



NEW YORK STATE
 OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
 40 NORTH PEARL STREET
 ALBANY, NEW YORK 12243-0001

George E. Pataki
 Governor

Brian J. Wing
 Commissioner

 : INFORMATIONAL LETTER :

TRANSMITTAL: 00 INF-2

DIVISION: Temporary Assistance

TO: Commissioners of
 Social Services

DATE: January 12, 2000

SUBJECT: Child Support Cooperation: Questions and Answers

SUGGESTED

DISTRIBUTION: Temporary Assistance Directors
 CAP Coordinators
 Medicaid Directors
 Services Directors
 Foster Care Supervisors
 Child Care Unit Supervisors
 Child Support Enforcement Unit Coordinators
 Support Collection Unit Supervisors
 Staff Development Coordinators

CONTACT PERSON: **Temporary Assistance and Food Stamps:** Your Regional Team Representative at 1-800-343-8859: Western Region - extension 3-0332; Central Region - 4-9344; Eastern Region - 3-1469; Metro Region - (212) 383-1658
Child Support: Your County Representative Outside of New York City at 1-800-343-8859; New York City at 1-212-383-1685
Medicaid: Your Local District Liaison at 518-474-9130 for Upstate and at 212-613-4330 for New York City
Foster Care: Michelle Rafael at (518) 474-4352
Child Care: Anne Ball at (518) 474-3775

ATTACHMENTS: 99 ADM-5 Errata Sheet (Available on-line)
 Questions and Answers (Not available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
99 ADM-5					

OTDA-329EL (Rev. 11/98)

"providing temporary assistance for permanent change"

Date January 12, 2000

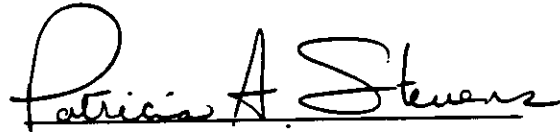
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During regional training meetings and a teleconference on child support cooperation, and subsequent to the release of 99 ADM-5, numerous questions were asked which should be of interest to all districts. Please share these questions and answers with your Child Support Enforcement Unit (CSEU), Temporary Assistance (TA), Medicaid, Child Care Services (CC), Foster Care Services (FC) and Staff Development workers.

In addition to the questions and answers, please distribute the enclosed errata sheet for 99 ADM-5.

Thank you for your continued efforts to improve client cooperation with child support enforcement.

A handwritten signature in cursive script that reads "Patricia A. Stevens". The signature is written in black ink and is positioned above the typed name and title.

Patricia A. Stevens
Deputy Commissioner
Division of Temporary Assistance

RE: ADMINISTRATIVE DIRECTIVE

SUBJECT: Child Support

TRANSMITTAL NUMBER: 99 ADM-5

DATE: June 30, 1999

Please make the following pen and ink changes to the above referenced transmittal. Thank you.

1. On page 7, section V.A.2.f, second sentence, change "is" to "if", and change "and" to "is".
2. On page 10, section V.B.1.b.(4), first paragraph, insert "Non-TANF funded" before "Safety Net Assistance (SNA)" in the second full sentence on page 10. In the last sentence of this paragraph, insert "Non-TANF funded" before "SNA".
3. On page 28, section V.C.2.c, first sentence, delete the comma at the end of the second line and, on the third line, delete "upon request,".

