the income for three months. Agency tried to recover overpayment from grandfather.*)) See 09 ADM-15 for other examples.

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### R. 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 capped at \$400 per year or \$200 per week. 18 NYCRR 352.7(i); GIS 02 TA/DC010.

Local Social Services districts can also use discretionary money they receive as part the TANF block grant for camp fees. Districts receive this money as part of the Flexible Fund for Family Services. 07 INF-14, Q 14.

A county-by-county guide to summer camp resources can be found at:

<http://www.nysnavigator.org>

### II. Supplemental Nutrition Assistance Program (SNAP) Benefits (formerly known as food stamps).

- A. Household:** SNAP budgets are based upon the concept of “household.” The same number of people will usually get more SNAP benefits if they constitute more than one household. For example, four people will usually get more SNAP benefits if they apply as two households of two instead of one household of four.

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). Thus, elderly or disabled relative caregivers who are caregivers for children cannot be considered separate households.

#### **Exception for Kinship Foster Care and KinGAP:**

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 SNAP budget and the SNAP household. 7 CFR 273.1(b)(4). Although the child does not have the right to be a separate SNAP household, excluding the child and the child’s income may result in greater overall benefits to the entire family. It is the caregivers choice whether to include the KinGAP subsidy and the child in the household when applying for SNAP. They may elect NOT to include the child and their income if they believe it will benefit them.

“KinGAP payments should be treated the same as foster care payments for FS purposes. This gives families the choice of including the child as a member of the household, and counting the KinGAP payment as unearned income, or excluding the child and the KinGAP payment. The decision to include or exclude a child from a household’s FS case should depend on if the household would benefit financially by including or excluding the child.”

<https://otda.ny.gov/policy/directives/2011/ADM/11-ADM-05.pdf>.

- B. Expanded eligibility for relatives with child care costs:** If a non-parent caregiver pays for dependent care expenses (child care, even if it is only a copayment, or care for an elder in the household), SNAP eligibility is expanded to 200% of household income.

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- C. Adoption subsidy payments are excluded** from the household income only if the parent can show receipts for expenses beyond normal living expenses (shelter, utilities, clothing, and food) such as school activities or music lessons. 08 ADM-4, p.4.
- D. Resource test:** There are no resource tests for most SNAP households.
- E. Reporting Requirements:** Most SNAP households with children are 6 month reporters, which means that they do not have to report changes in their income to DSS unless their income goes over 130% of the poverty level sometime during the six month period. Households should be advised by their worker as to whether they are 6 month reporters, and what the 130% figure is for their household, or if they have to report any changes in income within 10 days. If all the adults in the household are elderly or disabled and there is no earned income in the household, the household is likely a 10 day or "change reporter."
- F. Calculating a SNAP budget:** In order to determine a household's correct amount of SNAP benefits, by using the attached budget sheet: [https://empirejustice.org/resources\\_post/snap-budget-worksheet-new-york-state-2021/](https://empirejustice.org/resources_post/snap-budget-worksheet-new-york-state-2021/)
- G. Certification period:** SNAP households receive benefits for a period of time called "a certification period." This is usually 6-12 months unless SNAP benefits are provided on a basis, expedited (emergency) in which case certification period is shorter. SNAP Sourcebook, §15 available at: <http://otda.ny.gov/programs/snap/snapsb.pdf>.

**Case Example:** Appellant grandmother advised Nassau County Department of Social Services (NCDSS) that she had become the non-parent caregiver of her grandchildren upon her daughter's death. Her daughter's SNAP had been certified for 5 months, set to expire 8/31/09. Although the agency was aware of the Appellant's address (she moved after her daughter's death), the Agency mailed the notice of SNAP expiration to the deceased daughter's address and issued no SNAP after August 31, 2009. **Appellant requested a fair hearing over one year later**, in October 2010.

The grandmother had applied for and briefly received a "child only" grant which was discontinued because of the children's Social Security survivor's benefits. At no time did the agency respond to Appellant's repeated requests for SNAP.

The ALJ found that the NCDSS had failed to send the recertification notice to the correct address and that the grandmother was never provided an opportunity to recertify or be added to the household. The ALJ directed that NCDSS issues lost benefits retroactive to May 21, 2009. FH#5645036Z, (2/22/11).

