

OFFICE OF CHILDREN AND FAMILY SERVICES

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| LOCAL COMMISSIONERS MEMORANDUM |
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OCFS-4616EL (Rev. 11/98)

Transmittal No: 99 OCFS LCM-9

Date: March 19, 1999

Division: Administration

TO: Local District Commissioners

SUBJECT: Emergency Assistance to Families (EAF)
for Article 3 (Juvenile Delinquent) and Article 7
(Persons in Need of Supervision) Foster
Care Placements

ATTACHMENTS: EAF Authorization Form OCFS 638-J
Not available On-Line

The purpose of this Local Commissioner's Memorandum (LCM) is to advise social services districts regarding the authorization of and claiming for Temporary Assistance to Needy Families (TANF) funds made for foster care placements of children under provisions of Articles 3 or 7 of the Family Court Act. Prior LCM's issued by the Department addressing the use of Emergency Assistance to Families (Title IV-A EAF) for Articles 3 and 7 placements and services, specifically 95 LCM-54, 95 LCM-138 and 96 LCM-58, are superseded by the issuance of this LCM and cancelled. The general provisions for authorizing Title IV-A Emergency Assistance to Families (EAF) for services as found in 94 LCM-52 remain in place and underpin the instructions of this LCM.

I. BACKGROUND

The Department of Health and Human Services' (DHHS), Agency for Children and Families (ACF) in Action Transmittal (AT) 95-9 advised States that "(f)ederal financial participation is not available under the Emergency Assistance program for costs associated with providing benefits or services to children in the juvenile justice system who have been removed as a result of the child's alleged, charged or adjudicated delinquent behavior, or who have otherwise been determined to be in need of State supervision by reasons of the child's behavior." This prohibition was effective for services provided or paid for on or after January 1, 1996. In December 1996, the

State implemented the Personal Responsibility and Work Opportunity Act (PROWRA) which ended the Title IV-A EAF program as a federal funding source. The EAF program remains in effect under Title 18 NYCRR Section 372. Districts have been advised to continue authorizing EAF for all eligible foster care placements including those made under Articles 3 and 7 of the Family Court Act. Those instructions have remained in effect. Districts were also advised to file "informational only claims" for Articles 3 and 7 placements for purposes of supporting the State's appeal of AT 95-9 to DHHS. Although the appeal was not successful, the decision has, in effect, been modified by the passage of PROWRA which permits states to expend TANF for any services claimed under the Title IV-A EAF program on or before September 30, 1995.

II. POLICY IMPLICATIONS

Districts should discontinue the processing of the "informational only claims". The claims submitted for Articles 3 and 7 placements have been denied by the federal agency. We are not appealing the denial and districts should not anticipate any revenues from the claims for expenditures for the January 1, 1996 through December 31, 1998 period.

However, the advice and information in this LCM will assist social services districts in securing funding for Article 3 and 7 foster care cases from federal TANF dollars for expenditures beginning January 1, 1999 and thereafter. This funding is available based on the implementation of State eligibility and authorization standards for the Emergency Assistance Program (EAF) as found in Title 18 NYCRR Part 372 as effective on September 30, 1995. The resultant funding program is referred to in this LCM as "TANF-EAF".

Upon passage of the proposed budget for State fiscal year 1999- 2000 (SFY 99-00), social services districts must be prepared to submit claims related to payments for foster care placements for Article 3, juvenile delinquents (JD's), and Article 7, persons in need of supervision (PINS) of the Family Court Act who have been determined eligible and authorized for TANF-EAF pursuant to the provisions of Title 18 NYCRR section 372 and 94 LCM-52. Only payments for services provided in a non-secure setting expended on or after January 1, 1999 will be eligible for claiming as TANF-EAF. In addition, payments to be claimed as TANF-EAF can only be for foster care services provided in foster homes in compliance with the provisions of the federal Adoption and Safe Families Act (ASFA) and Chapter 7 of the Laws of 1999. This Office has recently sent districts instructions on the appropriate claiming of payments to foster homes affected by the federal ASFA and Chapter 7 of the laws of 1999.

Payments made for JD/PINS costs in foster care settings operated by social services districts or voluntary agencies will be reimbursed at 100% from the State's TANF block grant. The TANF-EAF funding for Article 3 and 7 foster care placements is separate and distinct from the TANF-EAF set aside for child welfare currently valued at \$100 million. However, for each dollar charged to the TANF-EAF funds for JD/PINS costs there will be a fifty

percent reduction in the district's portion of the States Family and Children Services Block Grant. For Title IV-E eligible children, costs not funded under that program, such as tuition, are eligible for TANF-EAF funding and will be reimbursed in the same manner as room and board costs for non-Title IV-E eligible placements. The "traditional" TANF set aside for child welfare purposes will continue to be allocated among districts.

