

## REPLACES:

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ELIGIBILITY REQUIREMENTS  
NEEDS AND INCOME

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## I. GENERAL

Need is based upon the maintenance standard established by the State. Need exists if eligibility is established and net income available for the child's support is insufficient to meet the cost of placement.

The 185% income limit must be applied to the child's non-exempt gross income. The 185% income limit refers to 185% of the AFDC-FC rate which is or could be paid on behalf of an individual child including Special Needs, group home rate, etc. When non-exempt gross income exceeds this limit, the child is ineligible to AFDC-FC, and County Board and Care for Children (CBCC) eligibility must be explored.

The absent parent's income is not considered as income to the child unless it is actually available to meet the child's current needs.

## II. TREATMENT OF INCOME

Instructions for treatment of income for the Foster Care child and/or for the federal eligibility determination are provided in each section below.

A. All earned income of a Foster Care child under age 19 is exempt if the child:

1. Is a full time student, or
2. Has a school schedule that is equal to at least one half of a full time curriculum and is not employed full time. (Part time employment is considered to be less than 173 hours per month).
3. Is a part-time student (a student who is attending less than a full time course as defined by the school).

The student exemption applies to full or part time earnings between school terms during vacation periods, if the child plans to continue to be a student next term or when vacation period ends.

B. Independent Living Skills Program (ILSP)

Income and incentive payments earned by a child 16 years of age or older, who is participating in the ILSP are exempt as income and must not be used to determine federal eligibility or the Foster Care payment. There is no limit to the amount of income the child may earn in the Independent Living Skills Program (ILSP).

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C. Non-Recurring Gifts

When determining eligibility for Foster Care, Eligibility Workers (EWs) must follow the AFDC rules which were in effect on 7/16/1996.

1. The first \$30 of small, nonrecurring gifts received by a Foster Care child during any calendar quarter is exempt.
2. When determining federal eligibility, the first \$30 of nonrecurring gifts received by each member of the AU during a calendar quarter is exempt.

D. Social Security, SSI, or Veterans Benefits

Social Security, SSI/SSP and Veterans benefits are treated as unearned income when received by the Foster Care child and for the family, when making the federal eligibility determination.

The child's eligibility to Social Security or Veterans benefits must be explored if one or both parents are deceased, disabled or the child otherwise appears eligible to these benefits.

1. Application for SSI

It may be appropriate for the county to apply for SSI/SSP on behalf of the child; however, federal eligibility greatly impacts FC eligibility for children who are receiving or applying for SSI.

- a. When a child is federally eligible, an application for SSI should not be made unless the SSI payment meets or exceeds the cost of the placement.
- b. If a federally eligible Foster Care child is receiving SSI and/or SSA, the county can request that Social Security suspend these benefits using the *FC 21, Request to Suspend SSA/SSI Benefits*.
- c. Federal status cannot be relinquished for the purpose of using State (non-federal) Foster Care to supplement SSI.
- d. An application for SSI should be made if the child is eligible for non-federal (state) Foster Care.

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## 2. Application for Social Security, or Veterans Benefits

Potential for Benefits:

The child's eligibility to Social Security, SSI, or Veterans benefits must be explored if one or both parents are deceased, disabled or the child appears otherwise eligible to these benefits.

When the FC 2 or a discussion with the Social Worker (SW) indicates a potential for Social Security, SSI or Veterans benefits, the Intake EW must determine the availability of unconditional income before the payment is initiated for the Foster Care placement. The Intake EW must:

- a. Request the death certificate of a deceased parent.
- b. For Social Security/SSI: fax the DC 40, *Referral for Government Benefits form*, to the Government Benefits Clerk (GBC) requesting that an application for Social Security Benefits be initiated.
- c. For Veterans Benefits: fax the DC 40 along with a completed CW 5, *Veterans' Benefits Verification and Referral form*, to the GBC requesting that an application for Veteran's Benefits be initiated.

