

March 22, 2023

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 23-28

The purpose of this All County Letter is to address the updates to the process for screening, completing an application, requesting reconsideration of a denial, filing subsequent appeals, and representative payee selection for Supplemental Security Income as described in Senate Bill 187, through the amendments to Welfare and Institutions Code Sections 13753, 13754 and 13757.



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GAVIN NEWSOM
GOVERNOR

March 22, 2023

ALL COUNTY LETTER NO. 23-28

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL CHIEF PROBATION OFFICERS
ALL FOSTER CARE ELIGIBILITY MANAGERS
ALL FEDERALLY RECOGNIZED TRIBES

SUBJECT: **UPDATED SUPPLEMENTAL SECURITY INCOME APPLICATION
AND QUALIFICATION GUIDELINES TO ASSIST FOSTER
YOUTH AND NONMINOR DEPENDENTS (SENATE BILL 187)**

REFERENCE: [WELFARE AND INSTITUTION CODE SECTIONS 13752, 13753,
13754, 13757; SENATE BILL 187 \(CHAPTER 50, STATUTES OF
2022\); ALL COUNTY LETTER NO. 07-10;
ACL 08-12 AND; 20 CODE OF FEDERAL REGULATIONS.
416.1540, 416.622, 416.635](#)

The purpose of this All County Letter (ACL) is to address changes to law in Senate Bill (SB)187 (Chapter 50, Statutes of 2022), which amends and adds new procedures for the screening, application, appeal processes, age-18 redeterminations, and payee selection for Supplemental Security Income (SSI) benefits for foster youth and nonminor dependents (NMD).

BACKGROUND

County placing agencies with placement and care responsibility for foster youth or NMDs are responsible for ensuring that foster youth and NMDs receive all federal benefits to which they are entitled while in care and are required to assist youth and their families in understanding any rights and responsibilities related to maintaining their SSI benefits as they transition from care.

Foster youth with disabilities who exit care without establishing eligibility for federal disability benefits are especially vulnerable to negative outcomes such as homelessness and untreated medical conditions. Existing law has focused on ensuring

that youth who are approaching age 18 are screened for SSI eligibility and that the county submits an application on behalf of youth who are likely to be eligible, with the goal that SSI will be in place at age 18 to assist the youth's transition to self-sufficiency.

The changes made by SB 187 add further protection and support for youth and NMDs to ensure the county placing agency not only screens them for eligibility for SSI benefits, but that the county will also assist them in filing a request for reconsideration and subsequent appeals, as needed, if the initial application is denied. In order to meet these new requirements, the Budget Act of 2022 has provided funding to counties to assist with these costs. A forthcoming County Fiscal Letter will be issued with information on the available funding.

The effective date for the requirements laid out in this ACL will be 30 days from the date of this letter. This ACL shall supersede the guidance found in [ACLs 07-10](#) and [08-12](#) as it relates to the statutory requirements of Welfare and Institutions Code (WIC) sections 13753, 13754 and 13757. The ACL 07-10 may continue to be used to inform county practice to the extent it does not conflict with information in this ACL or other federal or state law. A forthcoming ACL will provide updated best practice guidelines.

CHANGE IN SCREENING FOR SSI ADDED BY SB 187

Initial Screening

While the process of screening foster youth for potential federal SSI eligibility remains intact, SB 187 made some important changes to the law. The SB 187 moved the screening time to require that screening occur when each youth is at least 16 years of age and not older than 17 years of age (previously youth had to be screened between age 16 ½ and 17 ½). The goal of this change is to increase the likelihood that an initial Social Security benefits eligibility decision is made before the youth turns 18. The SB 187 also clarifies that this age range does not preclude a county from screening a foster youth prior to age 16. The county shall conduct the screening on behalf of a foster youth who is under the jurisdiction of the tribe if the tribe requests it. To the extent possible, the screening should be conducted early enough to ensure when the application is submitted, there is time to allow for a determination of eligibility by the Social Security Administration before the youth's 18th birthday.

NMD Screening

In addition, in the case of a NMD, the county shall initiate a screening if any of the following are true:

- The NMD was not screened before the youth's 18th birthday as required.