Also, for children in the custody of OCFS, who are placed in non-secure OCFS settings (including Allen Residential Center), OCFS staff will submit TANF-EAF applications to social services districts. The Verification of Assistance (VOA) form will serve as this application for placements at the Allen Residential Center. The VOA has been previously determined by the Department to be a valid and appropriate application form for EAF purposes. Once a placement is determined TANF-EAF eligible, a copy of the EAF Authorization form (OCFS 638-J) must be returned to OCFS Resource and Reimbursement Unit. OCFS will submit claims for the TANF-EAF authorized children in OCFS placement settings. Social services districts will be billed for costs after the TANF funds, as available, are applied.

Local districts are reminded that for foster care and foster care related expenditures, Title IV-E remains the claiming program of choice and must be documented, authorized and claimed for all eligible costs. TANF-EAF should only be claimed for cases not eligible for Title IV-E funding or for services to IV-E cases not reimbursable under Title IV-E.

Unlike Title IV-E, EAF does not provide automatic eligibility for Medical Assistance (MA). A separate MA-only determination must be made for every foster child who is not IV-E eligible (See 93-ADM-34 p. 24). In addition, all programmatic requirements of foster care, including but not limited to, case planning and court reviews, remain in effect. The basic services requirements contained in Title 18 NYCRR Parts 404 "Determination of Eligibility For Social Services" and 405 "Purchase of Services by Social Services District" must also be followed. This includes completing the DSS-2921 "Common Application For Assistance" or using Verification of Assistance (VOA) worksheet completed by OCFS staff.

TANF-EAF funding requires a full eligibility process be done for each case. This means that TANF-EAF eligibility determination, as required by 18 NYCRR Part 372 as in effect on September 30, 1995, must be made and documented by the completion of TANF-EAF authorization form in accordance with the provisions of this LCM and 94 LCM-52. In order to take full advantage of the available TANF funding, districts should assure that foster care placements are reviewed for and authorized as TANF-EAF in an appropriate and timely manner.

In addition, two critical policy clarifications must be kept in mind when authorizing and claiming for TANF-EAF funds for these cases.

1. Under PROWRA, no TANF funds may be expended on behalf of youth over the age 18, or over the age 18 when the youth is attending secondary education or vocational training until the youth becomes 19 or completes the education or training, whichever occurs first. It is essential that districts not claim TANF-EAF funds for any foster care child remaining in care beyond this age limit. Data entry of WMS anticipated future action (AFA) codes would be one method to control for this factor.

2. Pursuant to a Health and Human Services Department Appeals Board (DAB) decision issued in 1997, the Office has been advised that an EAF authorization must be completed prior to the provision of services in order for the payment for that service to be eligible for claiming under EAF. Districts have previously been advised to continue the EAF authorization process for all foster care cases and in particular for Articles 3 and 7 foster care placements as we contested the decision of Action Transmittal 95-9 (see discussion under the "Purpose" section of this LCM). To the extent that social services districts maintained the EAF authorization procedures for each new Article 3 or 7 foster care placement, this DAB policy decision has no effect. However, for cases not authorized for EAF at the time of the youth's placement into care, districts may not claim TANF-EAF funds for any foster care service rendered to a youth prior to the completion of the EAF authorization document (form OCFS 638-J attachment 1).

III. PROCEDURES

All Article 3 and 7 foster care placements must be reviewed for TANF-EAF eligibility by using the form, "Determination of Eligibility and Authorization for Emergency Assistance to Families TANF-EAF Juvenile Justice Services", form OCFS 638-J. Copies of the form can be obtained by calling one of the program contact persons noted at the end of this LCM or making photocopies of the attachment.

By following the instructions included in the authorization form OCFS 638-J or the RES-1, as well as those in this letter, local districts will meet TANF-EAF documentation requirements. A copy of the completed authorization form must be maintained in the case record. After completing the demographic information at the top of the form, the type of emergency situation which necessitated the placement must be indicated on the authorization. District staff must then evaluate each case to determine the answers asked on the form by using case record documentation as discussed in the following pages.

1. Insufficient Income and Resources

Financial eligibility for TANF-EAF is presumed to exist for all foster care cases unless the child is in receipt of sufficient income or resources to offset all costs of care, i.e. maintenance and administrative activities. Only income immediately available to the child to meet the costs of foster care should be considered in the eligibility determination review. Unless there are sufficient income and resources readily available to offset all costs of care, the TANF-EAF criteria has been met and the the form should be checked "YES".

2. Destitution Not Due to Mismanagement of PA Grant

The district must determine for each TANF-EAF applicant that such destitution did not arise from the mismanagement of a public assistance grant. If the case record does not document that the parents' mismanagement of PA funds gave rise to the emergency, the answer is "NO", and the TANF-EAF criteria is met.