Available Benefits:

When it is determined that Social Security and/or VA benefits are already being paid on the child's behalf or are available to the child, the EW must:

- a. Complete the FC 21 and fax to SSA requesting benefits be suspended; also forward a DC 40 with a copy of the FC 21 to GBC.
- b. Send a DC 40 with a copy of the child's Detention Court Order to GBC to request the county be made payee for existing Social Security payment.
- c. For Veterans Benefits, fax the completed DC 40 and CW5 to the GBC requesting a change of payee to the county be made for the VA Benefits.

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**NOTE:** Refer to the *FC 21A, Situational Guide for SS Benefits*, for more detailed information about how to handle the child's Social Security and/or SSI benefits.

## E. Earned Income

1. AFDC earned income rules which were in effect on July 16, 1996, must be used when determining federal eligibility (linkage) for Foster Care.

Most Foster Care children with earnings meet the "Student Exemption" criteria. If not, the following rules apply.

**NOTE:** The following payments are also treated as earned income:

- a. State disability Insurance (SDI/DIB)
  - b. Temporary Worker's Compensation (TWC)
  - c. Temporary Disability Indemnity (TDI) payments, and
  - d. Employer provided sick leave benefits
2. Standard Work Expense (SWE)

Deduct \$90 from the gross earned income of each recipient who is employed in the month the petition was filed.

3. \$30 and 1/3 Disregard

The \$30 and 1/3 Disregard rules have changed over time to provide incentive for cash recipients. Foster Care EWs must follow the rules which were in effect on July 16, 1996 when determining federal eligibility.

If the 185% Gross Income Test is passed, apply the \$30 and 1/3 disregard to earned income in the Financial Eligibility Test (FET). For each adult in the Assistance Unit (AU) with earnings (and a child with earnings who is not eligible for the Student Exemption):

- a. Deduct \$30 from the amount remaining after deducting the \$90 SWE, then



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- b. Deduct 1/3 of the remainder.
- c. The \$30 and 1/3 is not allowed when the 185% Gross Income Test is being computed.

4. Child Care

The child care deduction applies to the eligibility determination.

The reasonable and necessary costs of child care or care of an incapacitated adult in the AU may be allowed when the EW determines that dependent care cannot be provided during the individual's working hours, by someone in the AU.

- a. For each child age 2 or older or incapacitated individual, deduct the actual cost up to a maximum of \$175.
- b. For each child under age 2, deduct the actual cost up to a maximum of \$200.

**NOTE:** Effective 1/1/98, child/dependent care is no longer a separate deduction in the CalWORKs Program. Foster Care EWs, therefore, will need to ask if a parent with earnings paid for child care in the month of petition.

5. Self-Employment Expenses

Allow actual monthly self-employment expenses as a deduction from the gross self-employment income of:

- a. A member of the AU, when determining federal eligibility
- b. A Foster Care child, if his/her earnings are not otherwise exempted. The IM 18, *Self-Employment Expense Report*, may be used, if needed, to determine self-employment income.

**NOTE:** Effective 1/1/98, a CalWORKs recipient may choose to provide proof of actual monthly self-employment expenses, or receive a standard 40% of gross self-employed income as a deduction from their self-employment income (as indicated on the IM 18 form).

The 40% deduction is not an option for Foster Care. However, when  
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determining federal eligibility for Foster Care (POEM determination), there may be situations where the gross self-employment income of an AU is known, but there is no proof of self-employment expenses.

A 40% self-employed income deduction (from gross self-employment income) may be allowed as a reasonable estimate of self-employment expenses, if proof of self-employment expenses is not available (i.e. not in CalWORKs case and was requested from parent with no response).

F. Child Support Disregard

When determining federal eligibility (linkage), the first \$50 of current child/spousal support paid to the AU in the month of petition is disregarded when computing both the 185% Test and the Financial Eligibility Test (FET). If the AU receives child support from more than one absent parent, only one \$50 disregard is allowed.

A Foster Care child who receives child support is not eligible for eligible for a \$50 disregard.

