

**DSS ADMINISTRATIVE LETTER
FAMILY SUPPORT AND CHILD WELFARE SERVICES FSCWS-17-07**

TO: County Directors of Social Services

ATTENTION: Children's Services Program Managers and Supervisors
Children's Services Social Workers

DATE: December 18, 2007

SUBJECT: Use of a Child's Resources

EFFECTIVE DATE: IMMEDIATELY

This letter is intended to clarify the Division's policy on use of a child's resources while in foster care in light of the recent North Carolina Court of Appeals decision *in re J.G.*, 652 S.E.2d 266 (N.C. Ct. App. 2007) which can be found at: <http://www.aoc.state.nc.us/www/public/coa/opinions/2007/060752-1.htm>.

We are informed by the Division's Child Welfare Attorneys that nothing in the Court of Appeals decision requires Departments of Social Services to change the practice of using a child's resources, including social security survivor benefits, to cover the cost of meeting the child's current needs, including expenses associated with foster care maintenance. The facts of this case were highly unusual and can not be applied to all children in foster care. Information on the responsibilities of a Representative Payee can be found on the Social Security Online Website at <http://www.ssa.gov/payee/index.htm>.

The involved County Department of Social Services has filed a Petition for Discretionary Review with the North Carolina Supreme Court, which means that the State Supreme Court may review the decision of the Court of Appeals. The Division will keep counties informed if anything changes around this issue.

Previous Division policy on the use of SSI funds for a child's cost of care was reviewed and clarification is provided below. The Division policy on the use of any resource of a child in Foster Care is as follows:

Child's Resources

SSI
Although eligibility for title IV-E foster care is tied to eligibility for Aid to Families with Dependent Children (AFDC) and AFDC precluded concurrent eligibility for payments from AFDC and title XVI (SSI), this preclusion rule is not transferable to title IV-E for the purposes of foster care maintenance payment eligibility determinations. A child, if eligible, may receive benefits from both programs simultaneously.

In cases where the child is eligible for both SSI and title IV-E and there is concurrent receipt of payments from both programs, "the child's SSI payment will be reduced dollar for dollar without application of any exclusion", thus decreasing the SSI benefit by the amount of the title IV-E payment (SSI Program Operations Manual). To reiterate, concurrent receipt is subject to the SSI rule that the SSI payment will be reduced by the amount of the foster care payment.

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The county DSS may also choose to use either IV-E or SSI to fund the child's cost of care. The difference between title XVI (SSI) and title IV-E should be considered carefully by the decision maker when choosing whether to apply for either or both title IV-E or SSI benefits on behalf of the child. Information regarding the benefits available under each program should be carefully considered so that an informed choice can be made in the child's best interest. To achieve this goal, local DSS agencies should exchange information regarding eligibility requirements and benefits with local Social Security district offices and establish formal procedures to refer clients and their representatives to the local Social Security district office for consultation and/or application when appropriate.

If a county DSS chooses to claim IV-E foster care reimbursement to pay for a child's cost of care, rather than utilize SSI payments, the county DSS may request from the local Social Security office that the child be placed on inactive status. A child may be placed on inactive status for up to one year, without having to re-qualify for SSI. Having the SSI payment reinstated without reestablishing the child's SSI eligibility is particularly advantageous for children who are being reunited with their families, who are being placed with relatives or kin, or who are being emancipated prior to their eighteenth birthday. The child's resources do NOT affect eligibility for programming paid through IV-E Independent Living Funds.

If a child is eligible for title IV-E but the county chooses to fund the child's care with SSI rather than IV-E, the county may claim IV-E funding for title IV-E administrative functions performed on behalf of that child (program code Z).

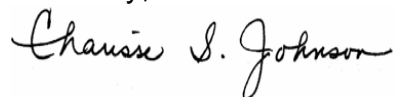
Note: SSI benefits, including funds conserved for the child in dedicated accounts, are not countable in determining the child's resources.

Resources other than SSI

The county DSS must be aware of all resources available to a child, which may include a child's unearned income from sources such as Social Security Survivor's benefits, trust funds, endowments, or child support paid directly to the agency. When a child is IV-E eligible, the agency **must** use the child's resources as part of the cost of care and the agency's IV-E claim for reimbursement must be reduced by the amount of the resource. For a child who is SFHF eligible, the child's resources **may** be used as part of the cost of care. The amount of the child's resources that is paid toward a child's cost of care should be entered in Field 56 of the DSS 5094.

If you have any questions about the information included in this Administrative Letter, please contact your CPR or Thomas Smith of the Foster Care and Adoption Policy Team at (919) 733-2580 or at thomas.smith@ncmail.net.

Sincerely,



Charisse S. Johnson, Chief
Family Support and Child Welfare Services

cc: Sherry S. Bradsher
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