## H. COVID-19 Updates

### **Pandemic Electronic Benefit Transfer ("P-EBT") Food Benefits:**

The Families First Coronavirus Response Act of 2020 ("FFCRA") authorized the payment of P-EBT food benefits to households with children who would normally have received free

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school lunches under the National School Lunch Act, if not for a school closure. The program has been extended for every month school is in session through September 30, 2021. All children who were eligible during March, April, May and June of 2020 should have already received their benefits, which should have been issued directly onto households' existing EBT cards and added to their SNAP balance. These benefits do NOT have to be repaid and should remain available on each household's NYS Medicaid CBIC or P-EBT 2020 benefit card for up to one year from the date they were issued. For more information about P-EBT, please visit: <https://otda.ny.gov/SNAP-COVID-19/Frequently-Asked-Questions-Pandemic-EBT.asp>

### **Six-month Boost to SNAP Maximum Benefits:**

The Consolidated Appropriations Act of 2021, signed into law on December 27, 2020, increased the maximum monthly SNAP benefit allotments by 15% from January 1 to June 30, 2021.

- I. Certification period:** SNAP households receive benefits for a period of time called “a certification period.” This is usually 6-12 months unless SNAP benefits are provided on a basis, expedited (emergency) in which case certification period is shorter. SNAP Sourcebook, §15 available at: <http://otda.ny.gov/programs/snap/snapsb.pdf> .

## **III. Child Care**

- A.** When a non-parent caregiver is in receipt of Family Assistance or Safety Net Assistance:

**The child care guarantee:** Child day care is an entitlement for FA/SNA recipients. Thus, if a relative caregiver receives FA or SNA, he or she is eligible for child care if such care is necessary to work, look for work or participate in a work activity. SSL §410-w (3).

No co-payment is assessed to FA/SNA recipients. 18 NYCRR 415.3(e).

Caregivers are guaranteed transitional child care (TCC) for one year after they leave assistance, so long as their income does not exceed 200% of poverty and they leave assistance because of employment, and increase in wages, or an increase in child support (so long as they are also working. Social Services Law §410-w (3). Copayments for TCC are calculated by applying a percentage chosen by the social services district against the amount of the household income that exceeds poverty.

- B.** When relative caregiver is **not** in receipt of Family Assistance

The child's receipt of FA does not create a guarantee. FH # 7334733 (Monroe Co. 9/13/16); *Matter of A.C.* fh# 1774772R, (3/31/92).

The income of the non-parent 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).



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The income of the child cannot exceed 200% of the state income standard (the poverty level adjusted as of June 1 each year). The 2020-21 s state income standard is at 20-OCFS-INF-07 on the OCFS website at: [https://ocfs.ny.gov/main/policies/external/ocfs\\_2020/INF/20-OCFS-INF-07.pdf](https://ocfs.ny.gov/main/policies/external/ocfs_2020/INF/20-OCFS-INF-07.pdf).

The relative caregiver is assessed a co-payment based on a complicated formula which varies by county. In Ulster County the formula is as follows: a multiplier of 20% is applied to the child’s income after subtracting out the state income standard.<sup>5</sup> In Dutchess County the formula is as follows: a multiplier of 30% is applied to the child’s income after subtracting out the state income standard. In Orange County, the copayment multiplier is 35%, which means that a family in Orange has a parent fee that is significantly higher than the parent fee in Ulster and Dutchess, even when the income and family sizes are the same.

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 childcare (i.e., center based, family based and the age of the child). See also, 06 OCFS INF 06, available at: <http://ocfs.ny.gov/main/policies/external>).

The non-parent caregiver may apply for child care benefits even if the child’s parent resides in the household. *Matter of B.D.*, fh #2800866J (1/2/98).

A non-parent 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) unless the social services district has amended its plan so that it does not provide child care in this situation.

The immigration status of the non-parent 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).

The non-parent caregiver may be able to claim the credit for child and dependent care expenses on his or her tax return if he or she has claimed the child as a dependent. See IRS publication 503 at: <http://www.irs.gov/pub/irs-pdf/p503.pdf>

- C. Preventive Day Care:** Preventative Day Care is mandated for children at risk of placement in foster care. 18 NYCRR 430.9(d)(3). FH # 6886924H (3/19/15); 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).

