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Offered: 2/8/89
Referred: Judiciary and Finance

Perry Lauterbach
6-0231E

Original sponsors: Uehling, Pearce,
and Sturgilewski

1 IN THE SENATE

BY THE HEALTH, EDUCATION, AND
SOCIAL SERVICES COMMITTEE

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CS FOR SENATE BILL NO. 70 (~~HESS~~) (Jun)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to certain testing in contested paternity actions; amending Rule 35, Alaska Rules of Civil Procedure; and providing for an effective date."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. AS 25.20.050 is amended by adding new subsections to read;

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(e) On request of a party in a contested paternity action, the court shall order the mother, the child, and the putative parent to submit to a blood test, tissue-type test, protein comparison, or other scientifically accepted procedure designed to determine the statistical probability that the putative parent is a legal parent of the child in question except that the order may not apply to a person who has been found under applicable federal regulations to have good cause not to cooperate.

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(f) If the child support enforcement agency is a party in a contested paternity action, the agency shall request the court to order the tests and procedures described in (e) of this section. The agency may recover the costs of tests as a cost of the action, except that no costs shall be recovered from a person who is a recipient of aid under AS 47.25.310 - 47.25.420 (Aid to Families with Dependent Children). Costs recovered under this subsection may not conflict with requirements of applicable federal regulations.

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* Sec. 2. AS 47.23.040(a) is amended to read:

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(a) The agency shall appear on behalf of minor children or their

1 mother or legal custodian or the state and initiate efforts to have
2 the paternity of children born out of wedlock determined by the court
3 on voluntary application by the mother or other legal custodian. When
4 the agency is a party in a contested paternity action, it shall re-
5 quest and pay for tests and procedures under AS 25.20.050(f). The
6 agency may recover the costs of the tests as a cost of the action,
7 except that no costs shall be recovered from a person who is a recipi-
8 ent of aid under AS 47.25.310 - 47.25.420 (Aid to Families with Depen-
9 dent Children). Cost recoveries authorized under this subsection may
10 not conflict with requirements of applicable federal regulations.

11 * Sec. 3. AS 25.20.050(e), enacted by sec. 1 of this Act, has the
12 effect of amending Civil Rule 35 by requiring a court in a contested pater-
13 nity action to order certain genetic tests on the request of a party.

14 * Sec. 4. This Act takes effect November 1, 1989.

Senator Rick Uehling

Downtown, Elmendorf, Northeast Anchorage



Co-Chairman, Senate Finance Committee
International Trade & Tourism Committee
State Affairs Committee

MEMORANDUM

TO: Senator Jan Faiks
Chair, Senate Judiciary Committee

FROM: Senator Rick Uehling *R. Uehling*

DATE: February 8, 1989

RE: CS SB 70: "An Act relating to certain testing in contested paternity actions; amending Rule 35, Alaska Rules of Civil Procedure"

I have asked staff to provide the following background and analysis to CSSB 70, which has been referred to the Judiciary Committee. At this time, I respectfully request that this bill be scheduled for hearing.

CS SB 70 is one of a group of companion bills which address new federal requirements mandated by the federal welfare reform act signed into law in October 1988.

CS SB 70 has the effect of amending a court rule by requiring a court in a contested paternity action to order certain genetic tests on the request of a party.

The Committee substitute which passed out of the Senate HESS Committee contains two changes which were worked out between my office and the Department of Revenue. We feel that the changes strengthen the bill. The first change occurs in Section 1 of the bill and serves to tighten up the language to protect the rights of the putative father.

The second changes eliminates the fee structure for recovering the cost of the testing, and substitutes fee recovery as a function of the civil recovery process. The net result of this change is to retain the cost recovery function of the department, but eliminate the fiscal note for the department by eliminating the need for billing clerks.

Senator Rick Uehling

Downtown, Elmendorf, Northeast Anchorage



Co-Chairman, Senate Finance Committee
International Trade & Tourism Committee
State Affairs Committee

Bill Summary: CS SB 70

CS SB 70 has the effect of amending Civil rule 35 by requiring a court in a contested paternity action to order certain genetic tests on the request of a party.

CS SB 70 requires the Child Support Enforcement Agency to pay for tests and procedures which it orders. CS SB 70 also describes the process to be used by the Child Support Enforcement Agency to recover the costs for the tests.

The federal Act provides for a 90/10 federal/state match to pay for the test costs which Child Support Enforcement incurs as a result of this legislation which are not recoverable.

2/8/89

Senator Rick Uehling

Downtown, Elmendorf, Northeast Anchorage



Co-Chairman, Senate Finance Committee
International Trade & Tourism Committee
State Affairs Committee

SECTIONAL ANALYSIS CS SB 70

Following is a sectional analysis of CS SB 70, a bill relating to the genetic testing requirements of the Federal Family Support Act of 1988.

Sec. 1 arises from section 111(b) of the federal Act. That section requires the state "to require the child and all interested parties in a contested paternity case to submit to genetic tests upon request of any such party... (except in cases where the individual involved has been found under section 402(a)(26)(B) to have good cause for refusing to cooperate)." AS 25.20.050(e) implements this requirement. AS 25.20.050(f) directs the CSEA to be the requesting party when genetic testing is at issue. This means that CSEA will bear the costs of the tests because court rules place the costs on the requesting party. However, the federal Act allows the state to recover the costs of the test. AS 25.20.050(f) specifies that the agency may recover the costs of the paternity tests through the civil recovery process, except that no person receiving AFDC can be required to pay for the tests.

Sec. 2 makes parallel amendments in the CSEA statutes.

Sec. 3 notes that a court rule is affected by this bill. Genetic testing is currently at the discretion of the court on a showing of good cause. This bill would make the testing mandatory on the request of a party.

Sec. 4 gives the bill the effective date required by the federal Act.

Chapter 20. Parent and Child.

Section 50. Legitimation by subsequent marriage, acknowledgment in writing or adjudication

Sec. 25.20.010. Age of majority.

NOTES TO DECISIONS

Quoted in *Dowling v. Dowling*, Sup. Ct. Op. No. 2809 (File No. 6454), 679 P.2d 480 (1984). Stated in *Lawrence v. Lawrence*, Sup. Ct. Op. No. 3044 (File No. S-652), 718 P.2d 142 (1986).

Sec. 25.20.030. Duty of parent and child to maintain each other.

NOTES TO DECISIONS

A parent is obligated both by statute and at common law to support his or her children, even in the absence of a court order of support. *Matthews v. Matthews*, Sup. Ct. Op. No. 3206 (File No. S-1693), 739 P.2d 1298 (1987).

A parent's duty of support encompasses a duty to reimburse other persons who provide the support the parent owes, belongs to whomever supported the children, and is simply an action on a debt. However, when a custodial parent seeks a modification of a divorce decree which neglected to address either child custody or child support and also seeks reimbursement for past child support expenditures, he or she may join the claims,

and bring both by motion in the original divorce action. *Matthews v. Matthews*, Sup. Ct. Op. No. 3206 (File No. S-1693), 739 P.2d 1298 (1987).

Applicability of criminal nonsupport statute. — The criminal nonsupport statute, AS 11.51.120, does not extend beyond those individuals expressly made legally responsible for the support of a child by this section and AS 47.25.230; it does not apply to stepparents regardless of their actual relationship to the stepchildren. *Olp v. State*, Ct. App. Op. No. 719 (File No. A-1812), 738 P.2d 1117 (1987).

Quoted in *Dowling v. Dowling*, Sup. Ct. Op. No. 2809 (File No. 6454), 679 P.2d 480 (1984).

Sec. 25.20.050. Legitimation by subsequent marriage, acknowledgment in writing or adjudication. (a) A child born out of wedlock is legitimated and considered the heir of the putative parent when (1) the putative parent subsequently marries the undisputed parent of the child; (2) the putative parent acknowledges, in writing, being a parent of the child; or (3) the putative parent is judged by a superior court, upon sufficient evidence, to be a parent of the child. Acceptable evidence includes, but is not limited to, evidence that the putative parent's conduct and bearing toward the child, either by word or act, indicates that the child is the child of the putative parent. That conduct may be construed by the court to constitute evidence of parentage. When indefinite, ambiguous, or uncertain terms are used, the court may use extrinsic evidence to show the putative parent's intent.

(b) The Bureau of Vital Statistics, as custodian of the original certificates of birth of all persons born in the state, is designated as the

depository for such acknowledgment and adjudication. The acknowledgment or adjudication shall be forwarded to the bureau in accordance with appropriate regulations of the bureau, and shall be noted on and filed with the corresponding original certificate of birth.

(c) In case of the Alaska birth of any child out of wedlock and the legitimation of the child in accordance with this section, at the written request of the parents, or either of them or of the legal guardian, or of the person when of legal age, the Bureau of Vital Statistics shall prepare and place on file a substitute birth certificate, in accordance with the laws and regulations of the bureau pertaining to new certificates of this type.

(d) The results of a blood test, tissue-type test, protein comparison, or other scientifically accepted procedure shall be admitted and weighed in conjunction with other evidence in determining the statistical probability that the putative parent is a legal parent of the child in question. However, a scientifically accepted procedure that establishes a probability of parentage at 95 percent or higher creates a presumption of parentage that may be rebutted only by clear and convincing evidence. (§ 21-3-3 ACLA 1949; am § 1 ch 57 SLA 1951; am § 1 ch 115 SLA 1957; am § 1 ch 19 SLA 1960; am §§ 3, 4 ch 144 SLA 1984)

Effect of amendments. — The 1984 amendment in subsection (a), reworded subsection (a) to provide sex-neutral terminology and added subsection (d).

