

DEPARTMENT OF SOCIAL SERVICES

744 P Street, M.S. 19-67, Sacramento, CA 95814



January 7, 1998

ALL-COUNTY LETTER NO. 98-03

TO: ALL COUNTY WELFARE DIRECTORS
 ALL LICENSED COUNTY AND PRIVATE
 ADOPTION AGENCIES
 ALL CDSS ADOPTION DISTRICT
 OFFICES

REASON FOR TRANSMITTAL

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

**SUBJECT: CLARIFICATION OF ADOPTION ASSISTANCE PROGRAM
 REQUIREMENTS**

- A. Prohibition Against Application Of A Means Test To Determine Eligibility**
- B. Procedure For Determining Eligibility And Subsequently Assessing Need For Cash Subsidy**
- C. Documentation of Adoptive Family's Circumstances For Purpose of Recertifying An Adoption Assistance Agreement**

The Department has been informed that some adoption agencies or individual caseworkers within agencies may be inappropriately applying statewide median income criteria as a means test for determining eligibility for Adoption Assistance Program (AAP) benefits. Federal regulation and state statute are unequivocally clear that there shall be no means test for AAP eligibility.

There also is apparent confusion about the difference between the determination of eligibility and the subsequent negotiation of an AAP payment, if any, required to meet the child's otherwise unmet needs. The determination of AAP eligibility and negotiation of the AAP payment are two separate and distinct processes.

Finally, some adoptive families who have expressed an interest in adopting a child or who are in the process of recertifying an existing AAP agreement have asserted that adoption agencies impose burdensome requirements for documenting the family's circumstances. During both initial application and recertification, only necessary and relevant information concerning the adoptive family's circumstances may be requested.

For your reference, a detailed discussion of each preceding clarification follows:

A. Determination of Eligibility

A child is initially eligible for the AAP if he or she meets the criteria described in Welfare and Institutions Code (WIC) Section 16120. No statutory provision ties a child's eligibility for AAP benefits to the adoptive family's income. In fact, both federal and state law specifically bar use of an income-based means test to determine eligibility. Federal regulation at 45 Code of Federal Regulations (CFR) Section 1356.40(c) states: "There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments." State statute at WIC Section 16119 (c), in pertinent part, states: "There shall be no means test used to determine an adoptive family's eligibility for the Adoption Assistance Program." However, these provisions should not be construed to imply that there is no consideration of the family's financial resources when determining the amount of payment, if any, required by the family in order to meet the child's otherwise unmet needs.

B. Determination of Amount and Duration of Payment

A child's AAP eligibility, once established, remains unchanged as long as criteria described in WIC Section 16120 (d), (e), and (f) continue to be met. After eligibility has been determined, the next step is to determine what amount of AAP subsidy, if any, will be required by the family in order to meet the child's otherwise unmet needs. Under 45 United States Code (USC) Section 673(a)(3), the amount of an AAP payment must be set through negotiation between the adoption agency and the adoptive family. The payment amount, however, cannot exceed the foster care maintenance payment which the child would have received had he or she remained in foster care. The payment amount is based on two factors: the circumstances of the adoptive parents and the needs of the child being adopted.

WIC Section 16119(c), requires the use of statewide median income data as a guideline to assist an adoption agency considering the adoptive parents' circumstances when negotiating the amount of an AAP payment. A comparison of the adoptive family's income and the statewide median income data is never to be the sole determinant of either AAP eligibility or payment amount. As stated by the Administration for Children, Youth and Families, Department of Health and Human Services in Policy Interpretation Question ACYF-PIQ-90-02 (October 2, 1990): "The use of guidelines [alone] is not appropriate to the process. During the negotiation of an adoption assistance agreement, it is important to keep in mind that the circumstances of the adopting parents and the needs of the child must be considered together. . . ." (emphasis in the original)

WIC Section 16119(d), read in conjunction with WIC Section 16119(c), provides agencies the following guidance for determining the appropriate amount of an AAP payment:

- (1) Families with income below the statewide median income may qualify for an amount up to the state-approved basic foster care rate and any state-approved specialized care increment for which the child would be eligible in foster care; and
- (2) Families with income above the statewide median income, unless actual family living expenses mitigate the family's ability to meet the child's basic needs, shall be considered to be able to meet the normal child rearing expenses encompassed in the state-approved basic foster family home care rate, but may qualify to receive benefits in an amount up to the state-approved specialized care increments the child would be eligible to receive if in foster care.