<sup>5</sup> The State Income Standard is the same as the federal poverty level, but it is not updated until June 1 of every year.

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### IV. Homemaker Services

Non-parent 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).

**Practice Tip:** The caregiver must show specific need for homemaker. Appellant had a chronic condition that made it difficult to get up in the morning and was receiving homemaker services to get her children (ages 5 and 11) off to school. She was able to successfully challenge the social service’s discontinuance of her homemaker services, by producing supporting evidence from her therapist. Although the Agency claimed that the services provided were temporary, the Agency produced no evidence that the Appellant or her therapist were so advised, and the record failed to show what services had been offered to the Appellant. *Matter of Anonymous*, FH # 5698751K (7/26/11) (Appellant was not a relative caregiver).

### V. Special Rent Subsidies

**A. 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).

### B. 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.



## LEGAL FACT SHEET

### **VI. What dependent benefits are available from the Social Security Administration for children who are being raised by their grandparents?**

#### **A. Social Security Dependency and Survivors Benefits**

1. The Social Security Act provides benefits to wage-earner individuals who are retired or disabled, as well as auxiliary dependency or survivor benefits to related individuals, usually the wage-earner's spouse or child. 42 U.S.C. §§402 *et seq.*
2. Dependency or survivor benefits are available to every "child" (who meets certain conditions) of an individual entitled to old age or disability benefits, or of an individual who dies as a fully or currently insured individual. 42 U.S.C. §402 (d)(1).
3. Dependency or survivor benefits are available to children up to the age of 18, or up to the age of 19 if they are still in elementary or secondary school. 42 U.S.C. §§402 (d)(6), (7); 20 C.F.R. §404.352(b)(1). In addition, benefits are available to adult children who are under a disability that began before age 22. 42 U.S.C. §402(d)(1)(B).

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

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

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### C. Grandchild Eligibility for Benefits from Grandparent

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

- a. the natural or adoptive parent(s) must either be deceased or disabled at the time:
  - (ii) the grandparent became entitled to old-age insurance benefits, disability insurance benefits or died, or
  - (iii) 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

- b. 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).

### D. Once an individual is considered the “child” of a grandparent, they must still meet certain conditions to be entitled to benefits:

1. They must file an application for child’s insurance benefits [42 U.S.C. §402(d)(1)(A)]; and at the time of the application, they must be unmarried and under the age of 18, under the age of 19 if they are still in school, or if an adult, under a disability that began before age 22. 42 U.S.C. §402(d)(1)(B).
2. Further, the child must also have been dependent upon the grandparent in accordance with the times set out in 42 U.S.C. §402(d)(1)(C); 20 C.F.R. §§404.362, 364.
3. In the case of children living with grandparents, dependency will be established at the time specified in 42 U.S.C. §402(d)(1)(C) only when:
  - (i) the child was living with the grandparent in the United States and receiving at least one-half of their support from the grandparent:
    - a. for the year immediately before the month in which the grandparent became entitled to benefits or died; or if such individual had a period of disability which continued until he had become entitled to benefits, or died, for the year immediately before the month in which the period of disability began,

AND

- (ii) the period during which the child was living with their grandparent began before the child attained age 18. 42 U.S.C. §402(d)(9)(A).

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4. In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from the grandparent, the child shall be deemed to meet the requirements if the child has lived with the grandparent in the United States and received at least one-half of his support from the grandparent for substantially all of the period beginning on the date of the child's birth. 42 U.S.C. § 402(d)(9)(B).

### IV. Special Issues that may Arise When Children Receive Supplemental Security Income (SSI)

**In Kind Support and Maintenance:** When a relative takes in a disabled child who receives Supplemental Security Income into her care, the Social Security Administration (SSA) should be notified right away. It is possible that the SSA will reduce the amount of SSI received by the child.

The rules for SSI do not require that the caretaker relative's income be deemed available to the child unless the caretaker has adopted the child.

However, the Social Security Administration will assume that the relative is providing In Kind Support and Maintenance (ISM) to the child and reduce the SSI by 1/3, unless the relative clearly demonstrates that she is not contributing 1/3 of the household expenses towards the child's care. Household expenses considered only include food and shelter costs.

