

FOSTER CARE BENEFITS: AFDC-FC PROGRAM CHANGE ALERT

The Aid to Families with Dependent Children-Foster Care (AFDC-FC) Program Will No Longer Evaluate Income and Resources After the Initial Eligibility Determination

Effective February 15, 2022, counties and child welfare placing agencies (both child welfare and probation departments) are no longer to evaluate income and resources after an initial determination of eligibility for AFDC-FC. See, [All County Letter \(“ACL”\) 22-16](#). The California Department of Social Services (“CDSS”) issued ACL 22-16 to remind foster care placing agencies of the eligibility and redetermination rules for federal foster care payments, update the policy for non-federally eligible youth, and to explicitly state that agencies should no longer review income and resources after the initial assessment.

The Title IV-E program instructions indicate that the Title IV-E agency (child welfare, juvenile probation, or tribe/organization) must establish Aid to Families with Dependent Children (“AFDC”) eligibility (aka “federal eligibility”) at the time the child is removed from the home or when a voluntary placement agreement (“VPA”) is entered; that is, upon legal entry or re-entry into foster care.

After the initial federal eligibility determination, income and resources are not to be reevaluated to determine continued eligibility for an AFDC-FC payment for the same foster care episode. This means that if a youth in foster care, including a nonminor dependent (“NMD”), receives income (e.g. through an inheritance, settlement, or receipt of a tribal trust fund), that income is not to be evaluated (at the time of receipt or at some later time) and has no impact on the youth’s continued eligibility for AFDC-FC benefits. The Administration for Children and Families issued a policy change to this effect in 2010, and California partially adopted it in 2011.¹ The new CDSS policy discussed in ACL 22-16 further extends the federal policy to end evaluations of income and resources which were left out in 2010.

As advocates are no doubt aware, eligibility for federal AFDC-FC benefits remains tied to the 1996 income and resource limits established for AFDC before the Professional Responsibility and Work Opportunity Reconciliation Act replaced it. The extraordinarily low income and resource limits established over 25 years ago often present an impediment to youth and families meeting the continuing federal eligibility requirements. For instance, the annual redetermination requirements have caused a loss of benefits for nonminor dependents who become employed and begin earning “too much,” to young people who are the recipient of a monetary award as part of a civil judgment, and even youth who received a lump sum payment to correct for a past failure to provide benefits. **This policy change means that a youth will no longer face a loss of foster**

¹ See [ACYF-CB-PI-10-11 2](#), Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008 (July 9, 2010), Page 8; and [CDSS All County Letter \(ACL\) 11-10](#).

care benefits due to an increase in their income or asset resources during a foster care episode.

RELATED QUESTIONS:

- 1) If a youth leaves their placement and then returns, does that count as a new foster care entry requiring a new eligibility determination?**

Answer: No. A new eligibility determination is not required if a youth absents themselves from placement and returns.

The criteria to be used in determining whether re-establishing a child's eligibility for foster care maintenance payments under title IV-E would be required hinges on whether the child is continuously under a foster care status (by virtue of a court order or a VPA) and remains under the responsibility of the title IV-E agency for placement and care.² If the child is discharged from foster care and returned to his own home (the home from which he was removed), he could not be considered to be in foster care status, even if the agency maintains a supervisory role with the child and family. In the event the child returns home for what is expected to be a permanent period, but is later returned to foster care, a new determination of eligibility based on circumstances at the time of that removal would be required. Of course, Federal financial participation is allowed only during the time the child is in a licensed or approved foster care facility. Welf. & Inst. Code Section 11401.

- 2) Does an agency need to make a new eligibility determination when a youth in foster care turns 18?**

Answer: No. A redetermination shall not be conducted solely due to the youth turning 18 years old while under an order for foster care placement. When youth are continuously in foster care, their income and resources need not be reconsidered at any point during the same foster care episode. NMDs who were eligible for federal foster care funding prior to turning 18, remain federally eligible until they formally exit foster care via court order. Only upon re-entry to foster care following a break in dependency (e.g. if an NMD opts-out of EFC and has their court case closed, then re-enters at a later point in time) shall a new federal AFDC (Title IV-E) determination be required. When the new federal eligibility determination is made for a youth who is re-entering, it is based solely on the NMDs income and resources, without regard to other familial income and resources. Even if the NMD is not federally eligible at that time based upon current income and resources, they remain eligible for extended foster care and for a foster care payment without federal financial participation in the payment if all other extended foster care placement, participation, and eligibility criteria are met, pursuant to WIC section 11401.

² See [Child Welfare Policy Manual, 8.3A.10](#).

3) Can a county make a new eligibility determination for nonminor dependents in order for them to become federally eligible?

Answer: Yes. Recent amendments to Welfare and Institutions Code Section 388 created a process by which a court can exit and immediately resume jurisdiction over non-federally eligible youth in order to trigger a new foster care episode and eligibility determination. This process is not applicable to youth who are already federally eligible when they turn 18 or to youth whose circumstances would make them federally ineligible upon reentry. For more information on this process see [All County Letter 22-72](#) and Judicial Council form [JV-469](#).

4) Can a child or nonminor dependent still receive foster care benefits (AFDC-FC) if they are deemed federally ineligible?

Answer: Yes. The initial federal financial eligibility determination does not impact general eligibility for placement in foster care or extended foster care, nor does it impact whether an AFDC-FC payment will be provided to fund the foster care placement. Effective February 15, 2022, income and resources shall not be considered at any point in the foster care episode to determine eligibility for, or the amount of, a non-federal or federal AFDC-FC payment. This means that if a child or NMD placed in an approved foster care placement is determined ineligible for a federal IV-E foster care payment for any reason, they are otherwise eligible to receive aid in the form of AFDC-FC, but without federal financial participation in the payment (i.e. the state or the county will cover the cost of what would have been the federal portion of the payment).

If you have questions or need other technical assistance, please contact the Youth Law Center at info@ylc.org, or reach out to any of our attorneys via our [directory](#).