CHILD SUPPORT COOPERATION: QUESTIONS AND ANSWERS**GENERAL**

1. **Q: Why, in some cases, are both the DSS-2860 and the DSS-2521 required?**
A: The DSS-2860 is the child support enforcement referral form and is required for all TA, Medicaid, IV-E FC and CC cases referred to the CSEU. For Family Assistance, TANF-funded Safety Net Non-Cash, Medicaid and IV-E FC cases, however, federal rules provide that the application for program benefits also constitutes an application for child support services and, therefore, a separate child support application (DSS-2521) cannot be required. For any other case referred to the CSEU, including Non-TANF Safety Net Assistance, Non-IV-E FC and CC, federal child support rules require an application for child support services which, in New York State, is the DSS-2521.
2. **Q: When will the DSS-2521 and DSS-2860 be revised and, hopefully, combined?**
A: Policy relating to legal representation and cost recovery is under review. When the review is completed and the policy is amended the issue of the separate application, i.e. DSS-2521, will be resolved.
3. **Q: Can an applicant/recipient (A/R) request a Fair Hearing on a denial of a Good Cause claim?**
A: Yes. Denial of a TA A/R's request for a domestic violence waiver also is a hearable issue.
4. **Q: Why don't Domestic Violence procedures apply to child care or Medicaid cases?**
A: Domestic violence (DV) waiver procedures do not apply to a child care (CC) or Medicaid case, but DV itself constitutes good cause for not cooperating with child support enforcement in a CC-Only or Medicaid-Only case. The CC worker (or other worker designated by the district) must make a good cause determination for a CC-Only A/R claiming DV, and a Medicaid worker (or other district designee) must make a good cause determination for a Medicaid-Only A/R claiming DV. DV liaisons are paid with TA funds and, therefore, are limited to DV assessments and waiver determinations for TA A/Rs. Districts may be able to arrange to have the DV liaison provide training to Services and Medicaid staff to help them identify situations where DV may be an issue. Training also may be available from a local DV services provider or from the NYS Office for the Prevention of Domestic Violence.

For an individual who *is* applying for TA, CC and Medicaid and for whom a full or partial waiver (or a good cause exception) from TA child support requirements is granted on the basis of domestic violence, the TA waiver or good cause exception also triggers a good cause exception from the child support requirements for CC and Medicaid. No separate determination process is required by those programs because the circumstances which call for the TA waiver or good cause also constitute good

cause for exemption from the same child support requirements under the CC and Medicaid programs.

CHILD SUPPORT

5. **Q: Who must appear in the CSEU for a face-to-face interview?**

A: Districts must establish criteria for determining whether an A/R must go in person to the CSEU. Factors to consider include the completeness of the information already provided by the client and existence of an active or recent child support case. If a CSEU interview is required and an appointment is scheduled, the client should be advised of what information is needed and how to find it, and to bring complete information and documentation to the CSEU interview. A good reference source for clients is the Child Support Services brochure (Pub# 1950).

6. **Q: Should CSEU build a case on CSMS for an A/R who signed an Attestation to Lack of Information (LDSS-4281)?**

A: Yes, if the respondent's name is known.

7. **Q: Can we impose a non-cooperation sanction if we don't believe the client signing the attestation form?**

A: Yes. But only if the CSEU has credible, independent evidence showing that the attestation is false, or can demonstrate that the A/R has given inconsistent information with no reasonable explanation. The district cannot sanction based solely on a subjective belief that the A/R is withholding information or attesting falsely.

8. **Q: What is the approximate timeframe for CSEU processing a case and the court issuing a child support order?**

A: The answer varies from county to county. Districts are encouraged to continuously look for ways to expedite the process. At the same time, districts are required to have established a support order, including establishing paternity if necessary, or have completed service of process within 90 calendar days of locating the absent parent/putative father (18 NYCRR 347.8).

9. **Q: Isn't the sanction "cure" more difficult to accomplish in counties with slower court systems?**

A: Yes. That is why cooperation with child support is so important.

10. **Q: What constitutes cooperation in order for a sanction to be ended? For example, if a woman failed to appear in court, and many months later is willing to do that, will the court appearance cure the sanction? Or, will the sanction only be cured when the final court determination is issued?**

A: The sanction would be cured when the woman actually appears in court, is cooperative there, and complies with any other child support requirement that is applicable at that time. The sanction would not, however, be continued solely by reason of waiting for the court to issue its decision.

