

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



November 13, 1986

ALL COUNTY LETTER NO. 86-115

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: TRUST FUNDS

REFERENCE: 42-211.256

The purpose of this letter is to provide guidelines on the treatment of trust funds in which applicants or recipients of AFDC, ECA, RCA or RDP assistance have an interest.

Existing AFDC regulations (MPP 42-211.256) require that an applicant or recipient's interest in a trust fund be included in the resource evaluation when the funds are actually available.

Trust funds for purposes of AFDC include those which are court ordered and non-court ordered such as funds established through the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act.

Instructions pertaining to a fund established for a child pursuant to a court order are provided in MPP 4211.256. The regulation is being amended to include a specific reference to AFDC-FC cases as follows:

"For AFDC-FC, if the individual in control of the trust refuses to petition the court, the county may do so on the child's behalf. During the time the court is being petitioned or if the fund is not made available by the court, the fund shall not be considered as personal property for purposes of eligibility determination or grant computation."

The proposed effective date of the amended regulation is October 6, 1986. The addition states current policy.

Instructions on how to handle other types of trust or savings funds are not specified in MPP 42-211.256. The regulation states only that the funds must be included in the resource evaluation provided such funds are available.

The following are guidelines on how to treat non-court ordered trust funds.

At application or upon receipt of interest in a trust fund, the county should inform the client that the trust fund is considered available, unless the client can produce evidence showing that the trust fund is not available. Examples of acceptable evidence include a statement from the trustee stating that she/he will not make funds available to the beneficiary, a statement in writing from an applicant or recipient's attorney and/or an officer of the financial institution administering the trust fund regarding its availability. If the client is not willing to supply evidence, then the case should be denied or discontinued based on the client's lack of cooperation. As long as the client is cooperating, she/he should not be found ineligible. When a trust fund is determined to be unavailable, the county does not have to reexamine availability during the recipient's annual redetermination period.

Another factor that could influence a county's decision as to availability of a trust fund would be the result of dissolution of the trust. If the trust is subject to reduction due to liens on the trust account (i.e., attorney fees, banking charges, etc.) to the extent that the remainder would not exceed, when considered with other property, the statutory limits, the trust need not be tested as to its availability.

The Uniform Gifts to Minors Act and the Uniform Transfers to Minors Act are both non-court ordered instruments which can be used to transfer property. As of January 1, 1985, the provisions of the Transfers to Minors Act supersede the Gifts to Minors Act. When a minor in an AFDC assistance unit is the beneficiary of property transferred by either of these instruments, an availability determination shall be made. The person designated as custodian has control over delivery or payment of the property to the minor. When a custodian is asked to make funds available

to the minor but the custodian refuses to do so, then the county can elect to petition the superior court. If the court orders that the property be made available to the minor, then the property, to the extent that it is available, is to be included in the resource evaluation as property of the minor. At that point the child could be deleted from the assistance unit as a result of the Simon case (see All County Information Notice I-84-85).

If the custodian is a member of the assistance unit, then the total value of the property is to be included in the resource evaluation since the custodian has the unconditional ability to make the property available. The custodian could elect to delete the minor from the assistance unit as a result of the Simon case, referenced above.

If you have any questions regarding this letter, or questions regarding real or personal property, please contact Judy Moore at (916) 324-2017 or ATSS 454-2017.


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Deputy Director