The rules regarding In-Kind Support and Maintenance are in Program Operation Materials called POMS. See POMS SI 00835.001, available at <https://secure.ssa.gov/poms.nsf/lnx/0500835001>.

The Social Security Administration will not calculate ISM if the caretaker is on public assistance or SSI.

**Representative Payee:** Relative does not have to have custody to be the representative payee. If child has another representative payee, the caretaker will have to petition for a change. The SSA has an order of preference for approving a representative payee. These criteria are at 20 C.F.R. § 416.621.

## LEGAL FACT SHEET

### VIII. Medicaid and Child Health Plus

#### A. Obtaining Medicaid and Child Health Plus

##### 1. Categorical Eligibility

Individuals in the following categories are automatically eligible for Medicaid provided they are citizens or have satisfactory immigration status. They receive Medicaid through the County Department of Social Services by virtue of their eligibility for these other programs:

- Kinship Guardianship Assistance Program (KinGAP) recipients. GIS 11 MA/006, available at [https://www.health.ny.gov/health\\_care/medicaid/publications/docs/gis/11ma006.pdf](https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/11ma006.pdf).
- Children in foster care. 05 MA/041, available at <https://ocfs.ny.gov/main/sppd/health-services/docs/CategoricalMedicaidElig.pdf>
- “Child Only” grant recipients and other temporary assistance recipients.
- Supplemental Security Income (SSI) recipients. 42 CFR 435.120; N.Y. Soc. Serv. L. § 366(1)(c)(1).
- SSI state supplement program (SSP) recipients. N.Y. Soc. Serv. L. § 366(1)(c)(1); TDA 14 ADM-07, available at <http://otda.ny.gov/policy/directives/2014/ADM/14-ADM-07.pdf>.

##### Applying for Medicaid and Child Health Plus

Medicaid is also available to children who are not receiving any of the above benefits.

Those who apply for Medicaid or wish to apply for Child Health Plus generally should file their application with the New York State of Health, New York’s health insurance marketplace (<https://nystateofhealth.ny.gov/>). It is advisable to use a navigator or other enrollment assistor who can track and follow up on the application. Community Service Society runs a statewide Navigator network: <http://www.cssny.org/programs/entry/community-service-society-navigator-network>. Other Navigators and enrollment assistors can be found by searching: [https://nystateofhealth.ny.gov/agent/hx\\_brokerSearch](https://nystateofhealth.ny.gov/agent/hx_brokerSearch).

If a child applying for Medicaid needs to access Medicaid waiver services, such as the Office for People with Developmental Disabilities (OPWDD) waiver, the application should be made to the county department of social services or, in New York City, the Human Resources Administration.

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### B. Eligibility

Where the non-parent caretaker is not applying for Medicaid for herself, her income cannot be counted in determining the child's eligibility for Medicaid benefits. *Matter of Anonymous*, fh # 7039625R (NYC, 6/30/15) at 12; *Matter of Anonymous*, fh # 6404742K (NYC, 11/22/13) at 8-9. To apply for Medicaid for a child, a non-parent caretaker does not need to disclose their own income (unless applying for Medicaid for the child and themselves).

Most people under age 65 who are not on Medicare are eligible for Medicaid using the Modified Adjusted Gross Income (MAGI) budgeting methodology. This includes most children. There are other Medicaid budgeting methodologies that may be used, but generally speaking these are not as favorable.

Caretaker relatives on Medicare or who are over 65 can also be eligible for Medicaid using MAGI budgeting. A “caretaker relative” under MAGI budgeting is a relative of a dependent child by blood, adoption or marriage with whom the child is living, who assumes primary responsibility for the child's care and who is the child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece; or the spouse of such parent or relative even after the marriage is terminated by death or divorce. To be considered a caretaker relative, the relative must be caring for a child under 18, or 18 years old and a full-time student in secondary school or equivalent vocational training. 42 C.F.R. § 435.4; 13 OHIP/ADM-03, p. 4 & 13, *available at* [https://www.health.ny.gov/health\\_care/medicaid/publications/docs/adm/13adm03.pdf](https://www.health.ny.gov/health_care/medicaid/publications/docs/adm/13adm03.pdf).