11. **Q: If a custodial parent's repeated failure to appear in court caused a judge to dismiss a petition with prejudice, but now the individual is willing to comply, can the non-cooperation sanction be lifted?**

A: No. If a child support case cannot proceed for reasons caused by the client's non-cooperation, the client's sanction would continue. As a legal matter, however, such cases should not be dismissed, and certainly not "with prejudice". New York case law is clear that a petition filed by a district cannot be dismissed because the A/R failed to appear: See *Snell v. Snell*, 582 N.Y.S.2d 180 (1992). The district should not be prejudiced from filing petitions as an assignee based on the failure of the assignor to act. Such decisions by the court should be objected to/appealed.

12. **Q: How, in CSMS, does CSEU suspend enforcement of an order while a PA A/R is being screened and assessed for Domestic Violence?**

A: In recognition of the fact that victims of DV often need and want child support and that enforcement activities of the CSEU are largely automated, it is strongly encouraged that the DV liaison discuss with the individual that enforcement be allowed to be continued. The CSEU must, however, upon notification from the DV liaison to waive enforcement efforts, suspend enforcement activities on CSMS.

To do this, the CSEU should enter a DELQ-SW 19 to stop enforcement by income execution and DMV license suspension. The district should contact Larry Dole at (518) 486-3129 to remove the respondent's name from the lottery intercept and credit reporting processes.

For tax refund offset (TROP), the district must enter the current value for the TROP process via the 33 DCOR transaction on page 00 of IVDQRY screen and, if the account is currently certified for TROP, process a negative 64 batch transaction for each ledger certified on the account to delete the account from the process. The entry of the current year's DCO value for non-submittal will suppress the account from being submitted for TROP if entered between May and August end-of-month. If notification is received after August end-of-month the district must still enter the current year's value for non-submittal so it will appear on the listing of accounts generated during May's end-of-month run each year, which lists each case in a district with the previous year's value for non-submittal. Once this annual list is received, the district should review each case to determine if non-submittal is still appropriate.

13. **Q: When a full waiver of support enforcement is requested and granted under the Domestic Violence provisions, what happens to an existing court order?**

A: All collection activities are suspended, but arrears accrue unless and until a court of appropriate jurisdiction terminates the order. Waivers are a temporary suspension of program requirements and, as such, the CSEU and the DV liaison should stay in contact during the waiver period. If a full waiver is still in force when the TA case closes, the IV-D case should be closed. Only if the waiver is terminated, or the TA recipient so requests, would the district collect the current obligation and accrued arrears.

14. **Q: How, in CSMS, does the CSEU indicate that the custodial parent's address must be concealed due to risk of domestic violence?**
A: The district should code the IVDJCA family violence indicator with a "Y" and the district should routinely review the case prior to taking any actions that would involve custodial parent addresses to assess whether the family violence indicator has been filled in. If it has, the address should be suppressed.
15. **Q: Is a Medicaid-Only or CC-Only A/R entitled to the same legal services as a TA A/R?**
A: Yes as regards a Medicaid-Only A/R because medical support rights are assigned. As such, a Medicaid-Only A/R cannot be required to sign an application for child support services and no costs for providing child support services (i.e., legal fees) may be recovered. No as regards CC-Only. There is no assignment in such cases. A CC-Only A/R makes an application for child support services and should be treated the same as a non-TANF individual.

TEMPORARY ASSISTANCE

16. **Q: Who must cooperate with TA child support requirements?**
A: The A/R in any case which includes an individual (child or adult) under 21 years old who has an absent parent or whose paternity has not been legally established, and any adult-only A/R who is the mother of, and living with, her child whose paternity has not been established, must cooperate. Exceptions from the TA requirement include DV waivers, Good Cause, children surrendered for adoption, children for whom surrender for adoption is being considered (up to 90 days after birth), and children under 60 days old for whom a paternity allegation has been denied.
17. **Q: If the TA applicant is determined to be non-cooperative with IV-D, do we deny the case?**
A: No, under current statute and regulations, even in a one-person household, an otherwise eligible case is opened with a 25% reduction in needs.
18. **Q: Can a TA caretaker of non-TA children be sanctioned for TA if he or she does not comply with child support requirements for the child(ren)?**
A: Under the provisions of SSL 132-a, a TA applicant or recipient who is the mother of a child born out of wedlock must cooperate to establish paternity and secure support for the child. Failure to do so will result in the 25% TA sanction. The mother also will be ineligible for CC, unless she is otherwise exempt from CC child support requirements. She would be exempt from Medicaid child support requirements if she is not applying for Medicaid for the child.
19. **Q: Can a district require a Family Assistance (FA) A/R to complete a DSS-2521: "Application for Child Support Services"?**
A: No, not a FA or TANF funded SNA A/R. In the case of a Non-TANF funded SNA A/R, however, the TA worker must complete the DSS-2521 on the A/R's behalf.