Opinions of attorney general. — On p. 23 of the main pamphlet, the cite for the note beginning "Necessarily involved" should be 1962 Op. Att'y Gen. No. 13.

NOTES TO DECISIONS

Establishment-preclusion order question of paternity. — The supervising court had discretion to enter an establishment-preclusion order on the question of paternity, where the alleged father

violated the court's order by providing false evidence. *Dade v. State, Child Support Enforcement Div. ex rel. Lovett*, Sup. Ct. Op. No. 3126 (File No. S-1194), P.2d (1986).

Sec. 25.20.060. Custody of child.

NOTE TO DECISIONS

Joint custody. — The mere existence of a custody agreement is not sufficient evidence of a couple's ability to cooperate to warrant joint custody. *Wolf v. Wolf*, Sup. Ct. Op. No. 3219 (File No. S-1707), P.2d (1987).

There was ample evidence in the record to support a trial court's finding that the parties could not cooperate to the extent necessary to make a joint custody arrangement work, despite the father's argument, that both his and his wife's joint concern for their son's developmental

problems, a court-ordered pretrial custody arrangement, and an earlier custody agreement evinced their ability to cooperate for the benefit of the children. *Wolf v. Wolf*, Sup. Ct. Op. No. 3219 (File No. S-1707), P.2d (1987).

Quoted in *S.N.E. v. R.L.B.*, Sup. Ct. Op. No. 2940 (File No. S-426), 699 P.2d 875 (1985); *McClain v. McClain*, Sup. Ct. Op. No. 3031 (File No. S-900), 716 P.2d 381 (1986); *McDanold v. McDanold*, Sup. Ct. Op. No. 3058 (File No. S-915), 718 P.2d 457 (1986).

Collateral references. — Responsibility of noncustodial divorced parent to pay for, or contribute to, costs of child's college education. 99 ALR3d 322.

Sec. 25.20.045. Legitimacy of children conceived by artificial insemination. A child, born to a married woman by means of artificial insemination performed by a licensed physician and consented to in writing by both spouses, is considered for all purposes the natural and legitimate child of both spouses. (§ 1 ch 122 SLA 1975)

Revisor's notes. — Formerly AS 20.20.010. Renumbered in 1982. Collateral references. — 10 Am.Jur.2d, Bastards, § 1; 59 Am.Jur.2d, Parent and Child, § 2. 2 C.J.S., Adoption of Persons, § 2. Legal consequences of human artificial insemination, 25 ALR3d 1103.

Sec. 25.20.050. Legitimation by subsequent marriage, acknowledgment in writing or adjudication. (a) A child born out of wedlock is legitimated and considered the heir of the father who (1) subsequently marries the mother of the child; (2) acknowledges in writing paternity of the child; or (3) is judged to be the father by a superior court, upon sufficient evidence. Acceptable evidence includes, but is not limited to, evidence that the alleged father's conduct and bearing toward the child, either by word or act, indicates that the child is the child of the alleged father. That conduct may be construed by the court to constitute evidence of paternity. Extrinsic evidence may be used by the court to show intent when indefinite, ambiguous, or uncertain terms are used.

(b) The Bureau of Vital Statistics, as custodian of the original certificates of birth of all persons born in the state, is designated as the depository for such acknowledgment and adjudication. The acknowledgment or adjudication shall be forwarded to the bureau in accordance with appropriate regulations of the bureau, and shall be noted on and filed with the corresponding original certificate of birth.

(c) In case of the Alaska birth of any child out of wedlock and the legitimation of the child in accordance with this section, at the written request of the parents, or either of them or of the legal guardian, or of the person when of legal age, the Bureau of Vital Statistics shall prepare and place on file a substitute birth certificate, in accordance with the laws and regulations of the bureau pertaining to new certificates of this type. (§ 21-3-3 ACLA 1949; am § 1 ch 57 SLA 1951; am § 1 ch 115 SLA 1957; am § 1 ch 19 SLA 1960)

Opinions of attorney general. — This section allows a substitute birth certificate when there is legitimization of the child by intermarriage (providing proof is offered that the marriage was between the parents of the child), as well as by court adjudication alone. 1959 Op. Att'y Gen., No. 29. Only the third method of legitimation is specifically vested in the court. 1962 Op. Att'y Gen., No. 13. By implication, the Bureau of Vital Sta-

tistics has the power and duty to make its own determination of the fulfillment of the first two conditions of legitimation. 1962 Op. Att'y Gen., No. 13.

Necessarily involved in legitimation is the administrative determination of illegitimacy at the time an original birth certificate is filed. 1962 Op. Att'y Gen., No. 3.

For application of presumption of legitimacy to validity of original birth certificate, see 1962 Op. Att'y Gen., No. 13.

For right of child to legitimation procedures, see 1962 Op. Att'y Gen., No. 13.

An admission under oath or in writing of paternity, in a foreign actor, could be recognized as satisfying the requirement of subdivision (a) (2) of this section that a father acknowledge his paternity of the child as a method of legitimation. 1962 Op. Att'y Gen., No. 13.

The bureau should recognize foreign marriages as sufficient under subdivision (a)(1) of this section to establish a subsequent intermarriage as a basis for legitimation. 1962 Op. Att'y Gen., No. 13.

For suggested standards of proof to

establish that the man subsequently marrying a mother is the father of her child, for purposes of issuing a substitute birth certificate legitimating the child under subdivision (a) (1), see 1962 Op. Att'y Gen., No. 13.

For discussion of what constitutes a sufficient written acknowledgment of paternity under subdivision (a)(2), see 1962 Op. Att'y Gen., No. 13.

Erroneous entries in the original birth certificates of children born to unwed mothers naming the father are significant to show a mother's acknowledgment of paternity corroborating the effect of subsequent intermarriage or written acknowledgment of paternity by the father, if it can be established that the entry was made by the mother or at her request, but such entries have no other evidentiary value. 1962 Op. Att'y Gen., No. 13.

Legitimation may be effected by the bureau even though the acknowledged father is married to another woman, under the general policy of the statute. 1962 Op. Att'y Gen., No. 13.

NOTES TO DECISIONS

When acknowledgment of paternity can be filed. — Under the existing provisions of subsection (a) of this section and AS 20.15.040(a) [now AS 25.23.040(a)], an acknowledgment of paternity can be filed at any time before the entry of a decree of adoption. In re L.A.H., Sup. Ct. Op. No. 1868 (File No. 3853), 597 P.2d 513 (1979).

The filing of an adoption petition does not preclude the biological father from thereafter filing a written acknowledgment of his paternity of the subject child, thereby legitimizing him. In re L.A.H., Sup. Ct. Op. No. 1868 (File No. 3853), 597 P.2d 513 (1979).

Interpretation of the relevant statutes precludes additional consideration of the best interests of the child in determining whether a father may legitimize the adoptee during the pendency of an adoption proceeding and so foreclose adoption absent his consent. In re L.A.H., Sup. Ct. Op. No. 1868 (File No. 3853), 597 P.2d 513 (1979).

Applied in *S.L.W. v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 736 (File No. 1333), 490 P.2d 42 (1971).

Collateral references. — 10 Am. Jur. Trials, pp. 653-757.

10 Am. Jur. 2d. Bastards, §§ 45-59, 74-132.

Proofs, generally, 2 Am. Jur. POF, pp. 445-453, 607-624; 14 Am. Jur. POF2d pp. 727-753; 19 Am. Jur. POF2d, pp. 1-44.

Legitimation by subsequent marriage, 27 ALR 1121.

Paternity, legitimacy, or legitimation as determined in action for divorce, separa-

tion, or annulment upon vacating or opening decree, 65 ALR2d 1390.

Race or color of child as admissible in evidence on issue of legitimacy or paternity, or as basis of rebuttal or exception to presumption of legitimacy, 32 ALR3d 1303.

Presumption of legitimacy of child born after annulment, divorce, or separation, 46 ALR3d 158.

§ 47.23.025 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.23.050

Effect of amendments. — The 1982 amendment added subsection (b). The amendment also, in present subsection (a), substituted the language beginning "subject to AS 47.23.025 and to federal law" and added "arrears of support that shall" for "a uniform schedule of fees which may" and "upon notice of child support payments" for "if the child support payments" in subparagraph (2)(C), and added paragraphs (6) and (7).

Sec. 47.23.025. Rates of penalty and interest. A penalty imposed under AS 47.23.020(a)(2)(C) may not be at a rate that exceeds the rate of interest imposed on delinquent taxes under AS 43.05.225. The rate of interest imposed under AS 47.23.020(a)(2)(C) shall equal the rate imposed under AS 43.05.225 or a lesser rate that is the maximum rate of interest permitted to be imposed under federal law. (§ 6 ch 118 SLA 1982)

Sec. 47.23.030. Establishment of fund. There is established in the state general fund a continuing, revolving, reserve account to receive collections and make the authorized disbursements of the agency. (§ 1 ch 251 SLA 1976)

Sec. 47.23.040. Determination of paternity. (a) The agency shall appear on behalf of minor children or their mother or legal custodian or the state and initiate efforts to have the paternity of children born out of wedlock determined by the court on voluntary application by the mother or other legal custodian.

