

15.3 CHILD SUPPORT REQUIREMENTS AND PROCEDURES (WV WORKS, AFDC MEDICAID AND AFDC-RELATED MEDICAID)

Federal law mandates that efforts be made to locate absent parents, establish paternity and/or obtain support for the children. The specified relative receiving WV WORKS, or the specified relative included in an AFDC Medicaid or AFDC-Related Medicaid AG, must cooperate with child support activities and redirect to the Bureau for Child Support Enforcement (BCSE) any child support payments received.

The major responsibility for this effort rests with the BCSE through its staff of Legal Assistants.

In addition, the Worker has the following responsibilities:

- To explain the requirements and benefits of BCSE services, including the right of the specified relative to claim good cause for refusal to cooperate
- To refer appropriate cases to the Legal Assistant. Referral is accomplished by data system exchange or DHS-1.
- To evaluate evidence presented if the client claims good cause
- To determine if good cause for failure to cooperate with BCSE exists
- For WV WORKS to apply the penalty for refusal without good cause to cooperate or redirect child support payments

The following information provides details about the responsibilities of the Worker, the Legal Assistant, and the client in the child support process.

A. OFS-AP-1, ACKNOWLEDGEMENT OF AUTOMATIC ASSIGNMENT OF SUPPORT RIGHTS AND OF COOPERATION REQUIREMENTS

The purpose of the OFS-AP-1 is to assure that affected clients know of the automatic assignment of support rights to the State and understand the benefits, requirements and rights associated with BCSE.

NOTE: While there is no penalty for Medicaid recipients who refuse to redirect support payments, they must be instructed that being referred to BCSE automatically triggers income withholding, whenever there is an existing court order for support and an identifiable source of income.

1. Who Is Required To Complete The OFS-AP-1

The OFS-AP-1 must be completed for:

a. Applicants

(1) AFDC Medicaid and AFDC-Related Medicaid

The OFS-AP-1 must be completed when a child has an absent parent(s) and the specified relative is included in the AG. This applies regardless of the Medicaid coverage group in which the child(ren) is included.

(2) WV WORKS

The OFS-AP-1 must be completed when there is at least one child included in the AG who has an absent parent(s). This includes children who receive SSI and are included in the WV WORKS AG.

b. Recipients

The OFS-AP-1 must be completed for active cases as follows:

(1) AFDC Medicaid and AFDC-Related Medicaid

- When the specified relative is in the AG; and
- At least one child in the AG has a parent(s) who is absent due to death, desertion, divorce or paternity not established; or
- A child who has a parent(s) absent for the above reasons is added to the AG. This applies regardless of the Medicaid coverage group in which the child(ren) is included.

(2) WV WORKS

- When a child is in an AG with no parent and a parent is then added, that parent must sign.

- When a child who has an absent parent, including a child who receives SSI, is added to the AG.

2. Instructions for completion:

- Complete in triplicate.
- Worker and client must sign all copies.
- Enter the case name and case number in the indicated spaces on the form.

- Enter a check mark in the block beside each paragraph number to indicate that the client understands the information.
- The specified relative must sign the form. If the parent is also in the home, he must sign the form.
- Distribute copies to the client and Legal Assistant, and file one in the case record. If no referral is made, the extra copy is filed in the case record.

3. Procedure When the Client Refuses to Sign

When the client refuses to sign the OFS-AP-1, the action taken depends upon the reason for the refusal. When the client indicates that he will not sign the OFS-AP-1 and, in doing so, indicates that he will not cooperate with BCSE, the Worker must determine if good cause exists for the refusal. If good cause does exist, no BCSE action is required or taken and no penalty is applied to the client. If good cause does not exist, the Medicaid or WV WORKS case is referred to BCSE and the penalty described in item H below is applied. The Worker must record in RAPIDS the circumstances involved in the determination of good cause.

When the client indicates that he will not sign the OFS-AP-1, but indicates that he will cooperate with BCSE after referral, the Medicaid or WV WORKS case is referred to BCSE and no penalty is applied. The Worker must record in RAPIDS that the content and purpose of the form were explained to the client, that he refused to sign, the reason given for the refusal, that the client has indicated that he will cooperate with BCSE after the referral. The Worker must provide the client with an unsigned copy of the OFS-AP-1 and this must also be recorded in RAPIDS.

