

DEPARTMENT OF SOCIAL SERVICES  
744 P Street, Sacramento, CA 95814



September 12, 1994

ALL-COUNTY LETTER NO. 94-75

REASON FOR THIS TRANSMITTAL

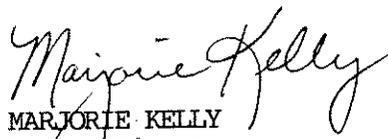
- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY PROBATION OFFICERS

SUBJECT: QUESTIONS AND ANSWERS PERTAINING TO THE AID TO FAMILIES  
WITH DEPENDENT CHILDREN-FOSTER CARE (AFDC-FC) PROGRAM

The purpose of this All-County Letter (ACL) is to provide answers to questions concerning the AFDC-FC program in California. These questions were posed by county staff during the joint Federal-State Title IV-E AFDC-FC training conducted in September and October in 1993. This letter does not respond to all of the questions received during the training sessions, but represents a sample of the most common subject areas. The questions and answers are organized in the following sections: Court Orders, Eligible Facilities, Deprivation and Miscellaneous. Questions pertaining to the Preponderance of Evidence Model (POEM) for linkage purposes have not been included in this letter but will be addressed separately at a later date.

If you have any further questions, please contact the Foster Care Policy consultant assigned to your county at (916) 445-0813.

  
MARJORIE KELLY  
Deputy Director  
Children and Family Services Division

Enclosure

- 4) Q. Are court transcripts the only acceptable documentation for Nunc Pro Tunc orders or are other resources available?
- A. The DHHS specifies which documentation will be necessary to substantiate a Nunc Pro Tunc order for the federal AFDC-FC program. Acceptable documentation includes court transcripts, bench notes, or other court documents which, in conjunction with the state agency's report, would confirm that the information was presented to the court and that the judicial determination(s) had been made at the original removal hearing. Documentation such as post-hearing affidavits is not acceptable. Counties considering the use of Nunc Pro Tunc orders should review DHHS policy in Administration for Children, Youth and Families (ACYF), Information Memoranda (IM) ACYF-IM-87-28 and ACYF-IM-89-28 distributed with ACL 92-17.
- 5) Q. When a child is returned home on a non-temporary basis and then removed again, which court order applies?
- A. For both the state and the federal AFDC-FC programs, a new or supplemental petition and court order must be obtained to remove a child who has been returned home on a non-temporary basis. The new court order would have to meet the authority for placement requirements, and the month of the new or supplemental petition would be used to determine federal linkage (EAS Section 45-202.321).
- 6) Q. If a child is a ward pursuant to Welfare and Institutions Code (WIC) Section 602, the court order may not contain the "contrary to the welfare" finding. Can the child still be federally eligible for foster care?
- A. No. For both state and federal foster care eligibility, the "contrary to the welfare" findings must be made at the time of removal. For federal eligibility, the "contrary to the welfare" finding must be in the first order which removes the child from the home.
- 7) Q. A non-related legal guardian is appointed for a child who is not a dependent or a ward of the court. A few years later, the child commits an offense, a petition is filed, and the child is declared a ward by the Juvenile Court. The court order gives "supervision" authority to the probation department; it does not remove the child from the legal guardian. Can the legal guardian receive (or continue to receive) AFDC-FC for the child?
- A. Yes, if otherwise eligible. When the child was made a ward of the court, the wardship took precedence over the legal guardianship pursuant to WIC Section 304. But the order in question is not a removal order, it only places the child under the "supervision" of the probation department. Thus, the court order does not provide the authority for placement required for AFDC-FC eligibility in accordance with WIC Section 11401(b) and EAS Section 45-203.313. However, the non-related legal guardian does satisfy the authority for placement requirements of the non-federal AFDC-FC program pursuant to WIC Section 11401(d) and EAS Section 45-203.312. The non-related legal guardian may apply for and receive non-federal AFDC-FC benefits if the child is otherwise eligible.

STATEWIDE JOINT FEDERAL-STATE TITLE IV-E AFDC-FC TRAINING

COURT ORDERS

- 1) Q. Which court order must contain the three requisite judicial findings?
- A. The federal government has interpreted Title IV-E of the Social Security Act to mean that the first order resulting in a child's removal from his/her home must contain the "contrary to the welfare" finding. Accordingly, in most cases, the federal Department of Health and Human Services (DHHS) requires that the "contrary to the welfare" finding be made in the detention order. The other requisite findings may be contained in later court orders, but federal (and state) financial participation in AFDC-FC aid payments may not begin until all three findings have been made. Again, if the "contrary to the welfare" finding is not made in the first court order, federal financial participation may not be claimed at any time for that case.