(b) The agency may not attempt to establish paternity in any case involving incest or forcible rape, when legal proceedings for adoption are pending, or when it would not be in the best interests of the children or the state. (§ 1 ch 251 SLA 1976; am § 18 ch 126 SLA 1977)

NOTES TO DECISIONS

Appointment of counsel for indigent defendant. — In light of the fact that paternity suits, in effect, are brought by the state, the significance of the parent-child relationship involved and the peculiar problems presented in such a proceeding, due process requires the appointment of counsel for an indigent defendant. *Reynolds v. Kimmons*, Sup. Ct. Op. No. 1505 (File No. 3305), 569 P.2d 799 (1977).

Sec. 47.23.045. Determination of support obligation. The agency may appear in an action seeking an award of support in behalf of a child owed a duty of support, and may also appear in an action seeking modification of a support order, decree or judgment already entered. Action under this section may be undertaken upon application of an obligee, or at the agency's own discretion if the obligor is liable to the state under AS 47.23.120(a) or (b). (§ 19 ch 126 SLA 1977)

Sec. 47.23.050. Legal assistance. The agency shall contract with the Department of Law to provide needed legal services. (§ 1 ch 251 SLA 1976; am § 20 ch 126 SLA 1977)

The dismissal of a complaint for refusal to comply with an order to produce corporate records is not an abuse of discretion where there is support in the record for the finding that the plaintiff willfully refused to obey the discovery order, in that he himself testified that he had made no efforts to produce corporate records during the 30 days following that order, and where he did not make any satisfactory explanation to the court as to the reason that such records had not been produced. *Hart v. Wolff*, Op. No. 724, 489 P2d 114 (Alaska 1971).

A prima facie case of control of requested records is all that need be established to justify an order to produce such records. *Hart v. Wolff*, Op. No. 724, 489 P2d 114 (Alaska 1971).

Liberal construction should be given the civil rules governing discovery. *Hart v. Wolff*, Op. No. 724, 489 P2d 114 (Alaska 1971).

Erroneous admission of deposition testimony was harmless error since the evidence contained in the depositions was cumulative. *Fairbanks North Star Borough v. Tundra Tours, Op. No. 3052, 719 P2d 1020 (Alaska 1986).*

Rule 35. Physical and Mental Examination of Persons.

(a) **Order for Examination.** When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court, on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other

involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973)

Rule 36. Requests for Admission.

(a) **Request for Admission.** A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine

issue for trial may not, in response to the request; he may, in response to Rule 37(c), deny the matter or state that he cannot admit or deny it.

The party who has requested admission may move to determine the sufficiency of the objections. Unless the court sustains the objection, it shall be served. If the court determines that the party has not complied with the requirements of the order either that the matter admitted answer be served or that the court's orders, determine the time the request be made at a particular designated time prior to trial, the provisions of Rule 37(a) (4) apply to the award of costs in relation to the motion.

(b) **Effect of Admission.** An admission under this rule is conclusive for the purposes of the court on motion permits withdrawal of the admission. Subject to the provisions of Rule 16 governing amendments, the court may permit withdrawal of the admission if the party making the admission fails to satisfy the court that the admission or amendment will prejudice the action or defense on the merits. An admission made by a party under this rule is not binding on him for any other purpose in any other proceedings.

(Adopted by SCO 5 October 9, 1959; amended by SCO 98 effective September 1, 1973; amended by SCO 158 effective February 15, 1973)

Annot.

Cases

A request for admissions as to the value of goods and materials by a concessionaire for performance of work and service in an action by creditors of the concessionaire for goods and materials was directed to the issues of the case and was within the scope of this rule. *Palzer v. Serv-U Meat Co.*, Op. No. 201 (Alaska 1966).

Where amount owed is admitted, a party is not required to request for admissions, party is not required to prove that amount admitted included. *Molitor v. ATZ Travel, Inc.*, Op. No. 1976).

A summary judgment granted in an action for failure to make timely responses to a request for admissions may be reversed when the plaintiff on motion shows that defendant's failure to respond was due to a party's failure to reply to an alternative basis for the information contained in plaintiff's reply. *Menard v. Alaska*, Op. No. 2340, 627 P2d 642 (Alaska 1981).

Summary judgment may be granted where the facts are dispositive. *Riley v. Alaska*, Op. No. 2534, 648 P2d 961 (Alaska 1982).

Under this standard, the IV-D agency must:

(a) Use appropriate local locate sources such as officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision), relatives and friends of the absent parent, current or past employers, the local telephone company, the U.S. Postal Service, financial references, unions, fraternal organizations, and police, parole, and probation records if appropriate;

(b) Establish working relationships with all appropriate local agencies in order to utilize local locate resources effectively;

(c) Use appropriate State agencies and departments, which as a minimum must include those departments which maintain records of public assistance, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records;

(d) Utilize all appropriate State and local locate sources within 60 days of referral of the case pursuant to § 235.70 of this title or application under § 302.33;

(e) Transmit appropriate cases to the Federal PLS to locate absent parents;

(f) Refer cases to the IV-D agency of any other State if there is reasonable belief that the absent parent may be present in such State. The IV-D agency of such other State shall follow the procedures prescribed in paragraphs (a) through (d) of this section for such cases.

[43 FR 33249, July 31, 1978, as amended at 50 FR 19650, May 9, 1985]

§ 303.4 Establishment of support obligations.

For all cases referred to the IV-D agency or applying under § 302.33 of this chapter, the IV-D Agency must:

(a) When necessary, establish paternity pursuant to the standards of § 303.5;

(b) Utilize appropriate State statutes and legal processes in establishing the support obligation pursuant to § 302.50 of this chapter.

(c) Review the support obligation periodically and whenever the IV-D agency becomes aware of changes in the factors which determine the amount of the support obligation.

[40 FR 27164, June 26, 1975, as amended at 50 FR 19650, May 9, 1985]

§ 303.5 Establishment of paternity.

(a) For all cases referred to the IV-D agency or applying under § 302.33 of this chapter in which paternity has not yet been established, the IV-D agency must:

(1) Attempt to establish paternity by court order or other legal process established under State law; or

(2) Establish paternity by acknowledgment if under the State law such acknowledgment has the same legal effect as court-ordered paternity, including the right to benefits other than child support.

(b) The IV-D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the IV-D agency, it would not be in the best interests of the child to establish paternity.

(c) The IV-D agency shall identify laboratories within the State which perform legally and medically acceptable tests, including blood tests, which tend to identify the father or exclude the alleged father from paternity. A list of such laboratories shall be available to appropriate courts and law enforcement officials, and to the public upon request.

[40 FR 27164, June 26, 1975, as amended at 50 FR 19650, May 9, 1985]

§ 303.6 Enforcement of support obligations.

For all cases under the State plan in which the obligation to support and the amount of the obligation have been established, the IV-D agency must maintain an effective system for identifying, within 30 days, those cases in which there is a failure to comply with the support obligation and to contact such delinquent individuals as soon as possible in order to enforce the obligation and obtain the current support obligation and any arrearages.

Such attempts to collect support must include the institution of the following procedures as applicable and necessary:

(a) Contempt proceedings to enforce an extant court order;

(b) Garnishment or similar proceedings if the State's statutes and constitution permit such a procedure and the individual can be brought under the jurisdiction of the courts of the State;

(c) Proceedings to attach real or personal property if the State's law provides for such a procedure and the individual is subject to such procedure;

(d) Any other collection or enforcement procedure described in the State plan pursuant to § 302.17 of this chapter;

(e) Applications to utilize the courts of the United States pursuant to § 303.73 of this chapter, and proceedings to enforce an order in the courts of the United States if such application is certified; and,

(f) Applications for collection of the delinquent support obligation by the Secretary of the Treasury pursuant to § 302.71 of this chapter.

[40 FR 27164, June 26, 1975, as amended at 47 FR 24719, June 8, 1982; 47 FR 57282, Dec. 23, 1982]

§ 303.7 Cooperation with other States.

(a) For all cases referred to the IV-D agency under the State plan of another State, the IV-D agency must assist the other State in locating an absent parent, establishing paternity, or securing support for a child or children and for the spouse (or former spouse) of the absent parent with whom the child or children are living in the other State. Under this standard, the IV-D agency must:

(1) When necessary, locate the putative father or absent parent utilizing the standards prescribed in § 303.3;

(2) When necessary, establish paternity or assist the other State in establishing paternity;

(3) Process and enforce all court orders referred by another State, whether pursuant to the Uniform Reciprocal Enforcement of Support Act or other legal processes. The IV-D agency shall utilize the same remedies normally applied to its own cases;

(4) Collect any support payments from the absent parent and forward them to the State to whom they are owed; and,

(5) Inform the State which initiated the action of the status of the case periodically and on request.

(b) For all cases referred for securing support by the IV-D agency under the State plan to the IV-D agency of another State, the IV-D agency must provide the IV-D agency of the other State sufficient information to act on the case, including but not limited to the following:

(1) Whether the case involves a recipient of aid under the State's title IV-A or IV-E plan;

(2) The amount of the current assistance payment, if any;

(3) Notice of any termination of eligibility for assistance; and

(4) Any other information prescribed by instructions of the Office.

