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INFORMATIONAL LETTER

TRANSMITTAL: 91 INF-61

TO: Commissioners of  
 Social Services

DIVISION: Family and  
 Children  
 Services

DATE: November 12, 1991

SUBJECT: Parents' Responsibility and Ability to Contribute to  
 the Support of their Children in Foster Care

SUGGESTED

DISTRIBUTION: Directors of Services  
 Services Staff  
 Income Maintenance Staff  
 County Attorneys/Legal Staff  
 County Support Enforcement Unit  
 Staff Development Coordinators

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ATTACHMENTS: Calculations Worksheet - Available On-Line

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
84 ADM-4		347.8	SSL		Consoli-
87 INF-44		347.10	398.6(d),(e)		dated
87 INF-61		352.30(b)	and (f)		Services
91 INF-2		369.4(c)			Plan -
91 ADM-1		369.7	FCA 413.1		Guidelines
91 ADM-40		404.5(b)			July 1990
		422.1			
		422.2			
		422.3			
		422.4			
		425.5(c)			
		426.8			

The purpose of this Informational Letter is to review and clarify State policy regarding assessment of parents' financial responsibility and ability to contribute support for their children in foster care.

Since there are two distinct tracks for assessing the ability of parents to make such contributions, the information included in this letter is intended to eliminate confusion and to assist social services districts in making appropriate determinations. By reviewing the standards, citing the formula provided in regulation and giving examples of calculations, this review of procedures is expected to help social services districts distinguish between cases which should be referred to the Child Support Enforcement Unit (CSEU) and those which should be assessed by a Services worker or other staff assigned by the social services commissioner. Please note that the CSEU cannot be used as the collection unit for assessments determined elsewhere in the agency.

A calculations worksheet is attached to this letter for workers to copy and use in assessing parental ability to contribute toward support of the child in foster care.

#### I. REQUIREMENT FOR ASSESSMENT AT THE TIME OF APPLICATION FOR FOSTER CARE

According to section 398.6 (d) of the Social Services Law (SSL), social services officials must "ascertain the financial ability of the parents of children who become public charges and collect toward the expense of such child's care such sum as the parents are able to pay."

Under Section 422.4 of Department regulations, social services districts are required to inform parents at the time the child is placed in foster care that:

(A) they have a legal obligation to contribute toward the expenses of their child's foster care if they are determined to be able to do so; and

(B) the maximum amount of support, if any, to be paid based on the family's income and household size.

These requirements remain in effect whether application for the child to be placed in foster care is made voluntarily by the parents (Section 383-c, 384, and 384-a of the SSL), or involuntarily by the social services district (Sections 3, 7 and 10 of the Family Court Act).

#### II. DETERMINING THE CATEGORY FOR FINANCIAL ASSESSMENT OF THE PARENTS

There are two possible tracks for determining the ability of parents to contribute toward the support of their child in foster care. In a third category of cases, no assessment is necessary. The local district Services worker will need to use the following guidelines to decide in which of the three categories the parents belong:

(A) Parents presumed unable to contribute toward support of the foster child

There are certain situations and certain types of cases which do not require any additional assessment or referral for assessment of financial ability to contribute to the support of the child in foster care. Such responsibility does not exist according to child support standards applied by the CSEU or under Section 398.6 (d) and (e) of the Social Service Law. Such cases may be presumed to be unable to make any contribution toward support payments. These include the following:

(1) Public Assistance (PA) recipients -- The custodial parent who is a public assistance recipient is categorically eligible for services, including foster care services, and any further re-assessment of income and resources for foster care support is unnecessary. Under guidelines provided by Section 425.5(c)(2) of Department regulations, the custodial parent in receipt of Public Assistance should be presumed to be unable to make any support payments for the child in foster care and should not be referred to CSEU or any other unit for that purpose. (Income Maintenance guidelines for referral to CSEU are included in 91 ADM-40.)

(2) Mothers surrendering out-of-wedlock children -- A mother of an out-of-wedlock child who has surrendered that child for adoption is relieved of all liability for support of that child, including any contributions toward support if that child is placed in foster care. Section 422.1 of Department regulations specifically exempts such mothers from any responsibility for contributions toward support.

(B) Parents who should be referred to the CSEU (IV-D)

In foster care cases, only when there is a parent who is truly absent from the household should a referral be made to the CSEU (IV-D unit) when a child is being placed in care, whether voluntarily or involuntarily.

The custodial parent who lives with the child at the time of placement in foster care must not be considered an absent parent as a result of the child's placement and is not to be referred to the Child Support Enforcement Unit (CSEU) for assessment of that parent's ability to contribute toward the child's support. This policy is consistent with current federal guidelines.