G. Lump Sum Income

The Lump Sum income requirements are a result of a lawsuit, *Rutan v. McMahon*. The following requirements are based on AFDC rules that were in effect on July 16, 1996.

Lump Sum Income is income the child receives that is a non-recurring amount or source. The most common types of Lump Sum Income are Social Security benefits (SSI or SSA), Veteran’s Benefits, ***however if the county is the payee for the child’s benefits, Lump Sum rules do not apply.*** Most typically Lump Sum rules will be applied when a Non Related Legal Guardian child receives a lump sum payment. A Foster Care Child may receive an inheritance or a personal injury court award that could be considered a Lump Sum Payment.

If a lump sum is received when the child is receiving federal Foster Care the Foster Care payments may stop until the lump sum money is used up. Here is how the lump sum rule works:

1. The lump sum income is divided by the FC rate the child is receiving and treated as income in the month received and the following month(s).

**Example:** If a FC child’s eligible monthly FC payment is \$889 and  
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receives a lump sum of \$6,435, there will be no cash aid paid for 7 months (\$6,435 divided by \$889 = 7 (the remaining amount will be counted the month when/if the child begins receiving FC in the month immediately following the period of ineligibility).

If the lump sum income is received during a month the child is not receiving cash aid, the lump sum rule may not apply. Federal Foster Care can be paid once the child's resources are less than \$10,000.

2. *“Lump Sum Important Notice”* (FC 1683)

These rules apply to both federal and state Foster Care cases:

- All relatives and legal guardians caring for Foster Care children must receive both written (FC 1683) and oral explanations of lump sum requirements by the EW at application, redetermination and when a payee change to a relative or legal guardian is made.
- A child must also receive a FC 1683 and an oral explanation from the EW of the lump sum rule as he/she approaches age 18 and at subsequent redeterminations, regardless of the payee. This explanation can be given to the child at the reinvestigation completed just prior to age 18 or within three months of this birthday.

**IMPORTANT:** Failure to provide the written notice and oral explanation prevents application of the lump sum computation. If a delayed notice is given/sent, only the unspent balance of the lump sum is subject to the computation. No overpayment collection can be made except for the month of receipt.

**Exception:** These requirements do not apply to payments received by the Social Service Agency on behalf of a child.

3. Procedure

The EW must:

- a. Give or send a FC 1683, *“Lump Sum Important Notice”* to all relatives/legal guardians:



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- At application
  - At redetermination
  - When the payee is changed to a relative/legal guardian
- b. Give or send a FC 1683 to the Foster Care child at the redetermination completed just prior to their 18<sup>th</sup> birthday or within three months of that birthday and at subsequent redeterminations.
  - c. Document in the County Use Only section of the FC 2 and CalWIN Case Comments the date the form was mailed.
  - d. Call the relative, legal guardian or Foster Care child to provide an oral explanation when the FC 1683 has been mailed.
  - e. Document in the CalWIN Case Comments the date the follow-up phone call was made to provide an oral explanation of the Lump Sum rules.
4. Period of Ineligibility

A Lump Sum Payment is treated as income in the month received. If it exceeds the monthly placement cost, it is used to calculate a period of ineligibility. During the period of ineligibility, the child is ineligible for foster Care. The intention of this regulation is to minimize Foster Care expenditures by mandating the use of the Lump Sum Income to meet the child’s placement needs during the period of ineligibility.

- The period of ineligibility begins in the month the lump sum is received. Any aid received during the period of ineligibility is an overpayment. If an overpayment does occur a referral for collection must be made.
- When a lump sum payment is anticipated, the period of ineligibility shall begin in the month the lump sum income is expected to be received. Aid shall be discontinued if the lump sum income exceeds the child’s needs.





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5. Period of Ineligibility Computation  
 To determine the period of ineligibility the EW must:
  - a. Add the Lump Sum Payment to any other nonexempt income received in that month.
  - b. Divide the total amount by the child’s monthly placement cost.
  - c. The resulting whole number is the number of months the child is ineligible to Foster Care.
  - d. Any remainder is counted as income only in the month immediately following the period of ineligibility. If the child’s cash assistance is not transferred back to Foster Care the month immediately following the termination of the period of ineligibility, the remainder is not used as income against the Foster Care payment at a later date.