NOTE: There are some circumstances under which a letter is automatically generated to the absent parent(s) from the BCSE data system (OSCAR) as soon as the case is referred through RAPIDS. Therefore, it is important that the client be given the opportunity to establish good cause for not cooperating prior to the data exchange between RAPIDS and OSCAR. If the case is approved, or benefits added to an existing case, prior to verification of the good cause claim, the claim of

having good cause that is pending verification, as entered into RAPIDS, will prevent the automatic production of a notice to the absent parent by the OSCAR system.

NOTE: For WV WORKS cases, refusal or other failure to sign the OFS-AP-1 does not constitute failure to cooperate with BCSE requirements as shown on the PRC. The above instructions are followed and no sanction is applied.

B. BCSE REFERRALS

Except when court-ordered public service and other are the specific reasons for AFDC Medicaid and AFDC-Related Medicaid continued absence, a referral to BCSE must be made. The referral is automated in RAPIDS. See the RAPIDS User Guide.

All WV WORKS recipients who are children with at least one absent parent, must be referred. In addition, a currently unmarried minor parent who is unable to live with her parent(s) (See Section 9.21,A,3) must be referred.

Clients who claim and establish good cause are not required to cooperate with BCSE, but a referral is automatically made by the data system. APNC in RAPIDS indicates good cause.

C. GOOD CAUSE

The client is required to cooperate unless good cause is established.

If the client who refuses to cooperate asserts that one or more of the factors listed below is the reason for non-cooperation, a good cause claim has been made. A client who refuses to cooperate and who gives as the reason some factor other than one of those listed below is considered to have refused to cooperate without claiming good cause.

1. Definition of Good Cause

The client has good cause for refusal to cooperate with BCSE if one of the following conditions exists:

- The child was conceived as the result of incest or forcible rape.
- Legal proceedings for the adoption of the child are pending.

- The client is currently being assisted by the Department or by a licensed private social agency to resolve the issue of whether to keep the child or to relinquish him for adoption and the discussions have not gone on for more than three months.
- The client's cooperation in establishing paternity or securing support is reasonably anticipated to result in:
 - Physical or emotional harm to the child for whom support is being sought; or
 - Physical or emotional harm to the parent or other specified relative with whom the child lives, which would reduce such person's capacity to care for the child adequately. A finding of good cause for emotional harm may only be based upon evidence of an emotional impairment that substantially affects the parent or other relative's functioning.

In determining good cause based in whole or in part upon the anticipation of emotional harm to the child, the parent or the other specified relative, the Worker must consider the following:

- The present emotional state of the individual;
- The emotional health history of the individual;
- The intensity and probable duration of the emotional impairment; and
- The extent of involvement of the child in the paternity establishment of support enforcement activity to be undertaken.

2. When the Client Refuses to Cooperate Prior to BCSE Referral

If the client indicates to the Worker, prior to BCSE referral, that he does not intend to cooperate in BCSE activities, the Worker must determine if good cause exists for the refusal.

If good cause does exist, no BCSE action is required or taken and no penalty is applied to the client. If good cause does not exist, the WV WORKS case is referred to BCSE and the penalty described in Item H below is applied. The Worker must record in RAPIDS the circumstances involved in the determination of good cause.

NOTE: There are some circumstances under which a letter is automatically generated to the absent parent(s) from the BCSE data system (OSCAR) as soon as the case is referred through RAPIDS. Therefore, it is important that the client be given the opportunity to establish good cause for not cooperating prior to the data exchange between RAPIDS and OSCAR. If the case is approved, or benefits added to an existing case, prior to verification of the good cause claim, the claim of having good cause that is pending verification, as entered into RAPIDS, will prevent the automatic production of a notice to the absent parent by the OSCAR system.

For WV WORKS cases, a sanction is applied when the client fails to comply with the child support requirements in Part 1 of the PRC.

3. When The Client Claims Good Cause For Refusal To Cooperate Prior To BCSE Referral

When a client claims good cause prior to referral, the Worker makes a determination according to the procedure in item 4 below.

If there is evidence to immediately establish good cause, the Worker notifies BCSE at the time of referral that good cause has been established.

NOTE: There are some circumstances under which a letter is automatically generated to the absent parent(s) from the BCSE data system (OSCAR) as soon as the case is referred through RAPIDS. Therefore, it is important that the client be given the opportunity to establish good cause for not cooperating prior to the data exchange between RAPIDS and OSCAR. If the case is approved, or benefits added to an existing case, prior to verification of the good cause claim, the claim of having good cause that is pending verification, as entered into RAPIDS, will prevent the automatic production of a notice to the absent parent by the OSCAR system.