For state AFDC-FC eligibility to exist, the findings must be made at the time that a child is removed from his/her home. This requirement is met if the findings are made in the original detention, jurisdictional, or dispositional orders. State financial participation may not begin until all three findings have been made.

- 2) Q. Who should be cited on the court order, the parent or the person from whom removed if different than the parent?
- A. It is our understanding that children are removed in California courts from the person with legal responsibility for the child, in most cases the parent(s), regardless of who abused, neglected, or exploited the child. The California Department of Social Services (CDSS) supports this position. However, for purposes of child welfare services, it would be best if the adult responsible for abuse or neglect is also cited on the court order if different from the parent. This will help to ensure that the child is not placed with the abusing party.
- 3) Q. What would happen to a case if the requisite judicial findings were not made in a court order at the time of removal and a Nunc Pro Tunc order could not be obtained?
- A. The case would not be eligible for federal or state financial participation (Eligibility and Assistance Standards [EAS] Manual Sections 45-202.4 and 45-203.313).

ELIGIBLE FACILITIES

- 8) Q. Can a legal guardian receive federal AFDC-FC benefits on behalf of an otherwise federally eligible child who is a dependent of the court?
- A. Yes, but only because the dependency takes precedence over the legal guardianship and only if the home is licensed. The federal AFDC-FC program does not recognize legal guardianship as an authority for placement. In addition, the child must meet all general and federal eligibility requirements pursuant to EAS Sections 45-201 and 45-202. For further clarification, please refer to ACL 91-13.
- 9) Q. A dependent child is receiving federal AFDC-FC and has been placed with a relative. Some time later parental rights are terminated by relinquishment or court action. Does the "former" relative need to be licensed?
- A. Yes. EAS Section 45-101(ee)(2) states that after parental rights are terminated by relinquishment or court action, any person who had been related to the child through the parent is no longer considered the child's relative. Non-related persons require licensure in order to meet the AFDC-FC eligible facility requirements. However, the CDSS is planning a review of existing statute and regulations in this area and counties will be notified of any subsequent changes in licensing requirements.
- 10) Q. A dependent child is receiving federal AFDC-FC benefits and has been placed with a relative. The relative becomes the legal guardian and the court dismisses dependency. Does the related legal guardian need to be licensed?
- A. It does not matter whether the related legal guardian is licensed because related legal guardians are not eligible for AFDC-FC benefits. After establishing legal guardianship and dismissing dependency, the child is ineligible for both the federal and state AFDC-FC programs; the federal program does not recognize legal guardianship as an authority for placement and relatives are not eligible for state program benefits. The related legal guardian could apply for AFDC-Family Group (FG) benefits.
- 11) Q. When may a certified license pending home be utilized?
- A. Manual of Policies and Procedures (MPP) Section 31-420.231 states that a child may only be placed in a certified license pending home when "the case record documents that the child's specific needs cannot be met by an available licensed or exempt facility." MPP Section 31-445 outlines the requirements that must be met to certify a home pending licensure. Please note that this process must be met for each child placed in an unlicensed home and the certification is lost if the child is removed from the home prior to licensure.

12) Q. Is there a limit to the length of time that a foster family home may be certified license pending?

A. A home may be considered certified license pending until the license application is approved or denied. An application is usually approved or denied within 90 days. However, the CDSS licensing authority may grant an applicant additional time to correct a licensing deficiency and extend the period the home is certified license pending.

13) Q. Is there a grace period for the licensed provider who moves to a different physical location without obtaining a new license? Is the child still eligible for AFDC-FC during the unlicensed period?

A. The community care facility license is only valid for the address printed on the license. Licensing regulations do not allow for a grace period when a provider moves to a new physical location. After a move, the provider would need to apply for a new license and have the home certified as pending licensure by a social worker or a probation officer in order to meet the eligible facility requirements for the federal or state AFDC-FC program.

14) Q. What is an approved home of a relative?

A. MPP Section 31-420.21 states that the approved home of a relative is a relative's home in which the child can be safely placed as determined and documented by the placement worker.

15) Q. Does the state or federal AFDC-FC program recognize the fifth degree of kinship within the definition of a relative? Do homes of relatives within the fifth degree need to be licensed?

A. The DHHS Administration for Children and Families (ACF) ACF-IM-92-04 and Action Transmittal (AT) ACF-AT-91-33 gave the option to expand the definition of relative to include persons within the fifth degree of kinship (first cousins once removed and great-great-great grandparents) in AFDC programs. This expanded definition has not been applied to the AFDC-FC program. Anyone who is not identified by statute or regulation as a relative pursuant to WIC Section 11400(m) and EAS Section 45-101(ee) would need to be licensed. However, the DHHS will not impose sanctions against the state or counties if it is used.

16) Q. What is the official date of relinquishment?

