

Joint custody / visitation

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

NORTH PEARL STREET, ALBANY, NEW YORK 12243

MAR A. PERALES  
Commissioner



[An Informational Letter informs local districts of potential developments in the Social Services field, or of actual or potential developments in collateral fields of interest.]

**INFORMATIONAL LETTER**

TRANSMITTAL NO.: 86 INF-21

TO: Commissioners of Social Services

SUBJECT: Income Maintenance Regional Meetings'  
Questions and Answers

DATE: October 6, 1986

SUGGESTED  
DISTRIBUTION:

IM Directors  
IM Staff  
Staff Development Coordinators

CONTACT PERSON: Any questions should be directed to the person listed under each topic by calling (800) 342-3715 and asking for the extension.

Attached are the following items:

Attachment A: "Questions and Answers" which were raised at the Income Maintenance Regional Meetings held in late May and June; and

Attachment B: "A reference chart which provides basic information regarding the various child care programs currently administered by this Department." This chart will assist your staff in becoming aware of the variety of child care options that are currently available.

At the Regional Meetings, we distributed a flow chart regarding immediate needs. Apparently, this chart was confusing. Therefore, I request that you ask your staff to disregard the flow chart and rely on the other explanatory material regarding immediate needs that was distributed at the meetings.

**FILING REFERENCES**

Previous INFs/ADMs	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References

DSS-329 (R 32)

**JOINT CUSTODY**

**CONTACT PERSON:** Ed Hennessy, 3-8839

1. **Question:** How do you verify who is the primary caretaker?  
**Answer:** It will depend on case circumstances - which parent has applied, how forthright they are. The primary source of information is the applying parent(s).
2. **Question:** Is divorce an automatic deprivation factor?  
**Answer:** Not any longer. If both parents are providing care and maintenance, there is no deprivation because of absence. Shared responsibility by parents means there is no absent parent. Usually, however, there is a primary caretaker, and the other parent is considered absent.
3. **Question:** Can ADC-U be used in shared responsibility (joint custody) situations?  
**Answer:** No, not at this time because the federal government states that the ADC-U cases must be two-parent households.
4. **Question:** Could you have ADC-U if one of joint custody parents remarries?  
**Answer:** Yes, we could use ADC-U in these circumstances.
5. **Question:** Do you need court ordered paternity for shared responsibility?  
**Answer:** Yes. Until there is paternity established, the child is considered deprived of parental support due to continued absence.
6. **Question:** Does joint custody have to be court ordered?  
**Answer:** No, it does not. Many arrangements are informal and other arrangements may, by mutual agreement, be different than the parents originally agreed to.
7. **Question:** Can we assume that if one parent is given visitation rights, the other parent is the custodial parent?  
**Answer:** Yes, that is a safe assumption.
8. **Question:** Does an income tax claim indicate primary caretaker?  
**Answer:** No. This may be an indicator, but the decision must take into account all the circumstances of the case.
9. **Question:** If the father pays child support, does this mean no shared responsibility?  
**Answer:** This may be an indication of no shared responsibility. However, each case will still need to be reviewed on an individual basis.

10. Question:

What if the father is in California?

Answer:

The mother in New York would be considered the primary caretaker, since shared responsibility is virtually impossible in such a situation.

11. Question:

If the child is away from home for six months, and is the only child, should case go back to HR?

Answer:

Yes, the category should change in this circumstance.

12. Question:

HR mother will have child for over one month in summer. Is this still Home Relief?

Answer:

Yes, if the other parent is the primary caretaker.

13. Question:

When there is shared responsibility and both parents are on PA and applying for the child, how are these cases budgeted?

Answer:

Both cases get a shelter allowance and a fuel allowance, if appropriate, for the child. The basic allowance, HEA, and SHEA are computed by using the \$4.00 per day visitor's allowance for each visit of the child to the parent's household. For example, if the child spends 10 days with mother and 20 days with father, mother would get  $\$4.00 \times 10 = \$40.00$ , and father would get  $\$4.00 \times 20 = \$80.00$ .

14. Question:

What if one parent is NPA and both parents are sharing the responsibilities for the child?

Answer:

The PA case will be HR, the PA parent will get the shelter allowance for the child, and \$4.00 per day for each visit to the PA household.

15. Question:

Why do you include child in both shelter allowances in shared responsibility situations?

Answer:

This reflects the difference between shared responsibility and primary caretaker situations. In shared responsibility situations, the child is considered to have two homes, one with each parent. Therefore, both parents are entitled to the shelter allowance.

16. Question:

Is there a time limit on the time a parent can receive the regular visitor's allowance of \$4.00 per day for the non-custodial parent before it becomes a shared responsibility situation?