20. **Q: Is the DSS-2860 still required to be data entered within two days of the case opening?**
A: Yes.
21. **Q: In a FA case where a child (or all the children) is in foster care, the shelter and the fuel portions of the TA grant are continued for the children if the child services plan is to return the children to the household. If the TA parent will not cooperate with the FC support requirements, can the TA parent be sanctioned (25% reduction) for TA?**
A: Yes. As long as the services plan is to return the children, the FA household is exempt from the 45-day limit on temporary absence and the children continue to be considered household members.
22. **Q: What if TA and/or IV-D do not follow the process in place to make determinations of cooperation in time to meet the 30 (or 45) day timeframe within which TA must process the application? Does TA just open the case with a 25% reduction in needs and then supplement when the cooperation determination is made?**
A: No. The TA worker must open an otherwise eligible case with the full needs in the standard of need. If the applicant has not been asked to comply (TA forgot to make the referral, or a referral was not acted upon) or if a good cause claim determination will not be made by the 30th day, no reduction can be applied. The only time that the case can be opened with a 25% needs reduction is when the CSEU has made a determination of non-cooperation.
23. **Q: If a TA applicant is referred to the CSEU but fails to go or otherwise fails to cooperate, how long should the PA worker hold the application?**
A: Once the eligibility determination process is otherwise complete and the CSEU signals that the applicant has not cooperated, the PA worker should open the PA case with the IV-D sanction imposed.
24. **Q: Does a TA A/R still have to sign a form to acknowledge that they have been told about good cause?**
A: Yes, before referring a TA A/R to the CSEU, the TA worker must explain the DSS-4279, which is the notice of child support rights, responsibilities and good cause, and ask the client to sign and indicate on the form whether or not good cause is claimed.
25. **Q: There is a "date deprivation established" field on the DSS-2860. At least one district thinks that the date that goes there is the date that TA benefits begin. Is that correct? If not, what date goes into that field?**
A: Yes, this would be the date that TA benefits began.
26. **Q: Will an applicant have to cooperate with IV-D in order to have an immediate need met?**

A: No. An immediate need is one that must be met that day. Assistance to meet an immediate need must not be delayed because the IV-D cooperation determination has not been made.

27. Q: If a case is non-cash SNA, does the recipient receive the \$50 child support pass-through payment in non-cash?

A: No, the pass-through is paid in cash. Section 159 of the Social Services Law is the statutory authority for the non-cash Safety Net. However, because the child support pass-through is not assistance, it is not governed by section 159. Section 159 provides no authority for paying the pass-through on a non-cash basis.

28. Q: In a case with multiple absent fathers, does the DV waiver apply to all support actions?

A: No. The DV liaison must identify the batterer and apply the waiver to that specific support case only.

29. Q: If a TA recipient receives and retains assigned support and LDSS recoups it, does TA also sanction the case for non-cooperation?

A: No. A sanction would not be imposed for an instance of failing to surrender an assigned support payment if the recipient cooperates by remitting subsequent support payments to the Support Collection Unit.

30. Q: Should the PA worker notify the CSEU when a IV-D sanction is imposed?

A: Yes. In Upstate districts, the CSEU will be notified, via the Daily Interface Report, when a TA case with a IV-D Indicator of 'Y' or 'X' undergoes an undercare transaction with PA Reason Code V30: 'Refusal to Comply with IV-D Support Provisions'. Comparable codes are available in New York City WMS.