(c) For all cases referred by the IV-D agency under the State plan to the IV-D agency of another State which require location activities, the IV-D agency shall provide sufficient information to assist the IV-D agency of the other State, such as the absent parent's social security account number and other identifying information to the extent it is available.

[40 FR 27164, June 26, 1975, as amended at 47 FR 57282, Dec. 23, 1982; 50 FR 19650, May 9, 1985]

§ 303.10 Procedures for case assessment and prioritization.

(a) The IV-D agency may implement a case assessment and prioritization system statewide or in a particular political subdivision of the State to manage its caseload.

(b) In implementing a case assessment and prioritization system, the IV-D agency must:

(1) Develop written procedures for the evaluation and prioritization of cases upon receipt and upon becoming aware of changes in case circumstances;

(2) Include all of its cases in the system, including cases referred from the title the IV-A agency under § 235.70 of this title, cases in which applications for services are received

§ 302.30 Publicizing the availability of support enforcement services.

Effective October 1, 1985, the State plan shall provide that the State will publicize regularly and frequently the availability of support enforcement services under the plan through public service announcements. Publicity must include information on any application fees which may be imposed for such services and a telephone number or postal address where further information may be obtained.

(Approved by the Office of Management and Budget under control number 0960-0385)

150 FR 19647, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986)

§ 302.31 Establishing paternity and securing support.

The State plan shall provide that:

(a) The IV-D agency will undertake:
(1) In the case of a child born out of wedlock with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, to establish the paternity of such child; and

(2) In the case of any individual with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, to secure support for a child or children from any person who is legally liable for such support, using State laws and reciprocal arrangements adopted with other States when appropriate. Effective October 1, 1985, this includes securing support for a spouse or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and the child support obligation is being enforced under the title IV-D State plan.

(3) When assigned support payments are received and retained by an AFDC recipient, to proceed as follows:

(i) In States that implement the IV-A State plan requirements to count retained support payments as income under 45 CFR 233.20(a)(3)(v), the IV-D agency shall notify the IV-A agency whenever it discovers that directly received payments are being, or have been, retained; or

(ii) In States that do not implement the IV-A State plan requirements to

count retained support payments as income to meet need, the IV-D agency shall recover the retained support payments. This recovery by the IV-D agency shall be carried out in accordance with the standards for program operations provided in § 303.80 of this chapter.

(b) Upon receiving notice from the IV-A or IV-E agency that there has been a claim of good cause under § 232.40 of this title, the IV-D agency will suspend all activities to establish paternity or secure support until notified of a final determination by the IV-A or IV-E agency.

(c) The IV-D agency will not undertake to establish paternity or secure support in any case for which it has received notice from the IV-A or IV-E agency that there has been a finding of good cause pursuant to §§ 232.40 through 232.49 of this title unless there has been a determination by the State or local IV-A or IV-E agency that support enforcement may proceed without the participation of the caretaker or other relative. If there has been such a determination, the IV-D agency will undertake to establish paternity or secure support but may not involve the caretaker or other relative in such undertaking.

(Approved by the Office of Management and Budget under control number 0960-0385)

150 FR 19647, May 9, 1985, as amended at 51 FR 25526, July 15, 1986; 51 FR 37731, Oct. 24, 1986)

§ 302.32 Support payments to the IV-D agency.

The State plan shall provide that:

(a) In any case in which support payments are collected for a recipient of aid under the State's title IV-A plan with respect to whom an assignment under § 232.11 is effective, such payments shall be made to the IV-D agency and shall not be paid directly to the family.

(b) As soon as possible but not later than 30 days after the end of a month, the IV-D agency will inform the agency administering the State's title IV-A plan of the amount of the collection which represents payment on the required support obligation for that

month as determined in § 302.51(a). Upon being informed of this amount, the IV-A agency will determine if such amount is sufficient to make the family ineligible for an assistance payment pursuant to the State's IV-A plan (See § 232.20 of Chapter II of this title). If such amount is sufficient to make the family ineligible for an assistance payment, the IV-A agency will notify the IV-D agency and the IV-D agency will distribute the amount collected pursuant to § 302.51 of this part. The IV-D agency will notify the family that it will continue to provide services pursuant to § 302.51(e)(1) of this part.

(c) If the IV-A agency determines that the amount of the collection which represents payment on the required support obligation for the month does not make the family ineligible for an assistance payment, or if a hearing is requested pursuant to § 205.10 of this title, the IV-A agency will notify the IV-D agency of such fact and the IV-D agency will distribute such amount pursuant to § 302.51 of this part.

(d) To the extent any amount collected in a month includes payment on required support obligations for past months, that portion of such amount will be distributed by the IV-D agency pursuant to § 302.51(b) (4) and (5) of this part.

(e) Support collected in a month after any month in which the support collected makes the family ineligible for an assistance payment (pursuant to § 232.20 of this title) but prior to or in the month in which the family receives its last assistance payment, shall be used to reimburse the State for any assistance paid in such months with any excess being paid to the family. This provision will not apply when a hearing is requested pursuant to § 205.10 of this title. In these cases, when the hearing results in a determination that the family was ineligible for an assistance payment, the IV-D agency will determine the amount by which the entire support collection for a month that the family would have received pursuant to paragraph (b) of this section exceeds the amount the family actually received for a month as an assistance payment and pursu-

ant to § 302.51. Such excess shall be paid to the family. If the family is determined to be eligible, distribution will continue to be made pursuant to § 302.51.

(Approved by the Office of Management and Budget under control number 0960-0385)

(40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982; 49 FR 22289, May 29, 1984; 50 FR 19048, May 9, 1985; 51 FR 37731, Oct. 24, 1986)

§ 302.33 Individuals not otherwise eligible for paternity and support services.

(a) *Availability of services.* The State plan must provide that the support collection or paternity determination services established under the plan shall be made available to any individual not receiving assistance under the Aid to Families with Dependent Children (AFDC) program who files an application for the services with the IV-D agency. In an interstate case, only the initiating State may require an application under this section.

(b) *Definitions.* For purposes of this section:

"Applicant's income" means the disposable income available for the applicant's use under State law.

(c) *Application fee.* (1) Until October 1, 1985, the State plan may provide for an application fee to be charged each individual who applies for services under this section. If the State elects to charge a fee, the State plan shall specify either:

(i) A flat dollar amount not to exceed \$25 to be charged each applicant; or

(ii) A fee schedule to be used to determine the fee to be charged each applicant. Such fee schedule will be based on each applicant's income and will be designed so as not to discourage the application for such services by those most in need of them.

(2) Beginning October 1, 1985, the State plan must provide that an application fee will be charged for each individual who applies for services under this section. Under this

(i) The State shall collect the application fee from the individual applying for IV-D services or pay the application fee out of State funds.

fect the value of the services rendered, or the amount of time given to the agency.

[34 FR 1319, Jan. 28, 1969]

§ 225.2 State plan requirements.

The State plan for financial assistance programs under titles I, X, XIV, or XVI (AABD) of the Social Security Act for Guam, Puerto Rico and the Virgin Islands or for child welfare services under title IV-B of the Act must:

(a) Provide for the training and effective use of subprofessional staff as community service aides through part-time or full-time employment of persons of low income and, where applicable, of recipients and for that purpose will provide for:

(1) Such methods of recruitment and selection as will offer opportunity for full-time or part-time employment of persons of low income and little or no formal education, including employment of young and middle aged adults, older persons, and the physically and mentally disabled, and in the case of a State plan for financial assistance under title I, X, XIV, or XVI (AABD), of recipients: And will provide that such subprofessional positions are subject to merit system requirements, except where special exemption is approved on the basis of a State alternative plan for recruitment and selection among the disadvantaged of persons who have the potential ability for training and job performance to help assure achievement of program objectives;

(2) An administrative staffing plan to include the range of service personnel of which subprofessional staff are an integral part;

(3) A career service plan permitting persons to enter employment at the subprofessional level and, according to their abilities, through work experience, pre-service and in-service training and educational leave with pay, progress to positions of increasing responsibility and reward;

(4) An organized training program, supervision, and supportive services for subprofessional staff; and

(5) Annual progressive expansion of the plan to assure utilization of increasing numbers of subprofessional

staff as community service aides, until an appropriate number and proportion of subprofessional staff to professional staff are achieved to make maximum use of subprofessionals in program operation.

(b) Provide for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency and for that purpose provide for:

(1) A position in which rests responsibility for the development, organization, and administration of the volunteer program, and for coordination of the program with related functions;

(2) Methods of recruitment and selection which will assure participation of volunteers of all income levels in planning capacities and service provision;

(3) A program for organized training and supervision of such volunteers;

(4) Meeting the costs incident to volunteer service and assuring that no individual shall be deprived of the opportunity to serve because of the expenses involved in such service; and

(5) Annual progressive expansion of the numbers of volunteers utilized, until the volunteer program is adequate for the achievement of the agency's service goals.

[34 FR 1320, Jan. 28, 1969, as amended at 41 FR 12015, Mar. 23, 1976; 42 FR 60566, Nov. 23, 1977; 45 FR 60886, Aug. 25, 1980; 51 FR 9204, Mar. 18, 1986]

§ 225.3 Federal financial participation.

