

CHAPTER 3-000 REQUIREMENTS FOR A MAINTENANCE PAYMENT FOR COURT AND TRIBAL WARDS: Court and tribal wards are eligible for payment if determined IV-E eligible.

{Effective }

3-001 Definition of a Court or Tribal Ward: A child becomes a court or tribal ward when his/her custody is committed to a court or other public agency. In order to receive payment from the Department, the agency must have a written agreement with the Department, ensuring that Title IV-E requirements are met. The agreement may be with a court or other public agency authorized under state law for the placement and supervision of children.

{Effective }

3-002 Application Form: Form EA-117 must be completed. It may be completed by a representative designated by the agency having custody of the ward.

3-003 Payment: To receive payment, a child shall meet the following requirements:

1. Custody of the child (see 479 NAC 3-003.01);
2. Service plan (see 479 NAC 3-003.02);
3. Living in a licensed foster care home or facility (see 479 NAC 3-003.03);
4. Residence (see 479 NAC 3-003.04);
5. Plan for self-support (see 479 NAC 3-003.05);
6. Social Security number (see 479 NAC 3-003.06);
7. Child support (see 479 NAC 3-003.07);
8. Resources (see 479 NAC 3-003.08);
9. Income (see 479 NAC 2-001.09);
10. Citizenship or alien status (see 479 NAC 2-001.10);
11. Deprivation (see 479 NAC 2-009.01A); and
12. Age (see 479 NAC 3-003.12).

3-003.01 Custody of the Child: To receive payment, the ward must have been placed in out of home care as the result of a physical or constructive removal from the home of a specified relative (see 479 NAC 2-009.01B1a) by means of a judicial determination by a county, district, separate juvenile, or tribal court that continuance in the home would be contrary to the child's welfare. (See 479 NAC 2-009.01B1.)

Note: If a child is returned to the home and subsequently removed again after six months or more, it is considered a new placement. There must be a new court order and a new determination of deprivation.

For payment for the child of a ward, see 479 NAC 2-002.10.

{Effective }

3-003.01A Specified Relatives: See 479 NAC 2-009.01B1.

3-003.01B Not Living in Specified Relative's Home: See 479 NAC 2-009.01B16.

3-003.02 Service Plan Information: The agency that has custody of the ward must have a service plan for the child that complies with the terms of the agreement with the Department. For procedures for permanency plan reviews, see 479-000-309.

3-003.03 Living in a IV-E Eligible Living Arrangement: See 479 NAC 2-009.01C.

3-003.04 Residence: To be eligible for assistance, the ward must be a Nebraska resident. A resident is defined as:

1. An individual living in the state; or
2. An individual who has been placed out-of-state but is under the jurisdiction of a Nebraska court that has a written agreement with the Department. The ward must be in a licensed child caring institution, licensed group home, or a licensed foster home.
{Effective }

3-003.05 Plan for Independent Living: The agency with custody of the child is responsible for the plan for independent living. See 479 NAC 2-001.05 ff.

3-003.06 Social Security Number (SSN): See 479 NAC 2-001.06 ff.

3-003.07 Child Support: Application for and acceptance of a IV-E payment results in a referral to CSE authorities who:

1. Establish a support obligation when none exists; and
2. Enforce support obligations.

3-003.07A Good Cause Claim:

3-003.07A1 Notification of Right to Claim Good Cause: The eligibility worker must inform the worker in the agency with custody of the right to claim good cause for pursuing child support.

The eligibility worker must accomplish this by giving the agency worker the pamphlet, CSE-PAM-50, explaining right to claim good cause for child support.

3-003.07A2 IM Worker's Responsibilities if Good Cause Claimed: If the agency worker claims good cause, the eligibility worker forwards a copy of Form IM-5 to the IV-D unit.

3-003.07B Termination of Assignment:

3-003.07B1 Partial Termination: A partial termination of assignment is automatically transmitted by the Central Office to the appropriate clerk of the district court when:

1. CSEU has been notified that an order for child support has been vacated or terminated; or
2. The ward's case has been closed or the assistance grant has been zeroed if child support payments were assigned or directed to the Department.

3-003.07B2 Final Termination: A final termination of assignment is automatically transmitted by the Central Office to the appropriate clerk of the district court when the assigned child support debt is satisfied.

3-003.07B3 Referral to the Child Support Enforcement Unit: The eligibility worker makes a referral to the IV-D unit no later than two working days after determination of eligibility. The worker makes a referral on each parent. A copy of all court orders must be forwarded to CSEU. When no support is ordered, the IV-D unit attempts to get an order for support.

3-003.08 Resources: The total equity value of available non-exempt resources of the ward is determined and compared with the established maximum for available resources which the ward may own and still receive a payment from the Department.