Furthermore, an initial conclusion, based solely on a comparison of family income to statewide median income data, that no assistance is warranted often may change after the required consideration of the family's actual living expenses, including any documented, unusual expenditures necessary for the health, safety, care, or education of any family member which are not reimbursed by other sources. Such expenses may include, but are not limited to, unusually high expenditures for housing, utilities, or transportation or the cost of health, safety, education and above normal care for any family member, including other adopted children. (Title 22 California Code of Regulations (CCR) Section 35333(a)(3)(D))

Consideration of family income comes into play only in determining the family's need for financial assistance in meeting usual, basic child rearing costs encompassed in the state-approved basic foster care rate. Unless other community resources are available to meet a child's special needs which would be paid for by the state-approved foster care specialized care increments, AAP benefits should be authorized for any adopted child to pay for the adoptive family's costs associated with those special needs up to the amount of the specialized care increment.

However, even if it is determined no cash payment is required at the time of adoption in order for the adoptive family to meet the AAP eligible child's needs, a deferred payment AAP agreement should be signed prior to finalization of the adoption to ensure continued eligibility and the family's ability to receive benefits in the future should the child's needs or family circumstances change such that cash assistance is required to meet the child's needs. Similarly, if the family requires only Medi-Cal benefits for the child, a zero dollar grant AAP agreement should be completed.

C. Documentation During Recertification Process

Under federal law at 42 USC Section 673(a)(3), the amount of an AAP payment “may be readjusted periodically.” WIC Section 16120.05 specifies that an adoption assistance agreement shall be reauthorized through a recertification process to occur no less frequently than every two years. Title 22 CCR Section 35333(d)(1) states that the agency shall determine the duration of time between each reauthorization, and that the “authorization shall be in effect no longer than the shortest of the following periods:

- (A) Two years,
- (B) 18 months if the child is placed in out-of-home care and is receiving a grant greater than the basic care foster care grant,
- (C) The expected duration of the services identified in Section 35333(a)(1)(B) if the child is receiving a grant based on a specialized care increment, or
- (D) A time period ending at the end of the month in which the child becomes 18 years of age, or if the agency has determined that the child has a mental or physical condition that warrants the continuation of assistance, 21 years of age.”

The AAP recertification process determines whether the child continues to be eligible for assistance and whether any change in assistance is indicated. Eligibility is seldom a recertification issue because a child continues to be eligible for AAP until age 18 (or, in some cases, age 21) unless the adoptive parents cease to support the child or their parental rights are terminated.

If the recertification review suggests that a change in AAP benefits is indicated, the agency would discuss this possible change with the parents. If, as a result of this negotiation, the parents concur with the change, the new AAP Agreement (AD 4320) would reflect this change. With limited exceptions, if the parents do not concur with a suggested change, the AAP benefit would remain at the level specified in the prior agreement and the new AD 4320 would not reflect a change. For example, the parents may have concurred with a planned future benefit change when they completed the prior agreement. Such concurrence would be shown in Item 2 of the AD 4320.

Only in limited circumstances may the agency decrease AAP without the parents' concurrence. These limited circumstance include decreases to avoid exceeding the maximum AAP payment, the failure to provide authorized services, the collection of overpayments, and ineligibility. These circumstances are specified in regulation at Title 22 CCR 35343(b)(3).

The documentation required for recertification, which includes completion of the Recertification Information - Adoption Assistance Program Form (AAP3), is usually readily accessible to the family. Agencies should strive to administer this requirement in a manner which will cause no undue hardship on families during the recertification process. Agencies should not impose more than minimally necessary documentation requirements on families unless facts have come to light which suggest a more thorough review of the child's and family's circumstances is warranted. For example, adequate documentation for unchanged payment reauthorization, in the case of a child with a chronic, stable medical condition, may be as little as a brief letter from a licensed clinician indicating no change from an earlier, more comprehensive diagnosis, accompanied by a copy of the family's most recent tax return verifying no substantial change in family financial circumstances.

In summary, we hope this information has served to clarify the sometimes subtle but important distinction between the prohibited practice of using family income alone as the basis for determining AAP eligibility and the comparison to statewide median income criteria as a starting point of negotiation with a family regarding appropriate subsidy amount. During this negotiation process, each family's unique circumstances, including, but not limited to, the impact of the family's actual living expenses, must be considered in determining the amount of AAP subsidy, if any, required to meet the child's otherwise unmet needs for which community or family resources are unavailable or insufficient. It is expected that the conclusion of these negotiations may result in grant levels that differ significantly from those suggested solely by comparison of family income and statewide median income.

Agencies are requested to review their internal operating policies and procedures as well as actual caseworker practices to ensure no income-based means test is applied in determining AAP eligibility. Agencies are also urged to review their AAP recertification process to eliminate any excessive or unnecessary documentation requirements for adoptive families.

If you have any questions, please contact Lisa Beckham of the Adoptions Policy Bureau at (916) 322-4228.


for MARJORIE KELLY
Deputy Director
Children and Family Services Division

c: CWDA