



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

INFORMATIONAL LETTER

TRANSMITTAL: 07 OHIP/INF-1

DIVISION: Office of Health
Insurance Programs

TO: Local District Commissioners

DATE: March 2, 2007

SUBJECT: Determining Medicaid Eligibility for Joint Custody Cases

SUGGESTED

DISTRIBUTION: Medicaid Directors
Temporary Assistance Directors
Fair Hearing Staff
Staff Development Coordinators
Legal Staff

CONTACT PERSON: Local District Support Liaison
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ATTACHMENTS: None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs	Soc. Serv. Law & Other Legal Ref.	Manual Ref	Misc.Ref
00 INF-02			360-1.4(h)	SSL 366 (1)	MTAG Minutes
94 INF-45			360-3.2(c)		8/2/05
99 ADM-05			360-4.2(a)		GIS 00 MA/007
82 ADM-6					GIS 99 MA/028
					Medicaid Reference Guide; Pages 16-19

I. Purpose

The purpose of this Office of Health Insurance Programs Informational Letter (OHIP/INF) is to remind local departments of social services (LDSS) of the procedures to be followed for determining case type, individual category, household size and budgeting methodology when determining Medicaid eligibility for joint (equally shared) physical custody cases.

II. Background

In recent years, Family Courts have issued orders that contain joint legal custody and joint (equally shared) physical custody of the minor child(ren). With such custody orders becoming more common, local departments of social services have raised questions regarding the aid category, household size and budgeting methodology for purposes of determining Medicaid eligibility for the children and/or parents.

In the past, child support orders often determined one parent to be the custodial parent. The second parent was generally ordered by the court to provide support. Districts generally identified the custodial parent as the primary caretaker as that parent had greater responsibility in decision making and the day-to-day care of the child.

Some joint custody orders evenly divide physical custody of the minor child(ren) such that the child spends equal time with each parent. Parents have equally shared responsibility for decision making for the child(ren) and for the care of the child(ren).

III. Determining Category

In situations of evenly shared (physical and legal) custody, both parents/households meet the categorical eligibility criteria for Aid to Dependent Children (ADC) and Low Income Families (LIF). There is no true parental absence. Both parents are as available to the children as if they were a single intact household, they just happen to live apart. Therefore, they both meet the ADC-related budgeting criteria for intact households due to unemployment or underemployment as described in GIS 99 MA/028.

IV. Household Size

The household size of a parent with joint (equally shared) physical custody who applies with his or her children includes both the parent and child(ren). If the other parent in the second household with equally shared physical custody also applies for Medicaid, that household's size includes that parent and his or her children as well. Remember that Mehler budgeting (as defined in 82 ADM-6) is always an option if a child's own income/resources makes other applying household members ineligible for full coverage, (that child can be removed from case count along with their income and resources) and should be offered and explained to the A/R as appropriate. It is the family's choice to utilize this budgeting option.

V. Budgeting Methodology

If both parents/households apply separately, each parent is categorically eligible for LIF/ADC (Budget Type 01). Each parent's household includes that parent and his/her child(ren). Each parent's income is evaluated on his or her respective case. Child support payments count as income to the applying household that is in receipt of such payments, and is subject to the \$50 disregard per month. The children's eligibility is determined using parental income of that household and their own income if any exists. If the child(ren) in question would be eligible in both parent's separate household situations, their Medicaid will be authorized in the case of the household that applies first.

VI. Primary Caretaker Situations

The primary source of information regarding the family's circumstances is the applying parent. When a court order for evenly shared custody of the child(ren) is not followed, the district must determine which parent is the primary caretaker. The district then must consider which parent has greater physical custody and responsibility for the child(ren's) medical, educational, day care and similar needs (See the Medicaid Reference Guide Section - Categorical Factors - ADC-Related, Deprivation of Parental Support or Care, Continued Absence). If the district has reason to question information provided by the applying parent, collateral sources should be contacted to confirm and document the actual arrangement. In the case where it is established that one parent truly is the primary caretaker, either parent may still apply for Medicaid for the child, although written consent of the other parent must be obtained prior to or at application.

The following questions / information will help the worker determine the primary caretaker of the child(ren) when a court order indicates equally shared custody, but one parent claims that custody is not equally shared:

If the parents reside in different school districts, where does the child attend school?

Who assists the child with homework or school related tasks? If both parents, how much time does each devote?

Is there any tuition cost related to the child's education? If so, who pays those costs?

If the child is enrolled in day care, who makes the arrangements and pays the costs?

Who is responsible for transporting the child to and from school or day care? If both parents, how often does each parent transport the child to and from school or day care?

Which parent is listed as the contact for emergencies at the child's school or day care centers?

Who arranges medical and dental care for the child? If both parents, how often does each parent arrange for and transport to and from the medical and dental care?

How are decisions made regarding the child's future? Does either parent make such decisions by him/herself?

Who responds to emergencies involving the child (i.e., medical or law enforcement emergencies)?

Who provides food and clothing when the child visits with the other parent?

Are visitation rights specified? If one parent is given visitation rights, the other parent is generally the custodial parent.

Who claims the child on his/her income tax may be an indicator of the primary caretaker; however, the final decision takes account all of the circumstances.