Under the State plan for financial assistance programs under titles I, X, XIV, XVI (AABD) or for child welfare services under title IV-B of the Act, Federal financial participation in expenditures for the recruitment, selection, training, and employment and other use of subprofessional staff and volunteers is available at the rates and under related conditions established for training, services, and other administrative costs under the respective titles.

[51 FR 9204, Mar. 18, 1986]

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

[40 FR 27154, June 26, 1975]

§ 232.11 Assignment of rights to support.

(a) The State plan must provide that:

(1) As a condition of eligibility for assistance, each applicant for or recipient of AFDC shall assign to the State any rights to support from any other person as such applicant or recipient may have:

(i) In his own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance; and

(ii) Which have accrued at the time such assignment is executed.

(2) If the relative with whom a child is living fails to comply with the requirements of paragraph (a)(1), (2), or (3) of this section, such relative shall be denied eligibility without regard to other eligibility factors.

(3) If the relative with whom a child is living is found to be ineligible for assistance because of failure to comply with the requirements of paragraph (a)(1), (2), or (3) of this section, any aid for which such child is eligible (determined without regard to the needs of the ineligible relative) will be provided in the form of protective payments as described in § 234.60 of this chapter.

(4) For new applicants, the requirements of paragraph (a) of this section shall be effective August 1, 1975; and for current recipients, it shall be effective as determined by the State agency but not later than the time of the next redetermination of eligibility required by § 206.10(a)(9) of this chapter and in any event not later than February 1, 1976.

(b) An assignment by operation of State law which is substantially identical to the requirements of paragraph (a)(1) may be utilized in lieu of the assignment described in that paragraph.

(c) If there is a failure to execute an assignment pursuant to this section, the State may attempt to establish paternity and collect child support pursuant to appropriate State statutes and regulations.

[40 FR 27154, June 26, 1975, as amended at 40 FR 52376, Nov. 10, 1975]

Sec.

232.1 Scope.

232.2 Child support program; State plan requirements.

232.11 Assignment of rights to support.

232.12 Cooperation in obtaining support.

232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.

232.21 Computation of a supplemental payment when there is a support payment.

232.30 Cost of staff of special administrative units.

232.40 Claiming good cause for refusing to cooperate.

232.41 Determination of good cause for refusal to cooperate.

232.42 Good cause circumstances.

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232.46 Granting or continuation of assistance.

232.47 Periodic review of good cause determination.

232.48 Record keeping in good cause.

232.49 Enforcement without the caretaker's cooperation.

APPENDIX A—MODEL TWO-PART GOOD-CAUSE NOTICE

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

§ 232.1 Scope.

This part implements provisions of titles IV-A and IV-D of the Social Security Act that are applicable only to the AFDC program and establishes other administrative and fiscal requirements.

(Sec. 1102, Social Security Act, as amended, 49 Stat. 647, as amended; 42 U.S.C. 1302 and Part XXIII of Pub. L. 97-35, 95 Stat. 843)

[47 FR 5674, Feb. 5, 1982]

§ 232.2 Child support program; State plan requirements.

The State plan must specify that the State:

(a) Has in effect a plan approved under Part D of title IV of the Act; and

(b) Operates a child support program in conformity with such plan.

§ 232.12 Cooperation in obtaining support.

The State plan must meet all requirements of this section.

(a) The plan shall provide that as a condition of eligibility for assistance, each applicant for or recipient of AFDC will be required to cooperate (unless good cause for refusing to do so is determined to exist in accordance with §§ 232.40 through 232.49 of this chapter) with the State in:

(1) Identifying and locating the parent of a child for whom aid is claimed;

(2) Establishing the paternity of a child born out of wedlock for whom aid is claimed;

(3) Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed; and

(4) Obtaining any other payments or property due the applicant or recipient or the child.

(b) The plan shall specify that *cooperate* includes any of the following actions that are relevant to, or necessary for, the achievement of the objectives specified in paragraph (a) of this section:

(1) Appearing at an office of the State or local agency or the child support agency as necessary to provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the applicant or recipient;

(2) Appearing as a witness at judicial or other hearings or proceedings;

(3) Providing information, or attesting to the lack of information, under penalty of perjury; and

(4) Paying to the child support agency any support payments received from the absent parent after an assignment under § 232.11 has been made. This includes support payments received in the current month and any amounts due to the IV-D agency

under the IV-D State plan provisions for recovery of retained direct support payments at 45 CFR 302.31(a)(3)(ii).

(c) The plan shall provide that, if the child support agency notifies the State or local agency of evidence of failure to cooperate, the State or local agency will act upon that information to enforce the eligibility requirements of this section.

(d) The plan shall provide that, if the caretaker relative fails to cooperate as required by paragraphs (a) and (b) of this section, the State or local agency will:

(1) Deny assistance to the caretaker relative without regard to other eligibility factors; and

(2) Provide assistance to the eligible child in the form of protective payments as described in § 234.60 of this chapter. Such assistance will be determined without regard to the needs of the caretaker relative.

[43 FR 2176, Jan. 16, 1978, as amended at 43 FR 45747, Oct. 3, 1978; 47 FR 43956, Oct. 5, 1982]

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.

(a) *Definition.* For purposes of this section, notwithstanding any other regulations in this chapter, support collections, monthly collections and support amounts for a month mean the assigned amount that the support enforcement agency collects from an absent parent or spouse on a monthly support obligation, less the disregarded sum under § 305.51(b)(1).

(b) The State plan must provide that in any case in which support payments are collected for a recipient of AFDC with respect to whom an assignment under § 232.11 is effective:

(1) Upon notification by the IV-D agency of the amount of a support collection, the IV-A agency will use such amount to review eligibility of the assistance unit under § 206.10(a)(9)(ii). This use of these amounts so collected shall not be later than the second month after the month in which the IV-A agency received a report of the monthly collections from the IV-D agency. In determining whether a support collection made by the State's IV-D agency, which represents support amounts for a month as determined pursuant to § 302.51(a) of this title, is sufficient to make the family ineligible for an assistance payment for the month to which the redetermination applies, the State will determine if such collection, when treated as if it were income, makes the family ineligible for an assistance payment. If such treatment makes the family ineligible, the IV-A agency will notify the family and the IV-D agency of the effective date of the family's ineligibility. The IV-D agency will treat the support collection that caused ineligibility in accordance with § 302.32. If such treatment does not make the family ineligible for an assistance payment, the assistance payment will be calculated without regard to such collection except that, when required under § 232.21 supplemental payments must be calculated and issued.

(2) Any payment received pursuant to § 302.51(b)(3) or (5) shall be treated as income in the month following the month to which the redetermination in paragraph (a)(1) of this section applies.

(c) From any amounts of assistance payments which are reimbursed by support collections made by the IV-D agency, the IV-A agency shall pay the Federal government its share of the collections made, after the incentive payments, if any, have been made pur-

suant to § 302.52 of Chapter III of this title.

(d) The State plan must provide that the IV-A agency, on behalf of the IV-D agency, will promptly pay to the family the sum disregarded under § 305.51(b)(1).

(Sec. 1102, Social Security Act, as amended, 49 Stat. 647, as amended; 42 U.S.C. 1302 and Part XXIII of Pub. L. 97-35, 248, 95 Stat. 843, 96 Stat. 324)

[47 FR 5674, Feb. 5, 1982, as amended at 48 FR 28408, June 21, 1983; 49 FR 35599, Sept. 10, 1984; 51 FR 20229, Aug. 15, 1986]

§ 232.21 Computation of a supplemental payment when there is a support payment.

(a) The purpose of this section is to provide for the computation of a supplemental payment under section 402(a)(28) of the Social Security Act. When used in this section—

"Countable income" means the amount of the recipient's gross income that is used in the computation of the assistance payment after application of all disregards, including work-related expenses.

"Countable support payment" means the support collected on the current month's support obligation less an amount not in excess of the first \$50 collected on that obligation. It also means the excess payments paid to the recipient by the IV-D agency under 45 CFR 302.51(b)(3) and (5).

"Disposable income" means the sum of the assistance payment, and the countable income used in determining the amount of the payment.

"Arrearages" means all collections of past due support exclusive of those made through the Federal and State income tax refund offset.

(b) The State plan must provide that, if the redetermination under

§ 232.20 indicates that the support payment made on the current month's support obligation would not cause ineligibility, and the State permitted recipients during July 1975 to retain countable income without an equal reduction in their assistance payment, and it currently has such a policy in effect, a supplemental payment will be computed for the current month.

(1) The supplemental payment for a month shall equal the maximum portion of the total support collected in that month which would not reduce the assistance payment if paid directly to the family. In determining this amount, the State agency will—

(i) First consider income from sources other than the support collection; and

(ii) Include in the amount of support collected the maximum amount of any arrearages paid which would not cause ineligibility if paid directly to the family.

(2) The supplemental payment will be computed as follows:

(i) The State IV-A agency determines the assistance payment which would result from treating as income to the family the largest amount of the month's child support collection, including arrearages, that will not cause ineligibility. Using that assistance payment, and using that amount of the support collection as countable income, disposable income is computed.

(ii) The State agency then determines the amount of the assistance payment for which the family would be eligible if there were no support collection. Using that assistance payment, disposable income is again computed.

(iii) The supplemental payment is the amount of disposable income as computed in step (i) less the amount of disposable income as computed in step (ii).