**Examples:**

- ✓ **A Non Related Legal Guardian Child receives \$2,480 lump sum social security benefits plus \$335 monthly SSA benefits. Placement cost is \$889 per month.**

*Period of Ineligibility is determined as follows:  $\$2480 + \$335 = \$2,815 \div \$889 = 3$  months of ineligibility to Foster Care with a remainder of \$148.*

*The \$148 remainder plus the \$335 monthly SSA benefit amount (\$483) will be counted as income in the month following the period of ineligibility (provided the child has been restored to Foster Care).*

- ✓ **19 year old Non-Minor Dependent (NMD) receives an inheritance of \$15,000 but was never provided with the FC 1683 or a verbal explanation of the Lump Sum rules within 3 months of turning age 18, nor at the subsequent Redetermination.**

*Lump Sum rules cannot be applied to this situation because the NMD was not informed of the rules prior to receiving the Lump*

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*Sum.*

*If a delayed FC 1683 and verbal explanation is provided, only the unspent balance of the lump sum can be computed. No overpayment collection can be made except for the month of receipt.*

## 6. Recalculation of the Period of Ineligibility

The period of ineligibility may be recalculated and shortened when one or more of the following situations occur:

- a. The cost of placement increases or the amount of the child would have received also changes i.e. any general increase in the child's Foster Care rate due to a COLA increase.
- b. The child incurs medical expenses, including any medical expenses that are not covered by Medi-Cal or private medical insurance.
- c. All or part of the lump sum income becomes unavailable to the child for a reason beyond the control of the child. Lump sum income shall be considered unavailable when it has been spent for items which an aided child would not be expected to meet from its grant; or, when it is no longer available to the child due to loss, theft, or a similar occurrence.

## 7. Lump Sum is Unavailable (Acceptable Reasons)

Acceptable situations where the lump sum becomes unavailable shall include but are not limited to:

- a. Theft or loss of the lump sum income.
- b. The parent/caretaker leaves the home with the lump sum income.
- c. The lump sum is spent on expenses to meet needs due to sudden and unusual circumstances of a life threatening nature.

## 8. Lump Sum is Unavailable (Unacceptable Reasons)

Unacceptable situations when the lump sum becomes unavailable shall include but are not limited to:

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- a. The lump sum is spent on the repair of the home or replacement or repair of major appliances due to normal wear and tear.
- b. The lump sum is spent on an increase in utility costs or the lump sum is spent on the purchase of additional property (real and/or personal).

Once it is determined that the lump sum income becomes unavailable to a child for reason beyond their control, the EW must substantiate/document their finding in CalWIN Case Comments.

### 9. Restoring Foster Care

If the child is eligible to Foster Care the first of the month after the period of ineligibility, an application must be taken. The child's current monthly income plus any remainder from the lump sum period of ineligibility calculation must be counted as income against that month's Foster Care grant.

Any remainder from the period of ineligibility calculation is counted as income only in the month immediately after the period of ineligibility. If the remainder plus the child's current monthly income exceeds the child's placement cost, the child remains ineligible.

**NOTE:** If the child's Foster Care is not restored the month immediately following the period of ineligibility, the remainder **is not used** as income against a future Foster Care payment.

### III. REFERENCE

[FC 1683 - Lump Sum Income Desk Guide](#)

EAS 44-100 Income

EAS 44-111.22 Student Exemption

EAS 44-113 Net Income

EAS 44-113.2 Earnings

EAS 44-133.4 Income of Children in Foster Care

EAS 44-207.4, Treatment of Lump Sum Payment

W&I Code 11451.5 Income

ACL 89-88, Treatment of Lump Sum-AFDC-FC (Rutan vs. McMahan)

ACL 94-42 Abatement of Initial Retroactive SSI/SSP Lump Sum Income in the AFDC-FC Program

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