Answer:

No, there is no time limit on the visitor's allowance. However, if the child spends a great deal of time with the non-custodial parent, the case should be re-evaluated for shared responsibility.

17. Question: Is it necessary to obtain verification of visits made by child?
- Answer: Generally, a statement by client is sufficient. If the agency has reason to doubt the statements made, they should check with the other parent.
18. Question: Can a NPA father receive the \$4.00 per day visitor's allowance for his child while visiting him?
- Answer: No, this allowance is a special need of the father, not of the child, Therefore, the father must be PA eligible to receive this money.
19. Question: Does the \$4.00 visitor's allowance count toward food stamps for the non-custodial parent who is receiving food stamps for himself?
- Answer: No, it does not.
20. Question: Is primary caretaker entitled to money when child isn't there?
- Answer: Yes, the child is considered temporarily absent from the home.
21. Question: If both parents are working, and sharing responsibility, who gets the \$30 and 1/3?
- Answer: Both are entitled to the full four months of \$30 and 1/3.
22. Question: How do you budget a case in which a child goes from one district to another?
- Answer: You will need to work with the other district to determine if you have a primary caretaker or shared responsibility. The general budgeting rules then follow.
23. Question: In shared responsibility cases, who is responsible for FS?
- Answer: If only one parent is on PA, that parent gets FS. If both parents are on PA, only one parent may receive FS for child.
24. Question: How is food stamp household composition determined in joint child custody situations? In which household is the joint custody child placed?
- Answer: Household composition must be decided on a case-by-case basis in joint custody situations. The fundamental applicable rule is that no individual can receive food stamps as a member of more than one household in any month. Therefore, such factors as parental control, the court order, if any, and similar considerations must be evaluated. However, the duration of time, per se, which a child spends with one parent in joint situations

is not the primary determining factor in whether or not the child is a member, for food stamp participation, of that parent's household. So long as a parent has joint custody of a child, the child may be included in the parent's food stamp household provided only that the child is not a member of another participating food stamp household. The child would remain a member of the parent's food stamp household unless:

1. The child is removed on a long-term basis, such as for a summer vacation of several months duration; or,
2. It becomes appropriate to add the child to a different food stamp household. Once in receipt of food stamps as a member of one household, the child must be deleted from that household in order to be added to a different food stamp household.

All decisions regarding household composition in joint custody situations should be thoroughly and accurately documented in the case record for Quality Control purposes. If both parents in a joint custody situation wish to receive benefits for the same child, the issue must be resolved between the parents. Local district responsibility only requires insuring against duplicate participation by any individual. In addition, it is always preferable to include a joint custody child in a food stamp household than to make a determination which results in the child being ineligible for food stamps at all.

25. Question:

What if the parent not receiving food stamps for the child complains that there is not enough money for food?

Answer:

Food stamps represent only a portion of the food allowance. In addition, food stamp regulations prohibit the child from being in more than one case. This issue should be discussed with both parents to determine if the correct parent is getting food stamps.

26. Question:

A person gets shelter for two, fuel for two, how much of the PA grant is income counted for FS purposes (does excess shelter and fuel count)?

Answer:

The individual who does not receive food stamps for the "shared" child is eligible for food stamps in their own right; however, the excess shelter and fuel are budgeted. The \$4.00 visitor's allowance is not.

27. Question:

Which district is responsible for MA for a child in both cases in two districts?

Answer:

The rule of thumb is that whichever county as the child on food stamps will also have the child on MA.

28. Question: What if both parents are equally responsible for medical care (and one is not on PA)?
- Answer: The child would receive MA coverage through the PA case and the other parent's responsibility would be considered as in any other third party situation.
29. Question: If responsibility is shared, is the child's name put on only one DSS-3209 authorization?
- Answer: The child's name will appear on the authorization for the case that will have the Food Stamps and/or Medicaid for the child.
30. Question: Can a child be in both cases?
- Answer: No, the district must make a decision on the child.
31. Question: How does shared responsibility affect ABEL?
- Answer: The case(s) must be done as bottom line budgeting.
32. Question: Is the visitor's allowance to be considered a special payment (separate payment line) or as an additional item of need within the budget?
- Answer: It is considered a special payment.
33. Question: What is necessary to have an audit trail to show the decision on a primary caretaker or shared responsibility?
- Answer: The primary source of information on this issue is the parent(s). The worker must fully document in the case record the reasoning behind the decision.
34. Question: What kind of documents will Q.C. look for regarding primary caretaker?
- Answer: Primarily, they will be looking for social comments and notes by the worker in the case record.
35. Question: If child is under six, which parent gets work exemption?
- Answer: The work exemptions are based on the category and case circumstances, as in other PA cases.
36. Question: If both parents are on PA, is there an IV-D referral?
- Answer: No, there is no absent parent.