

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



February 17, 2010

CSS LETTER: 10-04

ALL IV-D DIRECTORS
 ALL COUNTY ADMINISTRATIVE OFFICERS
 ALL BOARDS OF SUPERVISORS

Reason for this Transmittal

- State Law or Regulation Change
- Federal Law or Regulation Change
- Court Order or Settlement Change
- Clarification requested by One or More Counties
- Initiated by DCSS

SUBJECT: PROVIDING CHILD SUPPORT SERVICES TO THIRD PARTIES

The purpose of this letter is to discuss the legal impact of the court decision *Plumas County Child Support Services vs. Ame R. Rodriguez* (2008) 161 Cal.App.4th 1021 and to clarify the policy for providing child support services to third parties in specific situations.

The Appellate Court in *Plumas v. Rodriguez* found that the local child support agency (LCSA) had no authority to bring an action for child support on behalf of the child's caregivers against the child's mother where the mother was the court ordered custodial parent (CP) receiving court ordered child support from the non custodial parent.

The *Plumas* decision has no impact on cases referred to DCSS from IV-A, IV-E, (45 CFR 302.31) Medicaid only cases (45 CFR 302.33(a)(ii)) or cases formerly assisted cases (45 CFR 302.33(a)(iii)). Federal and state law require the Department of Child Support Services (DCSS) to provide child support services in situations where public assistance is provided, such as welfare, foster care and Medicaid-only cases. If a non-parent, third-party caregiver receiving public assistance has been referred to the LCSA by the agency providing services, LCSAs must proceed with opening a case. Services must be continued after assistance has ended, unless the recipient requests that the case be closed.

The *Plumas* ruling only impacts cases where public assistance is not being provided and was not provided in the past, rights to child support have not been assigned, and no referral has been made by a public entity. The *Plumas* holding prohibits DCSS from providing services to third party caregivers that apply for IV-D services on behalf of children in their custody for whom the caregiver does not have legal guardianship.

Plumas should be limited to its facts. In *Plumas*, the caregivers were not guardians of the child. LCSAs should continue to provide child support services to third party applicants who are guardians of the person for the child in their custody. The court of appeal's observation that the caregivers could enforce a written agreement between the caregiver and the mother for compensation has no legal effect binding DCSS. Private

parties are free to enter into written agreements for compensation in exchange for care giving. Such contracts may be enforced under the provisions of the Civil Code. However, DCSS has no authority to enforce caregiver agreements and a written caregiver agreement does not establish a guardianship for the child. Accordingly, DCSS should not open a child support case based on an application of a third party caregiver with a written agreement, unless the caregiver is a guardian of the person for the child.

In instances where there is an existing order involving the parents as parties to the case but the child is living with a non-parent, third-party caregiver, child support payments may be re-directed to the caregiver. To re-direct payments, the CP, as court-designated payee, must provide written authorization for DCSS to forward payments received to the non-parent caregiver. The authorization must be signed by the CP and notarized unless the parent verifies his/her identity and signs the agreement in the presence of an LCSA representative. If authorized by the court-designated payee, payments could be directed to a third-party payee by changing the charging instructions.

If you have any questions or concerns regarding this matter, please contact Cindi Pocoroba at (916) 464-5883.

Sincerely,

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BILL OTTERBECK
Deputy Director

Attachment

Scenario Q&A
Plumas County Child Support Services vs. Ame R. Rodriguez

Scenario #1: The mother is the custodial parent. The father is ordered to pay \$500/month for support of the child and the mother opens a IV-D case. After living for some time with the mother, the child is sent to live with the father in another county in California. The father then opens a IV-D case to obtain support from the mother.

Question: How should the local child support agency (LCSA) proceed?

Answer: The decision in Plumas dealt specifically with the status of non-parent third-party caregivers. In Scenario #1 the parties are parents. The change in custody represents a change in circumstances that under the California Code of Regulations, Title 22 section 115525, requires a Review and Adjustment. The LCSA should obtain a guideline child support order and, if the mother is the obligor, open a case with the father as the recipient of services.

Scenario #2: The mother is the custodial parent. The father is ordered to pay \$500/month for support of the child and the mother opens a IV-D case. After living for some time with the mother, the child is sent to live with the grandmother in another county in California. The grandmother then requests IV-D services to obtain support from the father.

Questions: Does the LCSA have to open a case against the mother?
Can the LCSA re-direct payments?

Answer: In order for the grandmother to establish a new order she would have to obtain a guardianship of the person. Since both parents are obligated to support their children, a new case opened by a legal custodian would have to be established against both parents as outlined in CSS Letter 06-12.

To re-direct payments to a third-party caregiver, such as the grandmother in this scenario, the custodial parent must provide a written agreement authorizing the Department of Child Support Services to forward payments received from the non-custodial parent to the non-parent, third party caregiver. The custodial parent must sign the agreement and have the signature notarized or verify his/her identity and sign the agreement in the presence of an LCSA representative. If authorized by the custodial parent, payments could be directed to a third-party payee by changing charging instructions.

Scenario #3: The mother is the custodial parent. The father is ordered to pay \$500/month for support of the child and the mother opens a IV-D case. After living for some time with the mother, the child is sent to live with the grandmother in another county in California. The grandmother then opens a IV-D case to obtain support from the mother.

Questions: Can the LCSA open the case?
Can the LCSA sue the mother for support?

Answer: If the grandmother does not have guardianship of the person for the child, the LCSA should not open the case. If the grandmother obtains guardianship of the person, the LCSA should open a case against both parents.

Scenario #4: The child is living with the grandmother. The grandmother applies for aid and a service referral is sent to the LCSA.

Questions: Can the LCSA open the case?
Can the LCSA sue the mother for support?

Family Code 3951 (c) states, "Nothing in this section relieves a parent of the obligation to support a child during any period in which the state, county, or other governmental entity provides support for the child." Because the grandmother is a recipient of governmental aid, the LCSA should open a case against both parents.

Scenario #5: The child is living with an aided grandmother. The LCSA is enforcing orders against both the mother and the father when aid is discontinued.

Questions: Can the LCSA continue to enforce against the father?
Can the LCSA continue to enforce against the mother?

Answer: As long as the grandmother has not requested closure in writing, the LCSA should continue to enforce both orders. According to 45CFR302.33 (a)(iii) and FC 17415(e), a State must make services available to any individual who has been receiving IV-D services, but is no longer eligible for aid.