For examples of resources see 479 NAC 2-001.08.

3-003.08A Verification of Resources of the Ward: See 479 NAC 2-001.08A.

3-003.08B Definition of Available Resources: See 479 NAC 2-001.08B.

3-003.08B1 Unavailability of Resource: Regardless of the terms of ownership, if it can be documented in the case record that the resource is unavailable to the ward, the value of that resource is not used. The worker must consider the feasibility of the responsible person taking legal action to make the resource available. If the worker determines that legal action can be taken, the worker must allow the responsible person 60 days to initiate legal action. After 60 days, if the responsible person has not initiated legal action, the resource is counted. The resource is not considered available until the legal action is completed.

In evaluating the availability of benefit funds, such as funds raised by a benefit dance or auction, the worker must determine the purpose of the funds and if the ward has access to them.

The worker must monitor the status of an unavailable resource.

3-003.08B2 Excluded Resources: See 479 NAC 2-001.08B2.

3-003.08C Determination of Ownership of Resources: See 479 NAC 2-001.08C through 2-001.08C1b(1)(b).

3-003.08D Inheritance: See 479 NAC 2-001.08E.

3-003.08E Value and Equity: See 479 NAC 2-001.08F and 2-001.08F1.

3-003.08F Types of Resources: See 479 NAC 2-001.08G through 2-001.08G2a.

3-003.08F1 Non-Liquid Resources: See 479 NAC 2-001.08G2 and 2-001.09G2a.

3-003.08G Maximum Available Resources: The established maximum for available resources (real and personal property) which the ward may own and still receive payment from the Department is \$10,000.

For the resource level for NMAP, see 479 NAC 4-007.03
{Effective}

3-003.09 Income: See 479 NAC 2-001.09 through 2-001.09B. Court and tribal wards are not allowed to accumulate income before it is counted against the child's needs.

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3-003.09A Receipt of SSI: A ward who is receiving SSI is ineligible for payment from the Department.

3-003.09B Lump Sum Benefits: When a ward receives a nonrecurring payment, the lump sum is not considered income. Any unspent remainder is considered a resource in the month following the month of receipt or report.

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3-003.09B1 Income-Producing Policies: Income received from an insurance policy that supplements the ward's income while s/he is hospitalized or receiving medical care is treated as unearned income. These policies provide income regardless of the type of service being provided or the condition of the ward. If it is verified that the income was applied to medical bills, the income is not counted in the ward's budget.

Income is not counted from health insurance policies which pay the client directly for the purpose of reimbursement to the provider and which cover a specific service(s).

3-003.09B2 Financial Settlements: Insurance payments for damage to personal property caused by a disaster are not treated as a lump sum. The ward is allowed a reasonable period of time to repair or replace the property.

When a ward is a beneficiary of life insurance or receives property through inheritance, verified payment of debts or obligations of the deceased are subtracted from the settlement.

The worker shall document in the case record the availability of settlement or inheritance funds to the ward.

When a ward receives an insurance settlement or other lump sum, the worker deducts from the lump sum any bills relating to the cause of the settlement that the ward is obligated to pay.

3-003.09B2a Overpayment Due to Lump Sum: Any overpayment caused by a delay in reporting the lump sum must be recouped.

3-003.10 Receipt of Other Assistance: A ward must not receive assistance in two foster care units at the same time. This does not preclude the ward from being the payee for a payment made on behalf of the ward's child.

A payment may be authorized from IV-E funds for the initial month of placement in foster care even if the child was included in an ADC payment with a specified relative for the same month. The foster care payment is prorated from the date of placement. This is an exception to 468 NAC 2-022.01.

3-003.11 Computation of Payment: The worker computes payment using the ward's income from all sources. If the ward is eligible for a IV-E grant, s/he is also eligible for medical assistance without a separate application or budget computation. The following provisions govern the computation of payment. The payment is computed by subtracting the child's countable income from the standard.

3-003.11A Treatment of Income: See 479 NAC 2-001.11A.

3-003.11A1 Changes in Circumstances See 479 NAC 2-001.11A1.

3-003.11A2 General Rules: See 479 NAC 2-001.11A2.

3-003.11A3 Income as It Applies to Resources: See 479 NAC 2-001.11A4.

3-003.12 Age: A ward is eligible through the entire month of his/her 19th birthday if s/he is a full-time student regularly attending a secondary school, or the equivalent level of vocational or technical training (this does not include college). An 18-year-old is eligible through the month of graduation from high school or the equivalent level of vocational or technical training.

3-003.12A Definition of a Student: A student is an individual who is:

1. Age 17 or younger and attending a school, college, or university or a course of vocational or technical training designed to fit him/her for gainful employment, and includes a participant in the Job Corps Program; or

Note: A ward who is not yet age 18 is eligible while attending a college or university until the month of his/her 18th birthday.