Child Health Plus always uses MAGI budgeting.

To determine eligibility for Medicaid and CHP using MAGI budgeting:

1. Determine who is in the **Household**.
2. Determine the **MAGI Income** for the Household members
3. **Compare** the MAGI Income for the Household to the appropriate federal poverty limit for Medicaid and CHP

Definitions used in MAGI household and income counting:

- Child is a “natural or biological, adopted or step child.” 42 CFR 435.603(b).
- Sibling is a “natural or biological, adopted, half, or step sibling.” 42 CFR 435.603(b).
- Parents is a “natural or biological, adopted or step parent.” 42 CFR 435.603(b).

#### 1. Step 1: Determine MAGI Household Size

Who counts in the household depends on whether the applicant is a:

- a) Filing taxpayer, not claimed as a dependent by another, or
- b) Tax dependent, or
- c) Non-filer and non-dependent

## LEGAL FACT SHEET

Note: Non-parent caregivers with whom a child lives are not included in the child's household if the child applies on the Marketplace.

**a. Filing taxpayer, not claimed as a dependent by another:**

Household = Taxpayer + Spouse (even if filing separately) + Tax Dependents (qualifying children, qualifying relatives)

**b. Tax Dependent**

Household = same as the Taxpayer's

BUT there are three exceptions:

- Dependent who is not taxpayer's child or spouse.
- Child living with both parents, who do not expect to file taxes jointly.
- Child living with a custodial parent, but claimed as dependent by a non-custodial parent.

Anyone who fits an exception will have their household determined using the "Non-filer and Non-dependent" rules below.

**c. Non-filer and Non-dependent**

The Non-filer and Non-dependent rules are used when the household doesn't file taxes OR when one of the exceptions to the tax dependent rules above is met.

For purposes of the non-filer / non-dependent rules → Children and Siblings are those under 19 , or a full-time student aged 19 or 20. 42 C.F.R. § 435.603 (f)(3)

Adult's Household = Individual + Spouse and Children with whom they live

Child's Household = Child + Parents and Siblings with whom they live

### Application of tax dependency rules in Medicaid and CHIP

Medicaid and CHIP agencies are not obligated to determine whether an individual may be claimed as a tax dependent. Agencies may accept self-attestation of tax dependent status. The agency may request additional information if attested information appears inconsistent with tax filing rules. For example, if a tax filer expects to claim another individual with more income than the tax filer, the state may inquire further.

Similarly, Medicaid and CHIP agencies do not determine whether an individual may claim another individual as a tax dependent. In instances when tax dependency cannot be reasonably established, the inclusion of such individual in the household is determined in accordance with the non-filer rules (42 CFR 435.603(f)(5)).

## LEGAL FACT SHEET

### **Case Example: Child does not live with a parent but the child IS claimed as a dependent by a non-custodial parent.**

Lucy age 9 lives with her Aunt and Uncle. Lucy's Mother does not live with her. Lucy's mother is not married. Lucy's mother claims Lucy as her only dependent on her taxes. Aunt and Uncle file taxes jointly and claim no dependents.

Lucy should have a household of two – the same household as her mother who is claiming her as a dependent on her taxes. *Note, however that the Marketplace might apply the non-filer / non-dependent rules here, in which case Lucy would have a household of one.*

Aunt and Uncle each have a household of two that includes each other. Reasonably established, the inclusion of such individual in the household is determined in accordance with the non-filer rules (42 CFR 435.603(f)(5)).

### **2. Step 2: Determine the Countable MAGI Income for each member of the MAGI Household**

MAGI budgeting is based on income that would count towards the adjusted gross income on a tax return *plus* tax exempt interest, foreign income that is not taxable, and the non-taxable portion of Social Security benefits. 26 U.S.C. § 36B(d)(2).