31. Q: In Upstate WMS, when would the IV-D Indicator code 'X' be used?

A: The 'X' value may be used for a case which has been in the Child Assistance Program (CAP) for more than three months, or for a case receiving both direct and assigned support (with ABEL already applying the \$50 disregard to the direct support). In both instances, the monthly WMS IV-D mass rebudget will prevent the case from receiving the child support pass-through payment, but the 'X' IV-D Indicator may be used to ensure exclusion from the mass rebudget (and inclusion in the IV-A/IV-D Daily Interface Report).

MEDICAID

32. Q: Are Medicaid-Only A/Rs required to cooperate in pursuing cash support?

A: No. Medicaid-Only A/Rs can only be required to cooperate in pursuing medical support. Medicaid and CSEU staff should assist interested Medicaid A/Rs in seeking cash support, however.

33. Q: Who is exempt from child support cooperation requirements for Medicaid?

A: Medicaid A/Rs who are exempt from child support requirements are:

- Women who are pregnant or in the 60-day postpartum extension (also exempt from referrals to CSEU);
 - Transitional Medicaid (TMA) recipients;
 - Children under age 19 who have failed to cooperate with child support requirements, but who are eligible for Medicaid under the Continuous Coverage 12 month extension;
 - A/Rs who have been determined to have good cause
 - A/Rs who are in the process of placing their babies for adoption;
 - SSI cash recipients; and
 - Families applying at outreach locations.
- All of the above may be informed of the availability of child support services; however, it is not an eligibility requirement.

34. **Q: We understand that the TA 25% reduction is imposed when a non-TA caretaker refuses to comply with child support requirements on behalf of TA children. But what if the non-TA caretaker is receiving Medicaid – can the caretaker be sanctioned from Medicaid for refusing to cooperate with support requirements on behalf of the TA children?**
- A:** Yes. Except for the A/Rs who are exempt from child support requirements, as listed in the answer to the preceding question, a Medicaid-Only A/R can be denied or discontinued from Medicaid until compliance if the child support requirement also pertains to Medicaid. For example, pursuit of cash support is not a requirement for Medicaid; therefore, if this were the only child support requirement with which the Medicaid A/R was non-compliant, the A/R would remain eligible for Medicaid. If this A/R was non-compliant with child support requirements that apply to Medicaid, e.g., establishment of paternity or medical support, the A/R is ineligible for Medicaid.
35. **Q: What if the caretaker is a disabled person (SSI-related but not SSI)? Can the caretaker be sanctioned from Medicaid? If the answer is no, does that mean that a disabled caretaker who is on TA cannot be sanctioned for Medicaid?**
- A:** SSI-related caretakers who do not comply with child support requirements that apply to the Medicaid program are ineligible for Medicaid until they comply. Although a SSI cash recipient who applies for Medicaid for a child may be referred for child support services, Medicaid coverage cannot be discontinued if the A/R does not comply.
36. **Q: If an A/R is exempt from child support requirements for Medicaid, does the exemption apply whether the person is applying for or receiving TA/Medicaid or Medicaid-Only?**
- A:** Yes, the A/R will be exempt for Medicaid purposes for TA/Medicaid and Medicaid-Only cases.
37. **Q: Must guardians comply with child support requirements?**
- A:** Yes, if both the guardian and child are applying for Medicaid.
38. **Q: At what age are non-pregnant minors required to comply with child support requirements with regard to their absent parents?**

A: At age 16 to 21, unless good cause is determined or the minor is otherwise exempt. Children under age 21, however, should never be denied Medicaid or lose Medicaid due to their *parents'* non-compliance with child support requirements.

39. **Q: If a TA/Medicaid individual is currently on a sanction for non-compliance with child support requirements and she then becomes pregnant, does the Medicaid sanction continue?**

A: No, the Medicaid sanction does not continue, because pregnant women are exempt from child support requirements for Medicaid.

40. **Q: If a pregnant minor's mother is applying for Medicaid for herself and the pregnant minor, must the mother comply with child support requirements regarding the pregnant minor's absent father?**

A: Yes, unless good cause is determined.