A. The official date of relinquishment is the date the document is stamped and filed by the CDSS. This date is recorded on both the relinquishment and the acknowledgment sent to the county.

17) Q. Does the Norman court decision apply to both the federal and State AFDC-FC programs?

A. No, the Norman v. McMahon court decision applies only to the state AFDC-FC program. The State Court of Appeals voided the provision in EAS Section 45-101(ee)(1)(c) to the effect that former stepparents are no longer relatives for purposes of the state AFDC-FC program. This court decision did not affect the federal AFDC-FC program, and former stepparents continue to meet the federal definition of caretaker relative after divorce. The CDSS has recently released an ACL on this subject.

18) Q. Is the spouse of a stepparent considered a relative? If so, is this person a caretaker relative after he/she divorces the stepparent?

A. A stepparent is first the spouse of a biological/adoptive parent and is considered a caretaker relative of the child in both the federal and state AFDC-FC programs. As stated above, a stepparent retains the status of caretaker relative to the child after divorcing the biological/adoptive parent in the federal AFDC-FC program, but loses that status in the state AFDC-FC program. If the divorced stepparent subsequently marries an individual unrelated to the child, the new spouse (of the former stepparent) would also be considered a caretaker relative in the federal AFDC-FC program, even after divorce from or the death of the former stepparent.

19) Q. If the county places a child out-of-state and the receiving state has a transitional living program, i.e., apartment-like living arrangements for emancipating youth, is the child eligible for AFDC-FC?

A. Yes, provided the placement facility meets the host state's community care licensing requirements and all AFDC-FC requirements are met. Please refer to All-County Information Notices (ACIN) I-08-91 and I-65-92 and an ACL to be released later this month on out-of-state placements for additional information.

20) Q. Is there a requirement that a copy of the foster family home license be in the services or eligibility file?

A. No. A copy of the foster family home license is not required to be placed in the services or eligibility file. However, a copy of the foster family home license must be available during case reviews to verify placement in an eligible facility pursuant to WIC Section 11402.

DEPRIVATION

21) Q. Can a child be linked to the AFDC-FG/Unemployed (U) Program in the month of petition if deprivation did not exist at the time of removal but did exist prior to the end of the month?

A. Yes, the requirement is that deprivation and linkage exist during the month of petition in the home of removal. The child must be federally linked to the AFDC-FG/U Program during the month of petition to qualify for federal foster care benefits (EAS Section 45-202.3).

22) Q. If it appears that a family received AFDC-FG/U fraudulently in the month of petition (e.g., the case record indicates that the father was living in the home and deprivation did not exist), does this affect the initial linkage and deprivation determinations?

A. Not necessarily. It does not matter unless fraud is proved in the AFDC-FG/U program and the family is assessed an AFDC-FG/U overpayment. If this occurs, the initial linkage and deprivation determination would have to be reviewed.

23) Q. If a two parent family is receiving General Assistance (GA) in the month of petition, would they automatically meet deprivation and linkage requirements for federal AFDC-FC?

A. No. Receipt of GA would only establish that they meet the income and resource requirements for AFDC linkage. Deprivation is not a requirement of GA.

24) Q. For purposes of determining deprivation, what is meant by the term "home of removal?" Is it the home cited in the court order or the place from which the child is physically removed?

A. For purposes of determining or redetermining deprivation, the "home of removal" is the home of the person or persons cited in the court order as being the parent or relative from whom the child was removed. When the court order states that the child was removed from the home of a relative, the deprivation is based on the parent's status in the relative's home.

25) Q. If the basis for deprivation is an unemployed parent, does the county have to reestablish the labor market connection of the principal wage earner (PWE) at each six month redetermination of deprivation?

A. No. ACL 91-44 states that if the PWE from an AFDC-U case remains unemployed, continued deprivation for federal AFDC-FC based on an unemployed parent can be supported.

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26) Q. What if the parents are not available to provide the necessary information when redetermining deprivation?

A. EAS Section 45-202.122 states that if the parent(s) whereabouts cannot be determined at the time of the redetermination by the county welfare department, case record documentation must demonstrate a "good faith" effort to locate the parent(s) to allow federal linkage to continue. What constitutes a "good faith" effort for redetermination of deprivation is described in ACLs 90-04 and 91-44.

27) Q. How do we redetermine deprivation if parental rights have been terminated?

A. According to EAS Section 45-202.121, "Continuing deprivation is automatically met in those cases in which ... the child has been relinquished following the initial determination of deprivation."

28) Q. When redetermining eligibility for AFDC-FC where deprivation was based on unemployment of the PWE, when does elimination of the 100-hour work limit apply?

A. This rule applies only if the deprivational factor was unemployment of the PWE and the PWE had applied for and received federal AFDC-U and continued to meet the federal AFDC-U requirements pursuant to EAS Section 89-301.