If good cause is not established, the Worker notifies BCSE at the time of referral that good cause was claimed but not established. If BCSE then notifies the Worker that the client has failed to cooperate, the Worker sends the notification of sanction.

4. When the Client Claims Good Cause for Refusal to Cooperate After BCSE Referral

When the client claims good cause after the referral, the Legal Assistant refers the case back to the Worker for a determination of good cause. The Worker enforces the cooperation requirement; however, the Legal Assistant must participate in the good cause determination in an advisory capacity. The Worker must give the Legal Assistant an opportunity to review and comment on the good cause investigation and the decision. The Worker must consider the recommendation of the Legal Assistant in making the final decision.

The procedure to determine good cause is as follows:

- Form OFS-AP-1A, Notice to Individual Who Has Claimed Good Cause for Refusal to Cooperate in Child Support Activities, must be completed by the Worker during a face-to-face contact with the client who signed or was interviewed about the OFS-AP-1.

The Worker must be sure the client understands the information on Form OFS-AP-1A. Two original forms must be completed and signed by the Worker and the client. One original is given to the client and the other filed in the case record.

- The client has the primary responsibility for obtaining the verification needed to establish good cause. Refer to Chapter 4. The client must provide the verifications within 20 days of the date good cause is claimed.

In certain situations, it is acceptable to make a determination of good cause without verification. These situations are:

- The claim of good cause is based on the anticipation that cooperation will result in physical harm to the specified relative or the child; and

- The Worker believes, from the information provided by the client, that:
 - The claim is credible without corroborative evidence; or
 - Corroborative evidence is not available; and
 - The Worker and Supervisor agree that good cause exists.
- The Worker must determine if good cause exists within 45 days of the date good cause is claimed.
- If good cause is established, the Worker must refer the case to the Legal Assistant in writing (DHS-1) and indicate the basis for good cause. The case is not acted on by BCSE. At each redetermination of eligibility, the Worker determines if good cause still exists. If good cause no longer exists the Worker must notify the client and take appropriate action.
- If good cause is not established, the Worker initiates the penalty by sending the client an ES-NL-C. The Worker notifies the Legal Assistant that good cause was claimed, but not established, and that the penalty or sanction for refusal to cooperate has been applied.

D. REDIRECTION OF CHILD SUPPORT PAYMENTS (WV WORKS)

All child support payments made on behalf of children who are recipients of WV WORKS must be redirected to BCSE.

Exceptions are as follows:

- The case is exempt from referral to the Legal Assistant due to good cause
- The specified relative refused to cooperate with child support activities after referral to BCSE and good cause was established.
- If paternity has not been established, but the putative father voluntarily makes child support payments, such payments are not required to be redirected.

After receiving a referral, the Legal Assistant arranges for support payments to be sent directly to BCSE rather than the specified relative. If direct payments to BCSE cannot be arranged, the client must forward the payment to BCSE. Failure to do so will result in application of a sanction for WV WORKS for failure to cooperate with child support activities.

NOTE: While there is no penalty for Medicaid recipients who refuse to redirect support payments, they must be instructed that being referred to BCSE automatically triggers income withholding, whenever there is an existing court order for support and an identifiable source of income.

E. REDIRECTION OF SPOUSAL SUPPORT (WV WORKS)

Spousal support must be redirected when:

- The spousal support (alimony or separate maintenance) is court-ordered; and
- It is paid by the absent parent to the parent who is the caretaker relative.

All policies and procedures applicable to child support which must be redirected also apply to spousal support which must be redirected to BCSE.

See Chapter 10 for counting redirected support.

Spousal support is not redirected when any of the following conditions exist:

- The parent is not included in the payment; or
- The caretaker relative receiving the spousal support is not the parent of the children receiving WV WORKS; or
- The parent who is the caretaker relative is receiving spousal support from a spouse who is not the parent of the children receiving cash assistance; or
- The spousal support is not court-ordered.

Spousal support which is not required to be redirected is considered unearned income and is counted as income. The \$50 Child Support Disregard is not an allowable deduction from spousal support.