Only a parent who was not living in the household at the time of the child's placement in foster care may be considered a truly absent parent. When a parent is truly absent, the CSEU will wish to obtain all necessary information to explore possible support for the child from that absent parent, and the Services caseworker is responsible for making appropriate referrals in such cases. The CSEU will pursue support from the absent parent under Sections 347.8 and 347.10 of Department regulations.

Social services districts should note that an exception to the rule for CSEU referrals may be made, according to Section 426.8 of Department regulations, if the social services district determines that such a referral would "adversely affect the health, safety or welfare of the child on whose

behalf such payments are made or other persons in the applicant's household or impair the ability of the child to return home when discharged from foster care."

(C) Parents for whom non-IV-D assessment is appropriate

Except for the parents described above in (A) and (B), all other parents of children placed in foster care must be assessed for ability to contribute support under Section 422.3 of Department regulations and not according to the IV-D child support guidelines:

"The social services official shall determine the maximum amount the parent shall be obligated to provide toward the expense of the child's foster care by using the formula set forth in section 425.5(c)(2) of this Title."

Procedures for making the required assessment are described below in Section III of this letter. The Services caseworker or other staff assigned by the local social services commissioner may be responsible for the assessment. Please note that the CSEU cannot be used as the collection unit for assessments determined elsewhere in the agency.

Section 422.3 of Department regulations also provides that the amount to be collected may not exceed the actual cost of the child's care, and further cautions that nothing shall prevent the social services official from collecting a lesser amount than the amount determined to be due, "if the social services official determines that the parent is unable to pay the amount due." The cost of care is considered to include those costs that are consistent and ongoing in support of the particular foster child, such as the board and care maintenance payment. In determining regular weekly or monthly payments by a birth parent, it would seldom be practical or cost effective to attempt calculations incorporating one time only or special expenses. Moreover, while administrative costs and medical costs may be substantial, determining such costs for a specific child at the time of placement, when the assessment must be done, would be impractical.

In the case of a child who has been adopted with subsidy and is subsequently placed in foster care, the social services district may not seek a contribution toward support of the child which is greater than the subsidy payment received by the adoptive parent.

III. PROCEDURES FOR ASSESSING ABILITY TO CONTRIBUTE NON-IV-D SUPPORT

In assessing the ability of the parents to contribute to the support of the child placed in foster care, the following procedures are necessary to determine the parents' monthly income, determine ability to contribute support, and calculate the amount of any assessment:

(A) Determining the parents' monthly income

The monthly income of the parents must be determined by using the standards set forth in Sections 404.5 and 425.5 of Department regulations. (The income of a step-parent is not to be considered in determining parental monthly income [See 18NYCRR, Section 422.1(a)]).

As stated in Section 404.5, determination of parents' monthly gross income is to be based on average monthly income for a period of one to three months, with weekly income multiplied by 4 and 1/3 to determine monthly income. Sources to be included in determining gross monthly income are listed in Section 404.5 of Department regulations, along with income and payments to be excluded in the calculations. No exploration of resources as defined in Section 404.5 may be made in determining monthly income.

INCLUDED IN INCOME	EXCLUDED AS INCOME
Earned wages or salary	Income from sale of property
Self-employment net income (non-farm)	Money borrowed
Self-employment net income (farm)	Tax refunds
Social security benefits	Gifts
Dividends and interest	Lump sums
Rental, trust, or estate income	Capital gains
Pensions and annuities	Value of Food Stamp coupons
Unemployment compensation	Value of USDA donated food
Worker's compensation	Value of food assistance/ services programs
Public assistance benefits	Loans and grants for education
Alimony	Earnings of child under 14
Child support	Home produce for household consumption
Veterans' pensions	Payments under Uniform Relocation Assistance

(Please see Section 404.5 of Department regulations for more detailed explanation of sources to be included or excluded as income.)

(B) Determining ability to contribute payment

After monthly income has been determined, the formula in Section 425.5 (c)(2) is to be applied. This means that the monthly income must first be annualized (multiplied by 12).

The next step is to establish basic income eligibility standards included in the "comprehensive annual social services plan" (now called the Consolidated Services Plan) for comparison with the parents' income. Income eligibility standards for services are based on the 1991 federal poverty level for a family of four as set forth in 91 INF-2: The 100 percent baseline for 1991 is \$13,400 for the family of four, with 16 percent increase or decrease for each numerical adjustment for family size. In determining family size, the child being placed in foster care is included with the other family members.

Appendix F of the Consolidated Services Plan requires local districts to use 190 percent of the income eligibility standard described above to determine foster care services eligibility and any assessment of the parents' ability to contribute toward support for the foster care of the child.