Does one parent pay support to the other? (It is a possibility to have joint (equally shared) physical custody, and one parent with a larger income may be ordered to pay support to the other, so review all other factors carefully.)

VII. IV-D Referral

Referrals to the Child Support Enforcement Unit (CSEU) should be made in all instances, except when good cause is established pursuant to NYCRR 360-3. Although neither parent is absent, referral to the CSEU is appropriate in order to assure that medical support is addressed and appropriately provided. The referral would be made for the parent that does not reside in the household in which the child receives Medicaid.

VIII. Confidentiality

Unless there is a signed consent, each parent's Medicaid application and any related information cannot be disclosed to the other parent.

IX. Joint Custody Examples

Example 1

Jane and John were divorced January of 2006. At that time, the county Family Court Judge ordered joint custody of their five year old daughter, Emily. Under the order, Emily was to spend three and a half days each week with each parent.

In February 2006, Jane went to the county department of social services (DSS) to apply for Medicaid for herself and Emily. During her eligibility interview, Jane provided a copy of the Family Court order awarding joint custody. The worker authorized Medicaid for Jane and Emily. The household size was two, and budget type was 01.

In March, John went to the county DSS to apply for Medicaid for himself. He listed Emily on his application, and was aware that Jane had also applied for Medicaid for Emily. In March 2006, John was determined eligible for Medicaid, as a household size of two and budget type 01. Since Jane applied first, Medicaid was authorized for Emily on Jane's Medicaid case.

John is opened using ADC-related budgeting and Emily is included in his household size but is authorized Medicaid on Jane's case.

Example 2

Carol and Tom were divorced in May 2005. At that time, the Family Court Judge in County A ordered joint custody of their 10 year old daughter, Kelsey. Under the order, Kelsey was to spend three and a half days each week with each parent. In July 2005, Carol went to the DSS in County A to apply for Medicaid for herself and Kelsey. In August, Tom applied for Medicaid at County B for himself, and included Kelsey on his application.

During the eligibility interview, Carol provided a copy of her family Court Order awarding joint custody. County A authorized Medicaid for Carol and Kelsey as a household size of two and budget type 01. In August 2005, Medicaid was authorized for Tom in County B with household size of two and budget type 01. Therefore, Carol and Kelsey are opened in County A, and Tom in County B, with both households budgeted using a household size of two and budget type 01.

Example 3

Dave and Kim were divorced in November 2005. At that time, a Family Court ordered joint custody of their 2 children. Kim, who lives in County A, applied for Medicaid for herself, her 12 year old daughter, Ann, and her three year old son, Joe, in March 2006 and was determined ineligible for Medicaid and Family Health Plus (FHP) because her income exceeds 150% of the federal poverty level. Ann's and Joe's applications were referred to Child Health Plus (CHPlus) B.

In April 2006, Dave applied for health care at a facilitated enroller in County B for himself, Ann, and Joe.

Dave received ADC budgeting. Ann and Joe were included in his household. Dave's income equaled 130% of the federal poverty level. He was determined eligible for FHP. Since Joe is only 3 years old, he is eligible for CHPlus A (Medicaid) in Dave's household. His medical coverage must be terminated under CHPlus B and opened under CHPlus A (MA) on Dave's case. Ann's health care continues under CHPlus B because she is ineligible for CHPlus A (MA) due to her age and excess income.

Example 4

Michelle and Jack, unwed parents of Jenny, Nathan and Steve, have joint custody through a court order. Jack has the children from Sunday at 5:00 pm through Thursday at 7:00 pm with shared alternating holidays. Michelle has the children the remainder of the time. Both parents are self-employed and have applied separately at the DSS office for Medicaid for their children. Since Jack has custody of the children for more than one-half of the week, the children were included in his household. Michelle is a non-custodial parent. The case must be referred to the CSEU to assure that medical support is addressed. (There may be an existing court order for medical support that is not being complied with). The children are not included in Michelle's household.

Example 5

Leona and James were divorced in December 2005. They share equal joint custody of their 10 year old daughter, Renee. James makes more money than Leona and the Family Court Judge in their county has ordered James to pay Leona \$50 a week in child support even though they each care for Renee 50 percent of the time. Both households applied for Medicaid in April 2006. Both receive the benefit of ADC / 01 budgeting. The child support that Leona receives for Renee is counted as income in their household budget. James does not get an income deduction (\$50 income disregard) for his child support payment that he makes to Leona for Renee, because the \$50 disregard applies to the household that is receiving the payments (Leona's). Both households are found to be eligible, and since Leona applied first, Renee's Medicaid is authorized through her mother's case.

Example 6

Keith and Anita were divorced in January 2006. They have been awarded joint custody of their 6 year old son, Carl. Keith is disabled and receives Social Security Disability benefits as his monthly income. Anita works full time, but both parents share equally in Carl's care. Carl is eligible for and receives Social Security Dependent benefits in a monthly check because of his father's disability. This benefit belongs to the child and therefore must be counted in each household that applies for Medicaid if Carl is included in the application. Both of the households have the option not to include Carl and his income in their application. The most beneficial budgeting must be explored by the eligibility worker, and all options should be explained to the applying households. If Carl is not eligible for Medicaid due to excess income when he is included in the applying household, the family must be informed of the option of Child Health Plus B.

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