(iv) *Examples:*

Example 1. The State computes the assistance payment by subtracting income from the need standard and pays the deficit or a maximum by family size, whichever is less: (All figures are assumed and do not include income from any other source.)

Step (i): Treating countable support payment as income. Subtract a countable support payment of \$100 from a need standard

of \$300. The deficit is \$200. Assume the State's maximum for this family size is \$150; therefore, the assistance payment would be \$150. The assistance unit would have a \$150 assistance payment and the \$100 countable support payment for a total disposable income of \$250.

Step (ii): Not treating countable support payment as income. There is no income to subtract from the need standard. Thus the assistance payment would be the maximum of \$150 for this family size, which would also be the disposable income.

Step (iii): Taking the difference. The supplemental payment is the difference between the disposable income computed under steps (i) and (ii), \$250 minus \$150, or \$100.

Example 2. The State computes the assistance payment by subtracting income from a reduced need standard and pays the deficit or a maximum by family size, whichever is less. Assume a need standard of \$400, a ratable reduction of 70%, and a maximum assistance payment of \$200. Also assume a \$500 total child support collection for the month, \$200 of which is the current month's support obligation. The State's minimum payment is \$5.

Step (i): Treating countable support payments as income. Determine the largest part of the \$500 child support collection which would not cause ineligibility if counted as income to the assistance unit. This would be \$279 because the State's reduced need standard is \$280 (70% of \$400) and any amount of income over \$279 would make the family ineligible. The deficit would be \$1. The assistance unit would not receive an assistance payment, however, they would have the \$279 support payment as disposable income. No assistance payment is made but the family remains eligible under § 233.20(a)(3)(viii) (C) and (D).

Step (ii): Not treating countable support payment as income. There is no income to subtract from the reduced need standard, thus the assistance payment would be the maximum of \$200 for this family size, which would also be the disposable income.

Step (iii): Taking the difference. The supplemental payment is the difference between the disposal incomes computed under steps (i) and (ii), \$280 minus \$200, or \$80.

(c) A supplemental payment under this section may either be added to the assistance payment for which the unit is otherwise eligible, to make a new total assistance payment for the month or be issued separately. In the examples in paragraph (b)(2)(iv) of this section, the new total assistance payments would be \$250 (\$150 plus

\$100) in Example 1, and \$280 (\$200 plus \$80) in Example 2.

(51 FR 29229, Aug. 15, 1986)

§ 232.30 Cost of staff of special administrative units.

Cost of staff of Special Administrative Units (SAUs) providing social and supportive services under the Work Incentive (WIN) program is subject to FFP under title IV-A in all jurisdictions, pursuant to section 403(d) of the Act and 45 CFR 224.14(d). Cost of staff who solely perform other social service functions is not eligible for FFP under title IV-A, except in Puerto Rico, the Virgin Islands, and Guam.

(41 FR 37781, Sept. 8, 1976, as amended at 47 FR 17508, Apr. 23, 1982)

§ 232.40 Claiming good cause for refusing to cooperate.

(a) *Opportunity to claim good cause.* The plan shall provide that an applicant for, or recipient of, AFDC will have the opportunity to claim good cause for refusing to cooperate as required by § 232.12.

(b) *Notice to applicant or recipient.* (1) The plan shall provide that: (i) Prior to requiring cooperation under § 232.12, the State or local agency will notify the applicant or recipient of the right to claim good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination;

(ii) The notice will be in writing, with a copy furnished to the applicant or recipient; and

(iii) The applicant or recipient and the caseworker will acknowledge that the applicant or recipient received the notice by signing and dating a copy of the notice, which will be placed in the case record.

(2) The notice may be in two parts. If the State elects a two part notice:

(i) The first notice shall: (A) Advise the applicant or recipient of the potential benefits the child may derive from the establishment of paternity and securing support;

(B) Advise the applicant or recipient that by law, cooperation in establish-

ing paternity and securing support is a condition of eligibility for AFDC;

(C) Advise the applicant or recipient of the sanction provided by § 232.12 for refusal to cooperate without good cause;

(D) Advise the applicant or recipient that good cause for refusal to cooperate may be claimed; and that if the State or local agency determines, in accordance with this section, that there is good cause, the applicant or recipient will be excused from the cooperation requirement; and

(E) Advise the applicant or recipient that upon request, or following a claim of good cause, the agency will provide further notice with additional details concerning good cause.

(ii) The second notice, which will be provided promptly upon request of the applicant or recipient or following a claim of good cause, shall:

(A) Indicate that the applicant or recipient must provide corroborative evidence of a good cause circumstance (as specified in § 232.43 (b) and (f)) and must, when requested, furnish sufficient information to permit the State or local agency to investigate the circumstances;

(B) Inform the applicant or recipient that upon request, the State or local agency will provide reasonable assistance in obtaining the corroborative evidence;

(C) Inform the applicant or recipient that on the basis of the corroborative evidence supplied and the agency's investigation if necessary, the State or local agency will determine whether cooperation would be against the best interests of the child for whom support would be sought;

(D) List the circumstances (as specified in § 232.42) under which cooperation may be determined to be against the best interests of the child;

(E) Inform the applicant or recipient that the State Child Support Enforcement agency may review the State or local agency's findings and basis for a good cause determination and may participate in any hearings concerning the issue of good cause; and

(F) As applicable, (see § 232.49) inform the applicant or recipient that

either: The State Child Support Enforcement agency will not attempt to establish paternity and collect support in those cases where the applicant or recipient is determined to have good cause for refusing to cooperate; or the State Child Support Enforcement agency may attempt to establish paternity and collect support in those cases where the State or local agency determines that this can be done without risk to the applicant or recipient if done without their participation.

(3) The State or local agency may, at its option, provide a single combined notice that contains all of the elements in paragraphs (b) (2) (i) and (ii) of this section.

(4) Appendix A to this Part 232 is a suggested two part notice format that meets the requirements of this section.

(c) *Requirements upon applicant or recipient.* (1) The plan shall provide that an applicant for, or recipient of, AFDC who refuses to cooperate and who claims to have good cause for refusing to cooperate has the burden of establishing the existence of a good cause circumstance. Such applicant or recipient will be required to:

(i) Specify the circumstances (see § 232.42) that the applicant or recipient believes provide sufficient good cause for not cooperating.

(ii) Corroborate the good cause circumstances in accordance with § 232.43; and

(iii) If requested, provide sufficient information (such as the putative father or absent parent's name and address, if known) to permit an investigation pursuant to § 232.43(g).

(2) The plan shall provide that if the requirements of paragraph (c)(1) of this section are not met, the State or local agency shall on that basis determine that good cause does not exist.

[43 FR 45747, Oct. 3, 1978]

§ 232.41 Determination of good cause for refusal to cooperate.

The plan shall provide that:

(a) For each applicant for or recipient of AFDC who claims to have good cause, the State or local agency will determine, in accordance with §§ 232.40, 232.42 and 232.43, whether good cause exists.

(b) The State or local agency's final determination that good cause does, or does not exist will:

(1) Be in writing;

(2) Contain the agency's findings and basis for determination; and

(3) Be entered into the AFDC case record.

(c) The State or local agency's determination of whether or not good cause exists will be made within a State established time standard that does not exceed 45 days from the day the good cause claim is made. The State or local agency may exceed this time standard only where the case record documents that the agency needs additional time because the information required to verify the claim cannot be obtained within the time standard or that the claimant did not provide corroborative evidence within the period required by § 232.43(b).

(d) If the State or local agency determines that good cause does not exist:

(1) The applicant or recipient will be so notified and afforded an opportunity to cooperate, withdraw the application for assistance, or have the case closed; and

(2) Continued refusal to cooperate will result in imposition of the sanction provided by § 232.12.

[43 FR 45748, Oct. 3, 1978]

§ 232.42 Good cause circumstances.

(a) *Circumstances under which cooperation may be "against the best interests of the child."* The plan shall provide that the State or local agency will determine that cooperation in establishing paternity and securing support is against the best interests of the child only if:

(1) The applicant's or recipient's cooperation in establishing paternity or securing support is reasonably anticipated to result in:

(i) Physical harm to the child for whom support is to be sought;

(ii) Emotional harm to the child for whom support is to be sought;

(iii) Physical harm to the parent or caretaker relative with whom the child is living which reduces such person's capacity to care for the child adequately;

(iv) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces such person's capacity to care for the child adequately; or

(2) At least one of the following circumstances exists, and the State or local agency believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure support would be detrimental to the child for whom support would be sought.

(i) The child for whom support is sought was conceived as a result of incest or forcible rape;

(ii) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(iii) The applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish him for adoption, and the discussions have not gone on for more than 3 months.

(b) *Physical harm and emotional harm defined.* Physical harm and emotional harm: must be of a serious nature in order to justify a finding of good cause under paragraph (a)(1) of this section. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

(c) *Special considerations related to emotional harm.* The plan shall provide that, for every good cause determination which is based in whole or part upon the anticipation of emotional harm to the child, the parent or the caretaker relative, as provided for in paragraphs (a)(1) (ii) and (iv) of this section, the State or local agency will consider the following:

(1) The present emotional state of the individual subject to emotional harm;

(2) The emotional health history of the individual subject to emotional harm;

(3) Intensity and probable duration of the emotional impairment;

(4) The degree of cooperation to be required; and

(5) The extent of involvement of the child in the paternity establishment or

support enforcement activity to be undertaken.