- The NMD has had a change of circumstance, including a medical condition that is expected to last more than one year.
- The NMD has been approved for Regional Center services since the last screening.
- The NMD, their court-appointed attorney, or a member of their child and family team requests screening.
- The juvenile court orders the county to screen the NMD.
- The county determines a screening is appropriate based on the NMD having a physical or mental impairment that limits their ability to work.

If the screening determines that the NMD is likely to be eligible for SSI benefits, and the NMD consents to the application, the county shall compile and submit an application to the Social Security Administration (SSA) on the youth's behalf. It should also be noted that a youth who is not eligible for SSI due to their immigration status may be eligible for the Cash Assistance Program for Immigrants.

For any application submitted pursuant to these requirements, counties must continue to follow WIC 13757(b), which states that the county shall, if necessary, forego federally funded Aid to Dependent Children-Foster Care (AFDC-FC) and use nonfederal AFDC-FC resources to fund the youth's placement in the month of SSI application or in the month after making an application, and to subsequently reclaim federally funded AFDC-FC, in order to ensure that the youth meets all the SSI eligibility requirements in a single month while the application is pending.

NEW REQUIREMENTS FOR SSI APPLICATION DENIALS, RECONSIDERATIONS & APPEALS

The WIC section 13757(c) now requires a county placing agency to file, or cause to be filed, a request for reconsideration with the SSA when the foster youth's SSI application is denied. If the request for reconsideration is also denied, then the county shall file a subsequent appeal and request for a hearing with the SSA, and if necessary and appropriate, if they receive an unfavorable hearing decision, shall file an appeal with the SSA Appeals Council, requesting review of the hearing decision. Any assistance provided by the county or its contractor on behalf of the NMD shall follow the guidelines for representatives set out by the SSA.

The county placing agency or its contractor must gather and submit all required documents and relevant records to the SSA in support of the initial application, request for reconsideration and any subsequent appeal(s). The county or county contractor shall sign on as the authorized representative and comply with federal regulations regarding the duties of a representative, available at [20 Code of Federal Regulations \(CFR\). 416.1540](#). The county may also partner with other agencies to assist with this

endeavor. It is recommended as a best practice that the county provide for representation throughout this appeal process, or contract with a qualified legal services program to provide representation.

The county is not required to file a request for reconsideration or subsequent appeal if the county does not possess the information or have the evidence or information (e.g., about the youth's treatment history, work history, etc.) to support the appeal. The county placing agency or its contractor must first make efforts to obtain the necessary documentation that would support an appeal, and the county's reason(s) for not filing the appeal must be documented in the youth's or NMD's case plan in consultation with the youth and the youth's child and family team.

The county placing agency or its contractor must also notify the youth or NMD of any denials or termination of aid, the status of the appeal process, any appeal deadlines, whether or not the county or their contractor is going to file the appeal, and how to file the appeal, and must document all actions in the case plan.

Additionally, the county placing agency or its contractor as the authorized representative must comply with federal regulations [20 CFR. 416.1540](#) regarding the duty to act with reasonable diligence and promptness in representing a claimant. These duties also include, but are not limited to, providing prompt and responsive answers to SSA's requests for information pertinent to processing of the claim and maintaining prompt and timely communication with the claimant. Agencies must reasonably inform the claimant of all matters concerning their representation, consulting with the claimant on an ongoing basis during the entire representational period, and promptly responding to claimant's reasonable requests for information.

FOSTER YOUTH ALREADY RECEIVING SSI BENEFITS

Prior to the passage of SB 187, counties were responsible for providing foster youth information about (1) the federal requirement that youth who receive SSI be subject to an age-18 redetermination to establish continued disability as an adult, and (2) how to become their own payee or designate an appropriate representative payee. These responsibilities continue; however, SB 187 amended WIC 13753 to specify when this must occur. Prior law indicated it must begin when the youth was nearing their 18th birthday.

The amendments made pursuant to SB 187 require the county to provide this information **at least six months before the youth's 18th birthday.** In addition to the information already required to be provided, counties must also inform the youth about the effect, if any, the youth's foster care benefits may have on the amount of their SSI payments and ongoing eligibility requirements, and assist the youth, as appropriate, in fulfilling these requirements (e.g., maintaining eligibility for SSI benefits, establishing

continuing disability as an adult, and becoming their own payee or designating an appropriate payee).

