

AUG 22 2007

Subject Fees for Collecting Child Support

To All Regional Directors
Food Stamp Program

We are providing guidance regarding the collection of fees for Child Support Enforcement when there is an issue in interpreting specific provisions of the Food Stamp Act and the Social Security Act. This guidance only concerns individual food stamp recipients who have **never** received Temporary Assistance for Needy Families (TANF) or Aid to Families with Dependent Children (AFDC).

Background

The Food Stamp Act

In two places the Food Stamp Act (FSA) forbids a State to charge food stamp clients a fee to collect child support. Those two provisions concern a State's options to require custodial and non-custodial parents to cooperate with Child Support Enforcement as a condition of eligibility for Food Stamps. The provisions are:

- Section 6(l)(3) for custodial parents
- Section 6(m)(3) for non-custodial parents.

The regulations for these policies are at:

- 7 CFR 273.11(o)(4) for custodial parents
- 7 CFR 273.11(p)(4) for non-custodial parents

The Social Security Act, amended by the Deficit Reduction Act of 2005

However, Section 7310 of the Deficit Reduction Act of 2005 (DRA), which is attached, amended the Social Security Act to require States to collect a fee for child support collections in specific circumstances. Those circumstances are:

- The fee applies to each individual who has **never** received assistance under Title IV-A of the Social Security Act (TANF or AFDC)
- A State may collect the fee only when the State has collected \$500 or more in support in a single Federal fiscal year
- The fee is \$25 a year, once the state has collected \$500
- There are four ways that a State may collect this fee:
 - Retained by the State from support collected in cases subject to the fee
 - Paid by the individual applying for title IV-D services
 - Recovered from the non-custodial parent
 - Paid by the State out of its own funds.

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

The Administration for Children and Families published a proposed rule on this subject on January 24, 2007, at 72 FR 3093, which is available on-line at:

<http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=011210305540+0+0+0&WAISaction=retrieve>

The Issue

The Food Stamp Act forbids the collection of fees when States tie food stamp eligibility to child support while the DRA requires such a collection. How do we reconcile the requirements of the two statutes?

Right now we know of five States that have made cooperation with Child Support Enforcement a condition of eligibility for food stamps. In the other States this issue would be moot.

An Example

This is one possible chronology of what would occur:

- In August 2007, the state agency chooses to require custodial parents to cooperate with Child Support Enforcement (IV-D) as a condition of eligibility for food stamps. The State agency does not choose to require the cooperation of non-custodial parents.
- On November 1, 2007, a custodial parent applies for food stamps on behalf of herself and her child. She cooperates with IV-D by helping IV-D locate her child's non-custodial parent. Neither she nor her child receives TANF and never has received either TANF or AFDC.
- On November 6, 2007 the State agency certifies the custodial parent's household for twelve months.
- The non-custodial parent pays \$100 in child support every month, beginning in November, 2007.
- In March, 2008, the collected child support for Fiscal Year 2008 reaches the \$500 threshold.
- At this point the state:
 - **Must not deduct** the \$25 fee from the collected child support. This method would impose a cost on the custodial parent's household by reducing their income from child support.
 - **Must not bill** the custodial parent for \$25. This would be a prohibited fee.
 - **May bill** the non-custodial parent for \$25. This is permissible because, the state has not required the non-custodial parent's cooperation as a condition of eligibility for food stamps.
 - **May pay** the \$25 out of its own public funds.

Therefore in August 2007, when the State agency is considering whether to require custodial parents' cooperation, the State agency must look ahead and insure that IV-D will not impose fees or other costs on custodial parents some months hence.

Methods of Dealing with the Issue

A State that chooses either or both of these food stamp cooperation options (the option for custodial parents and the option for non-custodial parents) and requires cooperation with Child Support Enforcement as a condition of eligibility for food stamps must choose one of these four methods to deal with this issue:

The State cannot require cooperation from a food stamp recipient who has to pay the \$25 annual fee or, if cooperation has already been required of the parent, the State cannot impose the fee against that parent (either directly or through a deduction of the fee from the child support collection in the case where cooperation is required from the custodial parent).

A Summary Table

May the State collect the annual fee from ...	If the State requires cooperation from a Food Stamp recipient who is	
	The custodial parent (273.11(o))?	The non-custodial parent (273.11(p))?
The collected child support	No, because the State may not impose a cost on a food stamp recipient who must comply with 273.11(o)	Yes, because this parent is not incurring a fee or other cost
The custodial parent	No, because the State may not charge a fee to a food stamp recipient who must comply with 273.11(o)	Yes, because this parent is not incurring a fee or other cost
The non-custodial parent	Yes, because this parent is not incurring a fee or other cost	No, because the State may not charge a fee to a food stamp recipient who must comply with 273.11(p)
The State's own funds	Yes, because this parent is not incurring an additional fee or other cost	Yes, because this parent is not incurring an additional fee or other cost

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Conclusion

Please inform your States of this change in policy.

If you have any questions or comments about this policy for the Food Stamp Program, please contact the Certification Policy Branch. If you have any questions about Child Support Enforcement policy, please contact the regional office of the Administration for Children and Families.

Signed

Arthur T. Foley
Director
Program Development Division

Attachment

FNS:FSP:PDD:CPB:Tom O'Connell:703-305-2390:Inc:08-20-07
File:I:CPB:273.11:Fees for Collecting Child Support

Attachment

Section 7310 of the Deficit Reduction Act of 2005

SEC. 7310. MANDATORY FEE FOR SUCCESSFUL CHILD SUPPORT COLLECTION FOR FAMILY THAT HAS NEVER RECEIVED TANF.

(a) IN GENERAL.—Section 454(6)(B) (42 U.S.C. 654(6)(B)) is amended—

- (1) by inserting “(i)” after “(B)”;
- (2) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;
- (3) by adding “and” after the semicolon; and
- (4) by adding after and below the end the following new clause:
“(ii) in the case of an individual who has never received assistance under a State program funded under part A and for whom the State has collected at least \$500 of support, the State shall impose an annual fee of \$25 for each case in which services are furnished, which shall be retained by the State from support collected on behalf of the individual (but not from the first \$500 so collected), paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and the fees shall be considered income to the program);”.

(b) CONFORMING AMENDMENTS.—Section 457(a)(3) (42 U.S.C. 657(a)(3)) is amended to read as follows:

“(3) FAMILIES THAT NEVER RECEIVED ASSISTANCE.—In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(6)(B)(ii).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2006. ■