29) Q. How do we redetermine deprivation based on the physical or mental incapacity of the parent?

A. If the individual's condition is expected to last more than one year, based on information provided by the medical professional or authorized member of his/her staff, it is to be reviewed at the annual reinvestigation. If not, "review is to be completed at the time the condition is expected to end or earlier if there is reason to believe there has been a change in the condition" (EAS Section 41-430.3).

MISCELLANEOUS

30) Q. What is the difference between "legal" and "physical" removal? Which is required for AFDC-FC eligibility?

A. Title IV-E of the Social Security Act authorizes federal financial participation in foster care costs if "removal from the home occurred pursuant to a voluntary placement agreement ... or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child ..."

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The state has interpreted this to mean that only a legal removal via a court order (i.e., judicial determination) constitutes removal and as such the "home of removal" is the home of the parent or relative from whom the child is legally removed. The federal government has interpreted this to mean that the "home of removal" is the home of the parent or relative from whom the child is physically removed, which may be different from the legal home of removal. The CDSS is presently working with the DHHS to bring closure to this issue.

- 31) Q. What happens to an intercounty transfer (ICT) of a foster care case if the receiving county court refuses to take jurisdiction during the transfer period?
  - A. When the receiving county court receives and files the order to transfer, the receiving county assumes responsibility for the income maintenance case at the end of the transfer period in accordance with EAS Section 40-125. It is not necessary that the receiving court assume or refuse jurisdiction before the end of the transfer period. If the receiving court declines or refuses jurisdiction before the close of the transfer period, the income maintenance file may simply be returned to the sending county as outlined in ACIN I-40-90. Should the receiving county court refuse jurisdiction after the expiration of the transfer period, a formal ICT of the income maintenance case to the originating or appropriate county would be necessary.
  
- 32) Q. What are the Notice of Action (NOA) requirements for the AFDC-FC program? Have any AFDC-FC NOAs been developed by the CDSS?
  - A. MPP Sections 22-021 and 22-022 outline the requirements for adequate and timely notice in the AFDC-FG/U and AFDC-FC programs. For AFDC-FC purposes, the effective date of action is the payment date. There are currently no mandated NOAs for the AFDC-FC program, but the CDSS is in the process of developing AFDC-FC NOAs for the Statewide Automated Welfare System (SAWS). Once counties are on-line with SAWS, they will use the SAWS generated NOAs. Until such time as the SAWS is available for statewide use, counties should continue to use their county developed NOAs.
  
- 33) Q. If a child is removed from a home which is currently experiencing an AFDC-FG/U period of ineligibility (POI) due to the receipt of lump sum income, can linkage be made?
  - A. EAS Section 45-202.31 states that a child must be linked to the federal AFDC-FG/U program during the petition month. If the family is experiencing a POI lasting two months or more, the family's AFDC-FG/U benefits are discontinued and the child cannot be linked to the AFDC-FG/U program. Families whose benefits have been discontinued are not considered open AFDC-FG/U cases and must reapply for aid once their POI has expired in accordance with EAS Section 44-207.43. Additionally, the family would not have been eligible had they applied for aid during the petition month because of lump sum income. However, if the POI lasts less than two months and the family's aid has been suspended, the family is considered to have an open AFDC-FG/U case and the child could be linked to the AFDC-FG/U program.

- 34) Q. What rate is paid to a newly licensed group home which hasn't had a rate established?
- A. A new provider must have an established rate before payment can be made (MPP Section 11-402.42).
- 35) Q. Do the new regulations regarding property limits for AFDC recipients also apply to the foster care program ?
- A. Yes. The provisions of the California "Work Pays" Demonstration Project increase the amount of exempt personal property for AFDC recipients. New AFDC applicants and control group participants will be subject to the current lower limit. These regulations will also apply to the AFDC-FC program.
- 36) Q. A child is in a group home placement. The child runs away from the placement on the 15th of the month. At the county's request, the group home holds the bed for the child until the 30th of the month; the bed is taken by another child on the first of the following month. What is the last date of payment? Does the county pay through the 29th or 30th?
- A. Because the county requested that the bed be held until the end of the month, the last date of payment would be the 30th of the month, the day before the child is considered to have permanently left the facility. Please note that payment may only be made for the entire month if the facility agrees to take the child back immediately, the child has not been moved from one eligible facility to another, no other AFDC-FC payment for the bed has been made, and the payment does not exceed the monthly rate set for the eligible facility (EAS Section 45-302.51).
- 37) Q. How should counties treat suspected illegal income?
- A. For purposes of determining AFDC-FC eligibility, if an applicant or recipient reports illegal income, it should be considered and treated as income. If illegal income is suspected but not reported, it is not considered income for eligibility purposes unless the county can prove and document it was received.