[43 FR 45748, Oct. 3, 1978]

§ 232.43 Proof of good-cause claim.

The plan shall provide that:

(a) The State or local agency will make a good-cause determination based on the corroborative evidence supplied by the applicant or recipient only after it has examined the evidence and found that it actually verifies the good-cause claim.

(b) The applicant or recipient who claims good cause must provide corroborative evidence within 20 days from the day the claim was made. In exceptional cases where the State or local agency determines the applicant or recipient requires additional time because of the difficulty of obtaining the corroborative evidence, the agency shall allow a reasonable additional period of time upon approval by supervisory personnel.

(c) A good-cause claim may be corroborated with the following types of evidence:

(1) Birth certificates or medical or law enforcement records which indicate that the child was conceived as the result of incest or forcible rape;

(2) Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction;

(3) Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child or caretaker relative;

(4) Medical records which indicate emotional health history and present emotional health status of the caretaker relative or the child for whom support would be sought; or, written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker relative or the child for whom support would be sought;

(5) A written statement from a public or licensed private social agency that the applicant or recipient is being

assisted by the agency to resolve the issue of whether to keep the child or relinquish him for adoption; and

(6) Sworn statements from individuals other than the applicant or recipient with knowledge of the circumstances which provide the basis for the good-cause claim.

(d) If after examining the corroborative evidence submitted by the applicant or recipient, the State or local agency wishes to request additional corroborative evidence which is needed to permit a good-cause determination, the agency will:

(1) Promptly notify the applicant or recipient that additional corroborative evidence is needed; and

(2) Specify the type of document which is needed.

(e) Upon request, the State or local agency will:

(1) Advise the applicant or recipient how to obtain the necessary documents; and

(2) Make a reasonable effort to obtain any specific documents which the applicant or recipient is not reasonably able to obtain without assistance.

(f) Where a claim is based on the applicant's or recipient's anticipation of physical harm as specified and defined in § 232.42 (a) and (b), and corroborative evidence is not submitted in support of the claim:

(1) The State or local agency will investigate the good-cause claim when the agency believes that:

(i) The claim is credible without corroborative evidence; and

(ii) Corroborative evidence is not available.

(2) Good cause will be found if the claimant's statement and the investigation which is conducted satisfies the agency that the applicant or recipient has good cause for refusing to cooperate.

(3) A determination that good cause exists will be reviewed and approved or disapproved by supervisory personnel and the agency's findings will be recorded in the case record.

(g) The State or local agency may further verify the good-cause claim if the applicant's or recipient's statement of the claim required by § 232.40(c)(1)(i), together with the cor-

roborative evidence do not provide sufficient basis for making a determination. When the State or local agency determines that it is necessary, the agency may conduct an investigation of good-cause claims to determine that good cause does or does not exist.

(h) If it conducts an investigation of a good-cause claim, the State or local agency will:

(1) Contact the absent parent or putative father from whom support would be sought if such contact is determined to be necessary to establish the good-cause claim; and

(2) Prior to making such necessary contact, notify the applicant or recipient to enable the applicant or recipient to:

(i) Present additional corroborative evidence or information so that contact with the parent or putative father becomes unnecessary;

(ii) Withdraw the application for assistance or have the case closed; or

(iii) have the good-cause claim denied.

[43 FR 45749, Oct. 3, 1978]

§ 232.44 Participation by the State IV-D Agency.

The plan shall provide that:

(a) Prior to making a final determination of good cause for refusing to cooperate, the State or local agency will:

(1) Afford the IV-D agency the opportunity to review and comment on the findings and basis for the proposed determination; and

(2) Consider any recommendation from the IV-D agency.

(b) The State or local agency will give the IV-D agency the opportunity to participate in any hearing (under § 205.10 of this chapter) that results from an applicant's or recipient's appeal of any agency action under §§ 232.40 through 232.49.

[43 FR 45749, Oct. 3, 1978]

§ 232.45 Notice to the IV-D Agency.

The plan shall provide that:

(a) If the notice, required by § 235.70 of this chapter, has previously been provided to the IV-D agency, the State or local agency will promptly

report to the IV-D agency that good cause has been claimed;

(b) The State or local agency will promptly report to the IV-D agency all cases in which it has determined that there is good cause for refusal to cooperate and if applicable, its determination whether or not child support enforcement may proceed without the participation of the caretaker relative; and

(c) The State and local agency will promptly report to the IV-D agency all cases in which it has determined that there is not good cause for refusal to cooperate.

[43 FR 45749, Oct. 3, 1978]

§ 232.46 Granting or continuation of assistance.

The plan shall provide that the State or local agency will not deny, delay, or discontinue assistance pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements of §§ 232.40(c) and 232.43 to furnish corroborative evidence and information.

[43 FR 45750, Oct. 3, 1978]

§ 232.47 Periodic review of good cause determination.

The plan shall provide that the State or local agency will:

(a) Periodically review, not less frequently than at each redetermination of eligibility required by § 206.10(a)(9) of this chapter, those cases in which the agency has determined that good cause exists based on a circumstance that is subject to change; and

(b) If it determines that circumstances have changed such that good cause no longer exists, it will rescind its findings and proceed to enforce the requirements of § 232.12 of this chapter.

[43 FR 45750, Oct. 3, 1978]

§ 232.48 Record keeping in good cause.

The plan shall provide that the State will maintain records of the activities under this section that will make it possible to submit to the Department, upon request, data concerning:

(a) The total number of cases in which the applicant or recipient claimed to have good cause for refusing to cooperate;

(b) The number of cases in which the claim was made without corroborative evidence under the provisions of § 232.43(f);

(c) The total number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate;

(d) The number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate without corroborative evidence under the provisions of § 232.43(f);

(e) The number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate based solely on an examination of the corroborative evidence supplied by the applicant or recipient with no investigation;

(f) The number of cases where good cause was claimed by an applicant prior to receiving AFDC and the final determination that good cause did not exist was made after the applicant was determined to be eligible for AFDC;

(g) The number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate but there was a determination pursuant to § 232.49 that child support enforcement may proceed without the participation of the caretaker relative; and

(h) For those cases in which good cause was found, which of the circumstances specified in § 232.42 was found to exist.

[43 FR 45750, Oct. 3, 1978]

§ 232.49 Enforcement without the caretaker's cooperation.

The State plan may provide that:

(a) If the State or local agency makes a determination that good cause exists it will also make a determination of whether or not child support enforcement could proceed without risk of harm to the child or caretaker relative if the enforcement or collection activities did not involve their participation;

(b) This determination will be in writing, contain the agency's findings

and basis for determination, and be entered into the AFDC case record;

(c) If the IV-A agency excuses cooperation but determines that the IV-D agency may proceed to establish paternity or enforce support, it will notify the applicant or recipient to enable such individual to withdraw their application for assistance or have the case closed; and

(d) Prior to making a determination under this paragraph, the State or local agency will afford the IV-D agency an opportunity to review and comment on the findings and basis for the proposed determination and consider any recommendation from the IV-D agency.

[43 FR 45750, Oct. 3, 1978]

APPENDIX A—MODEL TWO-PART GOOD CAUSE NOTICE

This suggested two-part notice format meets the notice requirements of § 232.40(b)(2). The first notice should be provided prior to requiring the applicant's or recipient's cooperation. The second notice should be promptly provided if the applicant or recipient so requests or following a claim of good cause. Receipt of the notice will be acknowledged by the applicant's or recipient's and the worker's signatures. The signed copy should be placed in the AFDC case record with one copy retained by the applicant or recipient.

Before being used by a State this model should be adapted by substituting the appropriate agencies' names.

NOTICE OF REQUIREMENT TO COOPERATE AND RIGHT TO CLAIM GOOD CAUSE FOR REFUSAL TO COOPERATE IN CHILD SUPPORT ENFORCEMENT

BENEFITS OF CHILD SUPPORT ENFORCEMENT

Your cooperation in the child support enforcement process may be of value to you and your child because it might result in the following benefits:

- Finding the absent parent;
- Legally establishing your child's paternity;
- The possibility that support payments might be higher than your welfare grant; and
- The possibility that you and your children may obtain rights to future social security, veterans, or other government benefits.

WHAT IS MEANT BY COOPERATION?

The law requires you to cooperate with the welfare and child support agencies to get any support owed to you and any of the children for whom you want AFDC, unless you have good cause for not cooperating.

In cooperating with the welfare or child support agency, you may be asked to do one or more of the following things:

- Name the parent of any child applying for or receiving AFDC, and give information you have to help find the parent;
- Help determine legally who the father is if your child was born out of wedlock;
- Give help to obtain money owed to you or the children receiving AFDC; and
- Pay to the State any money which is given directly to you by the absent parent (you will continue to get your full AFDC grant from the State).

You may be required to come to the welfare office, child support office, or court to sign papers or give necessary information.

WHAT IS MEANT BY GOOD CAUSE?

You may have good cause not to cooperate in the State's efforts to collect child support. You may be excused from cooperating if you believe that cooperation would not be in the best interest of your child, and if you can provide evidence to support this claim.