F. REDIRECTION OF CHILD/SPOUSAL SUPPORT IN SPECIAL SITUATIONS

If the absent parent is ordered by the court to make child support payments in the form of in-kind payments (provision of food, clothing, etc.) or third-party payments (direct payment of the rent or mortgage, etc.), the payment cannot be redirected.

If the court order specifies that part of the child support obligation is to be paid in cash and part by third-party or in-kind method, the portion paid in cash must be redirected.

A child may receive statutory benefits (RSDI, VA benefits, etc.) on the basis of his own entitlement, as a dependent of the absent parent who is the primary beneficiary. This benefit amount is not considered child support and is not redirected even though the court order may refer to such income as a source of support to the child, or even as child support.

G. REDIRECTION AND INCOME WITHHOLDING FOR AFDC MEDICAID and AFDC-RELATED MEDICAID

Adult recipients of AFDC Medicaid and AFDC-Related Medicaid are required to cooperate with BCSE in establishing paternity and obtaining medical support as a condition of eligibility. The client must sign the assignment of medical support provision on the OFS-2.

When an AFDC Medicaid or AFDC-Related Medicaid referral is made to BCSE, the Legal Assistant must immediately implement income withholding for child support whenever possible. This action may not be declined or terminated by the Medicaid client. Collection of support must, thereafter, be made through BCSE and distributed as non-public assistance (NPA) payments.

NOTE: While there is no penalty for Medicaid recipients who refuse to redirect support payments, they must be instructed that being referred to BCSE automatically triggers income withholding whenever there is an existing court order for support and an identifiable source of income.

If the client refuses to cooperate in the establishment of paternity and in obtaining medical support, the Legal Assistant notifies the Worker. If the client has not claimed good cause, or if a claim is made and no good cause is determined, the penalty in item H below is applied.

H. PENALTIES FOR FAILURE TO COOPERATE (WV WORKS, AFDC Medicaid, AFDC-RELATED MEDICAID)

1. WV WORKS

The decision about the application of a sanction is made by the Worker. The case is sanctioned for failure to cooperate with BCSE requirements based on Part 1 of the PRC. See Chapter 13 for the WV WORKS sanction.

An mp, who is included in the payment, must always cooperate for the mp's included child (ren) or a sanction is imposed, unless good cause exists. An included MP, or other caretaker, must cooperate for the mp and the mp's siblings, if any, or a sanction is imposed, unless good cause exists. In addition, an included MP must cooperate for the mp's included child(ren), as required by BCSE. Failure to comply, without good cause, results in application of a sanction.

Failure, without good cause, of either the mp or the MP to meet the cooperation requirements results in one sanction. Failure, without good cause, of both to cooperate may result in 2 sanctions. However, if there is more than one absent parent for either the mp or the MP, or both, failure, without good cause, results in one sanction for the case.

2. AFDC Medicaid and AFDC-Related Medicaid

When the MP, or other caretaker, receives Medicaid under any coverage group, under any case number, and is required to cooperate with BCSE for a child who also receives Medicaid, the MP or other caretaker, becomes ineligible for failure, without good cause, to cooperate. The penalty lasts until the MP, or other caretaker, complies with BCSE requirements. See Section 16.1,E.

EXCEPTION: When the MP, or other caretaker, receives TM a penalty must not be applied.

I. COMMUNICATION BETWEEN THE WORKER AND THE LEGAL ASSISTANT

Communication between the Worker and the Legal Assistant continues until the case is closed, the child whose parent(s) is absent is removed from the AG, or the AFDC Medicaid or AFDC-Related Medicaid deprivation factor changes to unemployment, incapacity or death.

The Worker must notify the Legal Assistant, in writing, of the following:

- A good cause determination is being made and the Legal Assistant's comments and recommendations are being requested prior to a final decision.
- The client has requested a Fair Hearing as the result of the Department's finding that good cause for non-cooperation is not established.
- Should the Worker become aware of information which could help the Legal Assistant in obtaining support, this information must be shared.

The Legal Assistant must notify the Worker, in writing, of the following:

- The client refuses to cooperate in child support activities and the reason for the refusal.
- Information which affects eligibility or the amount of the payment.
- Change of address.
- Paternity is established.
- Information regarding a change in the deprivation factor or cause of absence is secured.
- The client refuses to redirect child support payments and/or refuses to repay child support payments which were not redirected.

Changes in case circumstances are automatically referred to BCSE through the data systems.