(C) Calculation of Possible Assessment Amount

Any amount of annualized family income in excess of 190 percent of the income eligibility standard is multiplied by 1/2 of 1 percent (.005) to determine the weekly amount which may be assessed as a contribution toward the support of the child in foster care if all other conditions and cautions are observed.

Please Note: Section 422.3 of Department regulations permits the social services official to use discretion in collecting the amount determined to be due "if the official determines that the parent is unable to pay the amount due."

These calculations must be used by the Services staff or other staff assigned by the local social services commissioner to assess parental ability to contribute toward support of the child in foster care.

A calculations worksheet is attached to this letter to assist workers in assessing the amount parents are able to contribute.

IV. SAMPLE CASE CALCULATIONS

A child is being placed in foster care. There is no absent parent in the household; therefore, the parents will not be referred to the CSE Unit. The family is not receiving public assistance. The social services district must determine whether the parents are able to contribute toward the support of the child who is being placed in foster care.

(A) Case No. 1:

Weekly income for a family of 4 (including the child placed in foster care) based on Section 404.5 inclusions and exclusions:	\$485.00
Multiply \$485 x 4 and 1/3 to determine monthly income:	\$2,101.71
Multiply by 12 to determine annual income:	\$25,220.52
Multiply income eligible standard for family of 4 by 190% (1.90):	
\$13,400 x 1.90 =	\$25,460.00

Determination: Family will not be asked to make a contribution to the support of the child in foster care based on the formula calculation, since their income is not in excess of 190 percent of the federal poverty level.

(B) Case No. 2:

Weekly income for a family of 2 (including child placed in foster care) based on Section 404.5 inclusions and exclusions:	\$485.00
Multiply \$485 x 4 and 1/3 to determine monthly income:	\$2,101.71
Multiply by 12 to determine annual income:	\$25,220.52
Multiply income eligibility standard for family of 2 by 190% (1.90):	
\$9,112 x 1.90 =	\$17,312.80
Compare with family's annual income by subtracting to find any excess amount:	\$25,220.52
	<u>-17,312.80</u>
Amount in excess of eligibility standard:	\$7,907.72
Multiply excess amount by 1/2 of 1 percent(.005):	\$7,907.72
	<u>x .005</u>
	\$39.54

Determination: Family can be asked to make a weekly contribution of \$39.54 for support of the foster child if the assessment is determined to be appropriate according to the conditions and cautions under II.C on p. 4 of this Informational Letter.

(C) Case No. 3:

Weekly income for a family of 4 (including child placed in foster care) based on Section 404.5 inclusions and exclusions:	\$1,425.00
Multiply by 4 and 1/3 to determine monthly income:	\$6,175.00
Multiply by 12 to determine annual income:	\$74,100.00
Multiply income eligibility standard for family of 4 by 190% (1.90):	
\$13,400 x 1.90=	\$25,460.00
Compare with family's annual income by subtracting:	
	\$74,100.00
	<u>-25,460.00</u>
Amount in excess of eligibility standard:	\$48,640.00
Multiply excess by 1/2 of 1 percent (.005):	\$ 243.20

Determination: Weekly contribution is determined to be \$243.20. However, family cannot be assessed more than the cost of the child's care, according to Section 422.3 of Department regulations. (See II.C on p. 4 for definition and guidelines on cost of care.)

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Joseph Semidei  
Deputy Commissioner  
Division of Family & Children  
Services



Calculations Worksheet  
 For Assessment of Parental  
 Ability to Contribute Toward  
 Support of Child in  
 Foster Care

1. Weekly income for a family of \_\_\_ based on Section 404.5 inclusions and exclusions: \_\_\_\_\_
2. Multiply weekly income by 4 and 1/3 to determine monthly income: \_\_\_\_\_
3. Multiply monthly income by 12 to determine annual income: \_\_\_\_\_
4. Multiply income eligibility standard for family of \_\_\_ by 190% (1.90): \_\_\_\_\_
5. Compare amount in line 4 with family's annual income from line 3 by subtraction: \_\_\_\_\_
6. Determine amount of family income in excess of income eligibility standard from line 5: \_\_\_\_\_
7. Multiply excess amount in line 6 by ½ of 1 percent (.005) to determine weekly support contribution: \_\_\_\_\_
8. Determination:
  - (A) Family will be assessed \_\_\_\_\_ per week or \_\_\_\_\_ per month toward the foster care support of the child;
 

or
  - (B) Family will not be asked to make a contribution since their income is not in excess of 190 percent of the income eligibility standard;
 

or
  - (C) The social services district may use discretion in deciding whether to collect the amount due based on family circumstances which affect the family's ability to make a contribution.