3. Previous TANF-EAF Funding

A case can only be authorized to receive TANF-EAF funding during one consecutive 30 day period in a given 12 months although, once authorized, the authorization form supports TANF-EAF funding for as long as the needs arising from the emergency continue.

A review of WMS inquiry screens to determine if there are existing or prior EAF authorizations must be completed. This requires accessing the Services BICS EAF history and the individual case involvement screen. For cases already authorized and/or active as EAF, staff must determine if the identified child welfare services needs arise from the original emergency. If so, TANF-EAF continuation section of the OCFS 638-J must be completed and the answer to the second question is "YES".

If there is a closed case previously authorized as EAF and if a new emergency has arisen and more than 12 months has elapsed since the initial EAF authorization was written, a new determination and authorization for TANF-EAF is required. The answer to the question is "No" and the review is continued. If the answer is "YES" i.e., if there is a new emergency and 12 months has not elapsed since the previous EAF authorization was written, no EAF funding for the new service's needs is available. No additional review is necessary and the decision of ineligibility is documented on the form.

4. Destitution Not Due to Refusal of Employment/Training

The worker must determine if the emergency is caused by the child's caretaker refusal, without good cause, to accept employment or training for employment. For placements arising from Article 3 or 7 adjudications, the answer is "NO" and should be so indicated on the authorization form.

5. Living With a Specified Relative

To be eligible for EAF the child must have been living with any of the relatives specified in 18 NYCRR 369.1(b) within six months prior to the emergency situation which has given rise to the need for placement under Article 3 or 7. Case record documentation e.g., WMS printouts, UCR documents or birth certificates, noting the relationship are acceptable examples of documentation. The type of documentation used in the determination should be noted on the authorization form (OCFS 638 QA-J). For cases meeting this criteria, the answer is "YES".

All of the above requirements must be met and documentation must be contained in the case record. The case can then be authorized for TANF-EAF via the OCFS 638-J by completing the determination section and signing the document.

IV. SYSTEM INSTRUCTIONS FOR CLAIMING TANF-EAF IN CHILD WELFARE SERVICES

1. Foster Care TANF-EAF Only:

If all services for an Article 3 or 7 child are to be claimed under TANF-EAF, the local district must recertify the existing WMS Services case, or open a new case if none exists. The local district must enter the eligibility code "04" (EAF) for each client who is receiving only TANF-EAF services. The "04" (EAF) eligibility, in conjunction with the properly completed J\P indicator, will then result in the claiming of all services as TANF-EAF.

2. Foster Care Cases where only some services are TANF-EAF (dual claiming categories):

Title IV-E is the program of choice for foster care claiming whenever the child is Title IV-E eligible. For purposes of WMS coding, when foster care services are to be claimed as Title IV-E and services such as tuition are to be claimed as TANF-EAF, the local district must continue the child's Title IV-E foster care eligibility "02" (IV-E) and use the EAF suffix "E" to claim tuition costs as TANF-EAF.

The local district must open or recertify the WMS case with eligibility category "02" for each Article 3 or 7 child who is Title IV-E eligible. The local district must authorize the direct service component of "08"-Foster Care and the appropriate purchase of service lines on WMS to be claimed as TANF-EAF, authorizing "08-E" (TANF-EAF Foster Care) and also the appropriate Foster Care sub-services utilizing the "E" suffix.

V. CLAIMING INSTRUCTIONS

Upon passage of the State budget, claims for expenditures properly authorized for TANF-EAF in accordance with this LCM should be filed effective with January 1999 expenditures. Until necessary claim form changes to the Schedule "H" and the Automated Claiming System are put into place to accommodate any revisions to claim forms necessitated by enactment of the 1999-2000 State budget, local districts should claim TANF-EAF JD/PINS expenditures on a DSS-3922 Special Project Claim Form and labeled JD/PINS TANF-EAF. Claims should be submitted and will be settled on a monthly basis.

Completed claim forms should be sent to the:

Bureau of Financial Services
Office of Temporary and Disability Assistance
Claims Unit- 13th Floor
40 North Pearl Street
Albany, New York 12243

VI. CONTACT STAFF

Questions and issues relating to TANF-EAF should be directed to John Conboy (90b061) at 1-800-345-5437 extension 2-0147 or Veronica Lynch (89A594) extension 3-0143.

For questions and issues relating to claiming, the contact persons for the Bureau of Financial Services are:

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Regions I - IV: Roland Levie (FMS001): 1-800-343-8859, extension 4-7549

Region V: Marvin Gold (OFM270): (212) 383-1733

For questions and clarifications of issues regarding billing for JD's in non-secure facilities operated by the Office of Children and Family Services, the contact person is:

Robert L. Fabbricatore
Revenue and Reimbursement Unit
(518) 402-3313

Melvin I. Rosenblat
Deputy Commissioner for Administration