Income, other than the above, that is not taxable, is NOT included in the MAGI Medicaid budget:

- Child support received is not taxable and therefore not counted as income when determining a MAGI budget. 26 U.S.C § 71(c).
- Qualified foster care payments received. 26 U.S.C. § 131.
- KinGAP subsidies are treated the same as foster care and adoption subsidies in every case.
- See list at 13 OHIP/ADM, Att. IV, as revised in GIS 19 MA/11 *available at* [https://www.health.ny.gov/health\\_care/medicaid/publications/docs/gis/19ma11\\_attachme nt.pdf](https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/19ma11_attachme nt.pdf)

Some other income is also excluded from the MAGI budget: lump sum payments, except in the month received, scholarship income used for education expenses, and certain Native American income. 42 CFR § 435.603(f); 13 OHIP/ADM-03.



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The income of each household member counts towards the total Household income, with the following **exceptions**:

- Pregnant “minors” under the age of 21 → no income is countable in determining her eligibility for Medicaid. There is no income test for pregnant women under 21. GIS 14 MA/022, available at [https://www.health.ny.gov/health\\_care/medicaid/publications/docs/gis/14ma022.pdf](https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/14ma022.pdf).
- The income of a tax dependent who does not have a tax filing obligation is not included in the household income of the taxpayer. The dependent’s income would be included in the tax dependent’s own household. 42 CFR § 435.603(d)(2)(ii).
- The income of children who are in the MAGI household of a parent is not counted unless that child has a tax filing obligation. 42 CFR § 435.603(d)(2)(i).

**Case Example: Child does not live with a parent AND the child is not claimed as a dependent on parent(s)’ taxes.**

Maya age 16 lives with her half-brother, James, age 12, and their Grandmother, age 65. Grandmother claims both children on her taxes. Maya receives \$500 a month in Social Security dependent’s benefits. James has no income. Grandmother received \$1,800 per month in Social Security and \$1,000 in support payments for the children.

May and James each have a household of two that includes each other. Maya’s income is countable in determining both her and James’ eligibility for Medicaid and CHP. Their total household income is \$500 per month.

Grandmother has a household of three that includes herself, Maya and James. Only Grandmother’s Social Security is countable in determining her household income. This is because child support is not taxable and Maya, who has social security, does not have a tax filing obligation. The income of the tax dependents who do not have a tax filing obligation is not included in the taxpayer’s household income.

### 3. Step 3: Compare the MAGI income for the household to the appropriate Federal Poverty Limit (FPL) for Medicaid and CHP

Medicaid MAGI Income Limits	Federal Poverty Level
Pregnant minors (under age 21)	No income limit
Infants under 1 & pregnant women	≤ 223%
Children age 1-18	≤ 154%
19 & 20 year olds living with parent(s)	≤ 155%
Adults, including 19 & 20 year olds who don’t live with parent(s)	≤ 138%

## LEGAL FACT SHEET

### Child Health Plus Income Limits

There is no income limit for CHP. However, children at or below 400% FPL get a sliding scale premium or premium free CHP. Children over 400% FPL must pay the full cost of the premium.

#### CHP Premiums by FPL

Monthly premium per child	Max Monthly Premium	Federal Poverty Level
Free	Free	≤160%
\$9	\$27	≤222%
\$15	\$45	≤250%
\$30	\$90	≤300%
\$45	\$135	≤350%
\$60	\$180	≤400%
Full Premium	Full Premium	>400%

\*Full premium costs will vary by health plan.

#### 4. Immigrant Eligibility

Medicaid has complex immigration rules, but many children are eligible unless they are out of status – meaning they overstayed a visa or entered the U.S. without inspection.

All children under 19 are eligible for Child Health Plus, regardless of immigration status.

Information on health coverage options by immigration status is available in Empire Justice’s Health Coverage Crosswalk:

<https://empirejustice.org/wp-content/uploads/2019/10/Crosswalk-Report-October-2019.pdf>

#### 5. Recertification for Medicaid and Child Health Plus (CHP):

Recertification is every 12 months. People with MAGI budgeting get to keep Medicaid and CHP for 12 months even if they experience an increase in income during that time period.