2. Age 18 and registered full time and regularly attending a secondary school (or the equivalent level of vocational or technical training).

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3-003.12B Continued Enrollment: The worker must consider enrollment as continued through normal periods of class attendance, vacation, and recess unless the student graduates, drops out, is suspended or expelled, or does not intend to register for the next normal school term (excluding summer school).

3-004 Payments for Assistance: Money payments are made in behalf of a ward to the foster parent(s), group home, or child caring agency in which the ward resides. Only the ward is included in the standard of need. The standard filing unit does not apply to foster care cases.

A child must not receive foster care assistance in two foster care facilities for the same period of time.

3-004.01 Foster Home Payments: See 479 NAC 2-002.01.

3-004.02 Group Home or Child Caring Agency Payments: See 479 NAC 2-002.02.

3-004.03 Runaways: When a ward is determined a runaway, the worker must close the case.

3-004.04 Minor Parent: See 479 NAC 2-002.02.

3-004.05 Prorated Payment: Payment is made from the first of the month for the month of application, but no earlier than the date of court-ordered placement.

Payment is prorated for ongoing cases if the child moves from one facility, foster home, or group home to another.

The prorated payment is determined by dividing the maintenance payment by the actual number of days in the month and multiplying by the number of days in placement. Payment is made for the date of placement but not for the date of removal. When there is a contract with a child caring agency that specifies a per diem rate, the per diem rate is used for prorating. For date of medical eligibility, see 479 NAC 4-004.

3-004.06 Maintenance Payment: The representative of the court or agency completes the Foster Care Payment Determination using the same guidelines as Department workers.

3-004.07 Revision of Budget and Payment: See 479 NAC 2-002.05.

3-004.08 Incorrect Payments: See 479 NAC 2-002.06.

3-004.08A Underpayments: See 479 NAC 2-002.06A.

3-004.08B Overpayments: The agency must take all reasonable steps necessary to promptly correct overpayments. Overpayments over \$50 are recouped. The worker must record in the case record all steps taken to recoup any overpayments.

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The worker must first send a demand letter, giving the responsible person the choice of reimbursing all or part of the overpayment or having future assistance reduced. If the responsible person reimburses part of the overpayment, the remainder must be recouped by grant reduction. The worker must allow the responsible person ten days to respond to the demand letter. If the responsible person requests recoupment within the ten days, the worker must take necessary action at that time. If the responsible person does not respond within ten days, the worker must begin recoupment procedures in the first month possible, taking into account adequate and timely notice.

If the responsible person chooses to repay but fails to do so, the worker must immediately take necessary action to recoup the overpayment.

When the evidence clearly establishes that a responsible person willfully withheld information which resulted in an overpayment, the worker must refer the case to the Special Investigation Unit. Once a case has been referred to the Special Investigation Unit, the worker must take no action with regard to the prosecution of the suspected fraud except in accordance with instructions or approval by the Special Investigation Unit. However, the worker must complete normal case actions. Normal case actions include closing a case that is found to be ineligible and recovering overpayments.

If a case with an overpayment is closed or becomes MA only or MA with a share of cost, the agency must collect the overpayment if the ward becomes eligible for a grant at a future date. The worker must send a demand letter advising the responsible person that s/he is still liable for the overpayment.

3-005 Case Records: The case record must be complete and must contain facts to substantiate each action with respect to assistance payments.

3-006 Fraud: See 465 NAC 2-007 ff.

3-007 Annual Review: An eligibility review is required every 12 months. At the time of the review, the worker uses information provided by the agency with custody to determine if deprivation still exists based on the parent(s)' situation (see 479 NAC 2-009.01A2). Except for deprivation, all elements of the review, including income and resources, are based on the ward's circumstances. The worker in the agency with custody completes a new Income and Resources Data Form.

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3-007.01 Examples of Continued Deprivation: See 479-000-327.

3-007.02 Examples Where Deprivation No Longer Exists: See 479-000-327.

3-008 IV-E Eligibility: Court and tribal wards must be eligible for IV-E.
{Effective }

3-008.01 Family's Eligibility for ADC: See 479 NAC 2-009.01A ff.

3-008.01A No Active ADC Case: If there was no active ADC case at the time the petition was filed that led to the child's removal from the home, the eligibility worker must determine if the ward would have been eligible to receive ADC in the month of court proceedings or within six months of court proceedings if an application for ADC had been made. If information is not received from the court or other agency within 30 days, eligibility cannot be determined.

If a ward is physically or constructively removed from the home of a specified relative other than the parent, the parent's income and resources are not considered in determining the ward's eligibility for ADC in the month of judicial determination. Only income and resources actually available to the ward are taken into account in determining the ward's eligibility.

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