41. **Q: When is it inappropriate to refer Medicaid A/Rs to the CSEU or pursue recovery of the costs of confinement and pregnancy-related expenses?**

A: Workers *must not* refer a woman to the CSEU or pursue recovery of the costs of confinement and pregnancy-related expenses under any of the following circumstances:

- a. During pregnancy, during the 60-day period beginning on the last day of the pregnancy, or during the remainder of the calendar month in which such 60th day occurs;
- b. in the case of a married woman, if the husband's income and resources were considered available in determining the child's Medicaid eligibility; or
- c. in the case of a married woman whose husband refused to provide support, was on TA or Medicaid, or who had income and resources at or below the applicable Medicaid standards, at the time of the child's birth; however, such a case should be referred to the local DSS attorney for possible recovery action.

In the following situations, workers should refer the cases to the CSEU if paternity has not been established and/or for Medical support; however, they *must not* pursue recovery of the costs of confinement and pregnancy-related expenses:

- a. in the case of an unmarried woman, if the unwed father was on TA or Medicaid, or had income and resources at or below the applicable Medicaid standards, at the time of the child's birth;
- b. in the case of an unwed father or husband who is currently on TA or Medicaid, or who has income and resources at or below the applicable Medicaid standards; or
- c. in the case of an unmarried woman, if the unwed father's income and resources were used in determining the mother's eligibility during pregnancy.

CHILD CARE

42. **Q: Who must cooperate with CC child support requirements? If someone applies for child care and refuses to cooperate with child support are they sanctioned or denied?**

A: A TA recipient who needs child care in order to participate in a required work activity or to engage in work (as defined by the district) has a guarantee of child care which supersedes the requirement to cooperate with child support. A TA A/R who does not meet this criteria, i.e., is not complying with the work requirement, does *not* have a child care guarantee. 99 OCFS LCM-28 provides a description of families who have a child care guarantee.

Individuals who are **transitioning from TA** also have a child care guarantee. Their guarantee, however, does *not* supersede the child support cooperation requirement. The difference between the two populations which have a child care guarantee is that, in the case of the TA recipient, the district requires a specified number of hours of participation in an activity or a certain minimum number of hours of work as a condition of continued TA eligibility. A transitioning client is not required to work a specific number of hours in order to be eligible for the transitional child care guarantee. *All* transitioning clients, therefore, must cooperate with child support requirements unless they are exempted for good cause reasons. Current regulations [18 NYCRR 415.7 (d) (3)] require transitioning clients to cooperate with the CSEU. Proposed regulations will allow these clients to pursue support either through the CSEU or privately.

Non-TA low income families *will be* required to cooperate with child support requirements when the child care regulations containing this provision are promulgated. These families will have the option of going through the CSEU or pursuing support privately.

In all of the above situations, a family that is subject to child support requirements will either be eligible or ineligible for CC services based on their cooperation or non-cooperation in obtaining child support. There is no "sanction" procedure for CC services.

43. **Q: Can CC program staff gain access to the CSMS putative father registry screen?**

A: Yes. Authorization for local district staff to access the putative father registry screen on CSMS is at local district discretion. Perhaps a more efficient procedure would be for CSEU staff to query CSMS in response to CC worker requests for information on a child's paternity establishment status or a parent's compliance with cooperation requirements.

44. **Q: If the absent parent in a non-TA CC case stops paying support, should the CC worker stop budgeting the support money (for eligibility or fee determination)?**

A: If the absent parent is one month or more past due in paying support, the district should stop budgeting the support money for purposes of eligibility and family share/fee *as long as the custodial parent demonstrates that they are actively pursuing support by*

attempting to have the support order enforced. When the custodial parent's fee is adjusted to reflect a decrease in income from support, the district's portion of the child care payment will increase. If the order includes a separate amount for child care, the district will need to adjust the child care payment amount to cover the amount of child care support owed by the absent parent. The notice to the custodial parent regarding the benefit amount adjustment should include the following statement:

"Your child care benefit has been increased by \$ ____ based on your report of non-receipt of child support. You must continue to cooperate in enforcing your child support order to maintain your eligibility for child care. Any change in your income, including payment of back due child support, must be reported to the _____ County Department of Social Services ("LDSS") immediately. If the LDSS has paid child care benefits based on your non-receipt of support, you may be required to pay to the LDSS a portion of the back due support that you receive. The amount paid for back due support (that is not returned to the LDSS) may affect your eligibility and parent share/fee."

