

+-----+
 | INFORMATIONAL LETTER |
 +-----+

TRANSMITTAL: 94 INF-45

TO: Commissioners of
 Social Services

DIVISION: Economic
 Security

DATE: October 7, 1994

SUBJECT: PA Budgeting and Case Category for Joint Custody
 Cases

SUGGESTED

DISTRIBUTION: Public Assistance Staff
 Food Stamps Staff
 Medical Assistance Staff
 Staff Development Coordinators

CONTACT PERSON: For public assistance questions contact Greg Nolan
 at 1-800-343-8859, extension 4-9313.
 For food stamp questions contact your county
 representative at extension 4-9225.

ATTACHMENTS: None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
88 INF-59		352.29(f)		PASB	
86 INF-21		369.2(f)		VIII-L-3.3	
		369.2(g)		to	
				VIII-L-3.6,	
				XII-G-all	
				FSSB	
				V-A-1.1 to	
				V-A-1.2,	
				XII G-6 to	
				G-7	

I. Purpose

This is to remind social service districts (SSDs) of the procedures to be followed when determining case category and benefits for joint custody cases. The following information is already contained in the PASB but this is an attempt to present the material in a more complete manner. The source book will be updated accordingly.

II. Establishing Joint Custody

Joint custody exists when two parents reside apart, but share physical custody of a common child. This can occur when a court has awarded joint custody, or can be based on informal arrangements between separated parents.

When a child applying for assistance has continued contact with parents that live apart, the agency must review the case specific circumstances to establish whether one or both parents take an active and continuing responsibility for the upbringing of the child.

If one parent is making most of the decisions regarding the day-to-day upbringing and future of the child, then that parent is the primary caretaker and the child is considered to be living with that parent.

If both parents share equally in the upbringing of the child, then the parents share responsibility and the child is considered to be living in each parent's home.

The following are questions that will help SSDs determine whether one parent is the primary caretaker or both parents share responsibility:

1. Who selects the child's school? If the parents reside in different districts, where does the child attend school?
2. Who assists the child with homework or school-related tasks? Who attends school conferences, such as parent-teacher conferences?
3. Are there any tuition costs related to the child's education? If so, who pays these costs?
4. If the child is in day care, who makes the arrangements and pays the costs?
5. Who takes the child to and from school or day care?
6. Which parent is listed as the contact for emergencies at the child's school or day care centers?

7. Who arranges medical and dental care for the child? Who selects the doctor or dentist who provide medical and dental care for the child?
8. Who initiates and makes decisions regarding the child's future?
9. Who responds to emergencies involving the child (i.e., medical and/or law enforcement emergencies)?
10. Who spends money on food and/or clothing for the child when the child visits the other parent?
11. Who disciplines the child?
12. Who plays with the child and arranges recreational activities?
13. Does one parent have visitation rights? This may suggest that the other parent is the custodial parent.
14. An income tax claim may be an indicator of the primary caretaker, but the decision must take into account all the circumstances of the case.
15. If one parent pays child support, it may be an indication of no shared responsibility. However, each case will still need to be reviewed on an individual basis.

From the answers to these questions, and any other which the particular case circumstances may warrant, the SSD must make a determination as to whether one parent is the primary caretaker or both parents share responsibility.

The primary source of the information regarding the family's circumstances should be the applying parent. Collateral sources need only be contacted if the information provided by the applicant is contradictory or insufficient to establish joint custody.

It is important to note that the legal court order regarding custody of the child is not the determining factor in deciding whether the child is in a primary caretaker or shared responsibility situation.

III. Determining Category

1. Primary Caretaker Situations

When one parent is determined to be the primary caretaker, the child is considered to be living with that parent and the other parent is considered to be absent. In these instances, the deprivation factor is absence, and the child and primary caretaker are categorically eligible for ADC.

The absent parent is only eligible for HR, unless other children are living with him/her, in which case normal rules for determining category apply.

2. Shared Responsibility Situations

When both parents are involved in the daily upbringing of the child, districts cannot use absence as the deprivation factor.

However, the district may use incapacity, or use unemployment (ADC-U) if the parent who is the primary wage earner is applying for and eligible for assistance.

If the applying parent is not categorically eligible for ADC or ADC-U, then the appropriate category would be PG-ADC.

IV. Public Assistance Budgeting

1. Primary Caretaker Situation

When one parent is determined to be the primary caretaker, the child is considered to be living with that parent and a full ADC grant for two must be provided.

The absent parent is eligible for an HR grant for one, unless other children are living with him/her, in which case normal budgeting rules apply. However, the absent parent is entitled to a visitor's allowance of \$4 per day for each day the child visits the absent parent.

Note: For Food Stamps, if the child is not in the absent parent's Food Stamp case, the \$4 per day visitor's allowance is excluded as income.

2. Shared Responsibility Situations

When both parents share responsibility for the daily upbringing of the child, the parent applying with the child receives the following:

- o Shelter cost up to maximum for two;
- o Fuel allowance for two (if appropriate);
- o Basic allowance for one; and
- o Prorated basic allowance of \$4 per day for the child for each day he/she spends with the parent.

If each parent applies with the child, each parent can receive a grant based on the above.

V. Joint Custody Examples

1. Example in Which Legal Court Order Has No Bearing

Burt and Lonnie Jones were divorced in January of 1991. At the time, the judge ordered joint custody of their nine year old daughter, Margaret. Under the order, Margaret was to spend alternating two weeks with each parent.

In August of 1992, Lonnie comes into Monroe County Social Services to apply for herself and Margaret. At that time, Lonnie explains to her worker that Margaret now spends ten months a year with her, since Burt has returned to college. Margaret spends the summer months of July and August with her father.