See, e.g., GIS 15 MA/022, *available at*

[https://www.health.ny.gov/health\\_care/medicaid/publications/docs/gis/15ma022.pdf](https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/15ma022.pdf)

People who are 65+ and no longer meet the definition of “caretaker relative” will be determined ineligible for MAGI Medicaid and transitioned to the County DSS office or HRA to have their Medicaid eligibility determined under other Medicaid budgeting methodologies. GIS 16 MA/04, *available at*

[https://www.health.ny.gov/health\\_care/medicaid/publications/docs/gis/16ma004.pdf](https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/16ma004.pdf)

## LEGAL FACT SHEET

### Appendix- Shelter Allowance Charts for New York City, Albany and Erie Counties

#### 10/1/12 Public Assistance Standard of Need – New York City with Children

HH	Flat Grant that each household gets			Shelter Allowance With Children	Total	Heating (Fuel) Allowance 18 NYCRR 352.5(a) (pick one)			Grand Total: standard of need
	Basic Grant	HEA & SHEA	Total			Oil, Propane, Kerosene	Nat'l gas, coal, wood other	Electricity	
1	158	25.1	183.1	214	397.1	69	58	120	
2	252	39.5	291.5	219	510.5	69	58	120	
3	336	53	389	309	698	69	58	120	
4	433	68.7	501.7	348	849.7	72	60	125	
5	534	84.7	618.7	386	1005	75	63	131	
6	617	97.2	714.2	404	1118	81	68	140	
7	702	109.7	811.7	421	1233	87	72	150	
8	787	122.2	909.2	421	1330	92	71	160	
PLUS 1	85	12.5	97.5						

#### 10/1/12 Public Assistance Standard of Need – Albany County with Children

HH	Flat Grant that each household gets			Shelter Allowance With Children	Total	Heating (Fuel) Allowance 18 NYCRR 352.5(a) (pick one)			Grand Total: standard of need
	Basic Grant	HEA & SHEA	Total			Oil, Propane, Kerosene	Nat'l gas, coal, wood other	Electricity	
1	158	25.1	183.1	214	397.1	69	58	120	
2	252	39.5	291.5	219	510.5	69	58	120	
3	336	53	389	309	698	69	58	120	
4	433	68.7	501.7	348	849.7	72	60	125	
5	534	84.7	618.7	386	1005	75	63	131	
6	617	97.2	714.2	404	1118	81	68	140	
7	702	109.7	811.7	421	1233	87	72	150	
8	787	122.2	909.2	421	1330	92	71	160	
PLUS 1	85	12.5	97.5						

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### 10/1/12 Public Assistance Standard of Need – Erie County with Children

HH	Flat grant that each household gets			Shelter Allowance	Total	Heating (Fuel) Allowance 18 NYCRR 352.5(a) (pick one)			Grand Total - standard of need
	Basic Grant	HEA & SHEA	Total	with children		Oil, propane, kerosene	Nat'l gas, coal, wood other	Electricity	
1	158	25.1	183.1	209	392.1	69	54	107	
2	252	39.5	291.5	214	505.5	69	54	107	
3	336	53	389	301	690	69	54	107	
4	433	68.7	501.7	339	840.7	72	56	111	
5	534	84.7	618.7	377	995.7	75	58	117	
6	617	97.2	714.2	395	1109.2	81	63	125	
7	702	109.7	811.7	411	1222.7	87	67	134	
8	787	122.2	909.2	411	1322.2	92	71	142	
PLUS 1	85	12.5	97.5						

The column that says "**Total**" in the middle of the chart contains the grant for each household size when the household does not incur heating costs separate from rent.

Each row contains the grant component for a different household size, ranging from 1-8. At the bottom of the chart, which is in Excel, are tabs for each county in alphabetical order. Please click on the tab to get the standard of need for the county you want to see.

[https://empirejustice.org/resources\\_post/standard-need-charts/](https://empirejustice.org/resources_post/standard-need-charts/)

If the household pays for heat in addition to rent, the standard of need will include a heating/fuel allowance which is based on the type of heat (i.e., oil, gas, electricity). Determine the standard of need from the chart based on type of heat and family size and add in to get the GRAND Total.

The relative caregiver will only receive a grant if she “charges” the child for rent and fuel costs at or above the amounts lists above. See examples in 05 INF-24, pp 5-7.

Alternatively, the relative caregiver can charge room and board. The most that can be charged for room and board is the total of the living allowance and the SNA shelter allowance. In addition, when room and board is charged, each child gets a personal needs allowance of \$45.00.