IF YOU DO NOT COOPERATE AND YOU DO NOT HAVE GOOD CAUSE

- You will be ineligible for AFDC.
- Your children will still be eligible for AFDC for their own needs. Your children's grant will go to another person, called a "protective payee."

HOW AND WHEN YOU MAY CLAIM GOOD CAUSE

• If you want to claim good cause, you must tell a worker that you think you have good cause. You can do this at any time you believe you have good cause not to cooperate.

• If you claim "good cause" you must be given another notice. This second notice will explain the circumstances under which the Welfare Agency may find good cause, and the type of evidence or other information the Welfare Agency needs to decide your claim. You may also ask for this second notice to help you decide whether or not to claim good cause.

I have read this notice concerning my right to claim good cause for refusing to cooperate.

(Signature of applicant/recipient)

(Date)

I have provided the applicant/recipient with a copy of this notice.

(Signature of worker)

(Date)

SECOND NOTICE OF RIGHT TO CLAIM GOOD CAUSE FOR REFUSAL TO COOPERATE IN CHILD SUPPORT ENFORCEMENT

GOOD CAUSE CIRCUMSTANCES

You may claim to have good cause for refusing to cooperate if you believe that such cooperation would not be in the best interests of your child. The following are circumstances under which the Welfare Agency may determine that you have good cause for refusing to cooperate:

- Cooperation is anticipated to result in serious physical or emotional harm to the child;
- Cooperation is anticipated to result in physical or emotional harm to you which is so serious it reduces your ability to care for the child adequately;
- The child was born after forcible rape or incest;
- Court proceedings are going on for adoption of the child; or
- You are working with an agency helping you to decide whether to place the child for adoption.

PROVING GOOD CAUSE

It is your responsibility to:

• Provide the Welfare Agency with the evidence needed to determine whether you have good cause for refusing to cooperate (If your reason for claiming good cause is your fear of physical harm and it is impossible to obtain evidence, the Welfare Agency may still be able to make a good cause determination after an investigation of your claim.)

• Give the necessary evidence to the agency within 20 days after claiming good cause. The Welfare Agency will give you more time only if it determines that more than 20 days are required because of the difficulty in obtaining the evidence.

The Welfare Agency may:

- Decide your claim based on the evidence which you give to the agency, or
- Decide to conduct an investigation to further verify your claim. If the Welfare Agency decides an investigation is needed, you may be required to give information, such as the absent parent's name and address, to help the investigation. The agency

will not contact the absent parent without first telling you.

NOTE: If you are an applicant for assistance, you will not receive your share of the grant until you have given the agency the evidence needed to support your claim, and, if requested, the information needed to permit an investigation of your claim.

EXAMPLES OF ACCEPTABLE EVIDENCE

The following are examples of acceptable kinds of evidence the Welfare Agency can use in determining if good cause exists.

If you need help in getting a copy of any of the documents, ask the Welfare Agency. The Welfare Agency will give you reasonable assistance which is needed to help you obtain the necessary documents to support your claim.

- Birth certificates, or medical or law enforcement records, which indicate that the child was conceived as the result of incest or forcible rape;
- Court documents or other records which indicate that legal proceedings for adoption are pending in court;
- Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the alleged or absent father might inflict physical or emotional harm on you or the child;
- Medical records which indicate emotional health history and present health status of you or the child for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of you or the child;
- A written statement from a public or private agency confirming that you are being assisted in resolving the issue of whether to keep or give up the child for adoption; and
- Sworn statements from individuals, including friends, neighbors, clergymen, social workers, and medical professionals who might have knowledge of the circumstances providing the basis of your good cause claim.

CHILD SUPPORT AGENCY PARTICIPATION AND ENFORCEMENT

The Child Support Enforcement Agency may review the Welfare Agency's findings and the basis for a good cause determination in your case. If you request a hearing regarding this issue of good cause for refusing to cooperate, the Child Support Enforcement Agency may participate in that hearing.

The Notice must include one of the following statements, as applicable depending on the State plan option chosen. See § 232.49.

Option 1

If you are found to have good cause for not cooperating, the Child Support Enforcement Agency may attempt to establish paternity or collect support only if the Welfare Agency determines that this can be done without risk to you or your child. This will not be done without first telling you.

Option 2

If you are found to have good cause for not cooperating, the Child Support Enforcement Agency will not attempt to establish paternity or collect support.

I have read this notice concerning my right to claim good cause for refusing to cooperate.

(Signature of applicant/recipient)

(Date)

I have provided the applicant/recipient with a copy of this notice.

(Signature of worker)

(Date)

[43 FR 45750, Oct. 3, 1978]

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

- Sec.
- 233.10 General provisions regarding coverage and eligibility.
 - 233.20 Need and amount of assistance.
 - 233.21 Budgeting methods for OA, AB, APTD, and AABD.
 - 233.22 Determining eligibility under prospective budgeting.
 - 233.23 When assistance shall be paid under retrospective budgeting.
 - 233.24 Retrospective budgeting; determining eligibility and computing the assistance payment in the initial one or two months.
 - 233.25 Retrospective budgeting; computing the assistance payment after the initial one or two months.
 - 233.26 Retrospective budgeting; determining eligibility after the initial one or two months.

- Sec.
- 233.27 Supplemental payments under retrospective budgeting.
 - 233.28 Monthly reporting.
 - 233.29 How monthly reports are treated and what notices are required.
 - 233.32 Payment and budget months (AFDC).
 - 233.33 Determining eligibility prospectively for all payment months (AFDC).
 - 233.34 Computing the assistance payment in the initial one or two months (AFDC).
 - 233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).
 - 233.36 Monthly reporting (AFDC).
 - 233.38 Waiver of monthly reporting and retrospective budgeting requirements; AFDC.
 - 233.37 How monthly reports are treated and what notices are required (AFDC).
 - 233.39 Age.
 - 233.40 Residence.
 - 233.50 Citizenship and alienage.
 - 233.51 Eligibility of sponsored aliens.
 - 233.52 Overpayment to aliens.
 - 233.53 Support and maintenance assistance (including home energy assistance) in AFDC.
 - 233.60 Institutional status.
 - 233.70 Blindness.
 - 233.80 Disability.
 - 233.90 Factors specific to AFDC.
 - 233.100 Dependent children of unemployed parents.
 - 233.106 Denial of AFDC benefits to strikers.
 - 233.110 Foster care maintenance and adoption assistance.
 - 233.120 Emergency assistance to needy families with children.
 - 233.145 Expiration of medical assistance programs under titles I, IV-A, X, XIV and XVI of the Social Security Act.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

§ 233.10 General provisions regarding coverage and eligibility.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI, of the Social Security Act must:

(1) Specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not

result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act. Under this requirement:

- (i) A State shall impose each condition of eligibility required by the Social Security Act; and
- (ii) A State may:

(A) Provide more limited public assistance coverage than that provided by the Act only where the Social Security Act or its legislative history authorizes more limited coverage;

(B) Impose conditions upon applicants for and recipients of public assistance which, if not satisfied, result in the denial or termination of public assistance, if such conditions assist the State in the efficient administration of its public assistance programs, or further an independent State welfare policy, and are not inconsistent with the provisions and purposes of the Social Security Act.

(iii) There must be clarity as to what groups are included in the plan, and which are within, and which are outside, the scope of Federal financial participation.

(iv) Eligibility conditions must be applied on a consistent and equitable basis throughout the State.

(v) A plan under title XVI must have the same eligibility conditions and other requirements for the aged, blind, and disabled, except as otherwise specifically required or permitted by the Act.

(vi) Eligibility conditions or agency procedures or methods must not preclude the opportunity for an individual to apply and obtain a determination of eligibility or ineligibility.

(vii) Methods of determining eligibility must be consistent with the objective of assisting all eligible persons to qualify.

(2) Provide that the State agency will establish methods for identifying the expenditures for assistance for any groups included in the plan for whom Federal financial participation in assistance may not be claimed.

(3) In addition, a State plan under title IV-A, X, XIV, or XVI of the Act, must: Provided that no aid or assistance will be provided under the plan to an individual with respect to a

period for which he is receiving aid or assistance under a State plan approved under any other of such titles or under title I of the Act.

(b) *Federal financial participation.*

(1) The provisions which govern Federal financial participation in assistance payments are set forth in the Social Security Act, throughout this chapter, and in other policy issuances of the Secretary. Where indicated, State plan provisions are prerequisite to Federal financial participation with respect to the applicable group and payments. State plan provisions on need, the amount of assistance, and eligibility determine the limits of Federal financial participation. Federal financial participation is excluded from assistance payments in which the State refuses to participate because of the failure of a local authority to apply such State plan provisions.

(2) The following is a summary statement regarding the groups for whom Federal financial participation is available. (More detailed information is given elsewhere.)

(i) OAA—for needy individuals under the plan who are 65 years of age or older.

(ii) AFDC—for:

(a) Needy children under the plan who are:

(1) Under the age of 18, or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19;

(2) Deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or unemployment of a principal earner, and

(3) Living in the home of a parent or of certain relatives specified in the Act.

(b) The parent or other caretaker relative of a dependent child and, in certain situations, the parent's spouse.

(iii) AB—for needy individual's under the plan who are blind.

(iv) APTD—for needy individuals under the plan who are 18 years of age or older and permanently and totally disabled.

(v) AABD—for needy individuals under the plan who are aged, blind, or