During the eligibility interview, the worker asks Lonnie the questions about which parent is providing for the day-to-day upbringing of Margaret. From answers to these questions, the worker is able to establish that Lonnie is the primary caretaker of Margaret.

Since Lonnie and her daughter are eligible for assistance, the worker provides a full ADC grant for two. The case is also referred to IV-D so that child support can be sought from Burt.

2. Example of Absent Parent Applying

Continuing with the example above, Burt Jones leaves college in February of 1993. However, he cannot find a job.

In April of 1993, Burt applies for public assistance. At that time, Burt explains to his worker that his daughter will be spending the months of July and August with him.

During the eligibility interview, the worker asks Burt the questions about who is providing for the day-to-day upbringing of his daughter. From the answers, the worker is able to establish that Lonnie is still the primary caretaker.

Since Burt is otherwise eligible for assistance, the worker authorizes an HR grant in mid-May for full public assistance. In July and August, Burt will get a visitor's allowance of \$120 per month (\$4 allowance X 30 days) since Margaret will be visiting her father for these two months.

3. Example of Shared Responsibility

Mark and Sharon Stafford are informally separated. When they separated, both parents agreed that their two common children would spend two weeks at a time with each parent until their divorce was final.

Sharon has just started part-time work as a mechanic for Sears Roebuck Corporation and is self-supporting. Mark is receiving Unemployment Insurance Benefits.

When Mark's UIB ends in May of 1993, Mark applies for assistance for himself and the two children. During the eligibility interview, Mark's worker explores with him who is responsible for the day-to-day upbringing of the children. From the answers Mark provides, the worker establishes that Mark and his wife share responsibility for the upbringing of the children. Therefore, the deprivation factor of absence is not applicable.

The worker further explores the category under which Mark and the two children could receive benefits. Since neither Mark nor Sharon is incapacitated, the case is not eligible for ADC.

Next, an ADC-U checklist is completed. Mark has earned slightly more than Sharon in the past two years, so he is the primary wage earner. The completed checklist shows that Mark and the children are eligible for ADC-U.

The worker next determines the grant amount. Mark and the children can receive:

- o Shelter for three up to the maximum;
- o Fuel for three (if appropriate);
- o Full basic for one; and
- o Prorated basic for the two children of \$120 (2 children X 15 days (1/2 month) X \$4 per day).

The worker also refers the case to IV-D so that child support can be sought from Sharon.

VI. Food Stamp Policy

1. DETERMINING HOUSEHOLD COMPOSITION - Food Stamp 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 FS as a member of more than one household in any month.

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 of that parent's household.

2. CHANGES IN CIRCUMSTANCES - So long as a parent has joint custody of a child, the child may be included in the parent's FS household provided only that the child is not a member of another participating FS household. The child would remain a member of the parent's FS household unless:
 - a. The child is removed on a long-term basis, such as for a summer vacation of several months duration; or,
 - b. It becomes appropriate to add the child to a different FS household. Once in receipt of FS as a member of one household, the child must be deleted from that household in order to be added to a different FS household.
3. DOCUMENTATION - All decisions regarding household composition in joint custody situations should be thoroughly and accurately documented in the case record for Quality Control purposes.

4. LOCAL DISTRICT RESPONSIBILITY - 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 ensuring against duplicate participation by any individual. In addition, it is always preferable to include a joint custody child in a FS household than to make a determination which results in the child being ineligible for FS at all.

VII. Medical Assistance Implications

Generally, the procedures outlined in this release for PA cases should be followed for MA as well. However, if it is an equally shared responsibility situation and both parents and the child are applying for MA, the child can only be entered on one case. To determine in which case the child should be included, we suggest basing the decision on which parent is applying for the child. However, the child should be included in the case with the other parent if it is more advantageous for the child.

VIII. WMS Implications

A. Upstate Budgeting

- o Primary Caretaker - When one parent has been determined to be the primary caretaker, the child is included in the household and case counts for that parent's PA and FS ABEL budgets.
- o Non-Primary Caretaker - When budgeting PA and FS for the parent who is not the primary caretaker, the "visitor's allowance" paid to an absent parent is not part of the PA Needs for eligibility and therefore, is not part of the WMS/ABEL budget. It also is not counted as PA income to the FS case.
- o Shared Responsibility - The "Prorated Basic Allowance" is part of the PA needs for eligibility along with a shelter (and, if applicable, fuel) allowance which includes the child. As such, it is included in the WMS/ABEL budget. If both parents have FS cases, the child can be a member of only one Food Stamp case or the other. For that Food Stamp case, the "prorated Basic Allowance", as well as the child's share of shelter and fuel, is counted as part of the PA income to Food Stamps. For the other Food Stamp case, the "prorated Basic Allowance", as well as the child's share of shelter and fuel, are counted as part of the PA income to Food Stamps. For the other Food Stamp case, the "prorated Basic Allowance" is not counted as part of the PA income to Food Stamps, although the child's portion of shelter and fuel allowances are included.

The "prorated Basic Allowance" reflecting the number of days spent with the parent cannot be accommodated on an automatic or calculated ABEL budget. Instead, the worker should manually compute the "prorated Basic Allowance" of \$4.00 per day spent with the parent, and add this to the parent's own Basic Allowance on a Bottom-Line budget. If desired, an automated scratchpad budget may be calculated for the parent and child to determine the correct shelter and fuel allowances. The adjusted Basic Allowance along with the shelter (and fuel, if applicable) allowance should be stored on a Bottom-Line budget.

B. PA MA Coverage

If both parents are on PA and it is determined that a "true" shared responsibility exists, a decision must be made as to which case should have the child entered on WMS. The child should not be entered on both cases because of MA coverage complications.

Oscar R. Best, Jr.
Deputy Commissioner
Division of Economic Security