ADDITIONAL INFORMATION REGARDING NMDs AND SSI BENEFITS

The information in this section relates to amendments made to WIC sections 13753, 13754, and 13757 that are unique to NMDs and have not already been addressed in this ACL.

When a foster youth chooses to remain in foster care as an NMD, the county must ensure the requirements as stated in WIC 13754(c) are met. This includes:

Requirements related to Age-18 Redeterminations

- The county shall assist the NMD with the steps necessary to establish their continuing disability as an adult through the Age-18 Redetermination process required by SSA. This may include, but is not limited to, steps the NMD needs to take to gather and submit all relevant records to the SSA, request an appeal as described in the above section, and timely file a request for benefits continuation, with the consent of the NMD.
- Upon request of the NMD, the county shall provide any information from their case file that may assist them in establishing and/or maintaining their SSI benefits.
- The county shall also provide information to the NMD on how to access any known legal representation and advocacy organizations or entities for further assistance, and if the NMD requests to obtain an SSI advocate, shall assist the NMD with communicating and coordinating with the SSI advocate.

Requirements for Identifying an Appropriate Payee and Duties of Representative Payees

- Consulting with the NMD to identify an appropriate representative payee. This payee may be the NMD, a trusted adult, a tribal agency if the youth is an Indian child, or the county if no other payee is available. [20 CFR. 416.622](#) outlines who cannot serve as representative payees.
- If the NMD chooses someone other than the county as the payee, or requests to become their own payee, the county shall assist the NMD in requesting a change of payee to the SSA and assist the NMD, or the NMD's representative, with any forms or communication to the SSA regarding any changes to their foster care

case that may impact their eligibility for or amount of SSI benefits.

- If the NMD requests, and SSA selects the county as the representative payee for the NMD, the county shall advise the NMD on an annual basis of the NMD's right to request a different representative payee, or to become their own payee. The county should also work with the NMD and document in their transitional independent living case plan steps they can take to become their own payee by the time they turn 21 years of age. If the NMD exits care prior to age 21, the county must provide information to them regarding the steps they will need to take to submit a change of payee request to the SSA and provide them the necessary assistance to ensure they will continue to receive SSI payments as soon as possible after exiting care.

Prior to SB 187, WIC 13754 required the county as a representative payee to establish a no-cost, interest-bearing maintenance account for each child in its care and custody for whom the department serves as a representative payee. Interest earned on these accounts shall be credited to the account. The county shall keep an itemized current account, in the manner required by [federal law, 20 CFR. 416.635](#) of all income and expense items for each child's and NMD's maintenance account. The county also shall establish procedures for disbursing money from the accounts, including disbursing the net balance to the beneficiary upon release from care, and use the child/NMD's SSI benefits only for the use and benefit of the child/NMD or for purposes determined by the county to be in the child/NMD's best interest. The county shall also continue to follow existing law on the use and maintenance of dedicated accounts in accordance with federal law. All these requirements remain the same and SB 187 clarifies that these responsibilities apply to NMDs who are under the county's placement and care responsibility for whom the county is the representative payee.

The WIC 13757 already established that an NMD whose federally funded AFDC-FC amount exceeds the SSI payment, thereby placing the SSI payment in suspense, must receive the SSI payment once during every 12 month period in order to maintain their eligibility for SSI, and must receive nonfederal AFDC-FC resources in that month to supplement the SSI payment. This process prevents the NMD's SSI payments from being inadvertently terminated while the NMD is in care. The SB 187 further established the process for ensuring that NMDs receive SSI once every 12-month period based on whether the county is the NMD's representative payee. When the county is the representative payee, it is the county's responsibility to inform SSA during that month that the NMD is not receiving any federal financial participation. When the county is not the representative payee, the county must still assist the NMD or their representative payee with providing information to SSA and with keeping track of how many months the SSI payment has been in suspense.

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A county may contract with legal services organizations or other entities to provide extended legal representation on behalf of children and NMDs in foster care to provide the necessary support to establish and maintain SSI eligibility.

If you have any questions or need additional guidance regarding the information in this letter, contact the Funding and Eligibility Unit at FC-KGEligibility@dss.ca.gov.

Sincerely,

Original Document Signed By

ANGIE SCHWARTZ
Deputy Director
Children and Family Services Division