Districts must review the child support status in these cases as they would for other cases where income fluctuates significantly, and make adjustments accordingly. 18 NYCRR 404.5 (b) requires that when "income fluctuates significantly, the average monthly amount shall be computed based on income received during a period of not less than three nor more than six months."

45. **Q: How does the CC worker treat income from child support payments when the support order requires the absent parent to pay a percentage of the cost of care or a percentage of the parent fee?**

A: The only child support payment that is treated as income for child care eligibility purposes is *general child support*. The amount that the absent parent is required to pay for *child care as part of the support order* is used to reduce the amount of child care benefit the district pays.

An example illustrates the treatment of child support payments. An absent parent is subject to a support order that requires payment of \$150 per week in general support and 50% of the cost of child care. The total child care cost is \$80. 50% of \$80 is \$40. The \$150 per week is budgeted as income to the custodial parent. The \$40 child care payment reduces the amount of the child care subsidy paid by the district by \$40. The custodial parent also may be responsible for a family share/fee, which would further reduce the amount of the district's subsidy payments.

46. **Q: If an absent parent is helping financially with child care costs, should the case be brought to court to get a formal order?**

A: Yes. The case must be brought to court, either through the CSEU or by pursuing support privately, to get a formal order whether the absent parent is helping financially or not.

47. **Q: Aren't recipients of transitional child care exempt from child support cooperation requirements?**

A: No. Eligibility for transitional child care has always carried a child support cooperation prerequisite, as found in Part 415.7 (d) (3) of Department regulations. *After promulgation of the child care regulations containing the new child support language, however, these clients will have the option to pursue support privately.*

FOSTER CARE

48. **Q: Why was there no mention about changes in referrals for foster care?**

A: There have been no changes in the referrals since implementation of the 1995 amendments to foster care regulations (18 NYCRR 422.2-5) established the referral procedure. 99 ADM-5 explains and reinforces the regulations.

49. **Q: If the amount of a support order exceeds the cost of foster care, can the excess be diverted to an account for the child or to defray Medicaid costs?**

A: In a foster care case where the basic child support obligation as determined by the child support standards exceeds the cost of care, the CSEU may advise the court that the basic child support obligation amount is unjust or inappropriate and that the amount of the support order should not exceed the cost of care plus the costs of Medicaid paid on behalf of the child (18 NYCRR 422.3). If, however, the court orders the support and it exceeds the cost of care, pursuant to federal regulations at 42 CFR 302.52, the difference should be distributed to the agency responsible for supervising the child's placement and care. Such agency must use the money in the manner it determines will serve the best interest of the child, including setting aside amounts for the child's future needs or making all or part of the amount available to the person responsible for meeting the child's daily needs to be used for the child's benefit.

50. **Q: Can Non-IV-E FC cases be required to assign cash support?**

A: No. There is no assignment in non-IV-E foster care cases.

51. **Q: If the FC former custodial parent signs an Attestation to Lack of Information (LDSS-4281), where is the form filed?**

A: The LDSS-4281 should be retained in the CSEU case record.

FOOD STAMPS

52. **Q: What about Food Stamps?**

A: Under current regulations, a food stamp recipient whose TA case is sanctioned for child support non-cooperation would have the pre-sanction TA income counted in the food stamp benefit calculation. The benefit calculation for a food stamp applicant who fails to comply with TA child support requirements would be based on the sanctioned (reduced) TA amount. Please see ABEL Transmittal 99-2 for Upstate WMS instructions.

When proposed Office regulations are filed, both custodial and non-custodial parents who fail to cooperate with paternity establishment and support enforcement will be disqualified from receiving food stamps. Details about the food stamp child support requirements will be provided in a separate directive.