



Office of Children and Family Services

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Commissioner

Administrative Directive

Transmittal:	20-OCFS-ADM-17
To:	Commissioners of Social Services
Issuing Division/Office:	Division of Child Care Services
Date:	September 24, 2020
Subject:	Child Care Subsidy for Children Age 13 or Older With Special Needs
Suggested Distribution:	Directors of Social Services Directors of Services Directors of Temporary Assistance Supervisors of Day Care Supervisors of Temporary Assistance Child Care Assistance Staff
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Attachments:	Desk Aid: Child Care Eligibility for Families With a Special Needs Child Age 13 or Older

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
05-OCFS-ADM-03 91-ADM-34		18 NYCRR Part 415	410-w		

I. Purpose

The purpose of this Administrative Directive (ADM) is to provide local social services districts (districts) with direction regarding the provision of child care assistance funded under the New York State Child Care Block Grant (NYSCCBG) and Title XX of the federal Social Security Act for children with special needs who are age 13 or older.

II. Background

To be eligible to receive NYSCCBG funds, families must meet the following criteria:

- have family income at or below 200 percent of the state income standard (SIS),
- have resources that do not exceed one million dollars,
- have a need for child care services as part of a plan for self-support,
- not have a legally responsible person or caretaker available to provide care at the time when care is needed, and
- meet the criteria of one of the categories of eligible families.

There are three categories of families eligible for child care assistance under the NYSCCBG. The first category is families who are eligible for a child care guarantee; the second is families who are eligible if funds are available; and the third category is families who are eligible if funds are available and if the district includes them as eligible families in the child care section of the Child and Family Services Plan (CFSP).

In addition to family-level eligibility, each child in need of child care must meet the definition of “eligible child.” Title 18 of the Codes, Rules and Regulations of the State of New York (NYCRR) 415.1(b) defines “eligible child” for the purposes of receiving child care assistance. To meet the definition, two criteria must be met. First, the child must reside with a parent or caretaker who meets the programmatic and financial eligibility requirements for the particular type of child care services under which the family qualifies in 18 NYCRR 415.2. Second, the child must be one of the following:

- under 13 years of age;
- under 18 years of age and a child with special needs;
- under 18 years of age and under court supervision;
- under 19 years of age, a full-time student in a secondary school, or in an equivalent level of vocational or technical training, and a child with special needs; or
- under 19 years of age, a full-time student in a secondary school, or in an equivalent level of vocational or technical training, and under court supervision.

18 NYCRR415.1(c) defines “child with special needs” as a child who is incapable of caring for himself or herself and who has been diagnosed by a physician, licensed or certified psychologist, or other professional with the appropriate credentials to make such a diagnosis, as having one or more of the conditions listed below to such a degree that special education or related services are required, in accordance with section 602 of the Individuals with Disabilities Education Act ([20 U.S.C. 1401](#)), part C of the Individuals with Disabilities Education Act ([20 U.S.C. 1431 et seq.](#)), and section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)).

The following are qualifying diagnoses:

- Visual impairment
- Deafness or other hearing impairment
- Orthopedic impairment
- Emotional disturbance
- Intellectual disability

- Learning disability
- Speech or language impairment
- Health impairment
- Autism
- Multiple disabilities
- Traumatic brain injury
- Deaf-blindness
- Other health impairment

The definition of eligible child makes an exception for a child who turns 13 years old during a school year, so that the child may continue to receive child care services through the end of that school year, if child care services are provided under Title XX of the Federal Social Security Act, or are provided as child protective or preventive services that are funded other than under the NYSCCBG.

III. Program Implications

The provision of child care assistance to children with special needs who are age 13 or older is outlined below as related to each category of eligible family.

Families Who Are Eligible for a Child Care Guarantee

Families who are guaranteed child care include families who have applied for or are receiving temporary assistance (TA) while engaged in work or participating in required activities, families who choose to receive child care assistance in lieu of TA and transitional child care (TCC) cases.

SSL 410-w(3), 18 NYCRR 415.2(a)(1)(i), and 18 NYCRR 415.2(a)(1)(iii) require that families who have applied for or are receiving TA who are engaged in work or participating in required activities have at least one child younger than 13 in need of care for the family as a whole to be eligible for the child care guarantee. In that case, every child who meets the definition of “eligible child,” including children with special needs age 13 or older, must receive the child care guarantee. This is supported by 18 NYCRR 415.2 (a)(1)(i), which states that the TA guarantee applies to all of the eligible children of the caretaker regardless of the child's status as part of the TA filing unit. However, when such a family does not have a child younger than 13 and has only a child with special needs age 13 or older in need of care to enable the caretaker to engage in work or required activities, the family is not eligible for the TA child care guarantee.

SSL 410-w(4)(a) and 18 NYCRR 415.2(a)(1)(ii), related to families receiving child care assistance in lieu of TA, are directly related to the TA family guarantee statute and regulations set forth above. As such, if a family has at least one child younger than 13 in need of child care, the family as a whole is eligible and every child that meets the definition of “eligible child,” including special needs children age 13 or older, must receive the child care assistance in lieu of TA child care guarantee. When a family receiving child care assistance in lieu of TA does not have a child younger than 13 and has only a special needs child age 13 or older in need of care, child care is not guaranteed. There is no distinction between a TA family and a family receiving child care assistance in lieu of TA in this regard; such families must be treated the same.

The language in SSL 410-w(3) related to the TCC guarantee immediately follows the language in SSL 410-w(3) related to the TA family child care guarantee and refers back to “such a family,” thereby incorporating the requirement for a child younger than 13 in need of care. The TA to TCC regulation, 18 NYCRR 415.2(a)(1)(iv)(c), explicitly requires that the family include an eligible child younger than 13 who needs child care to enable the caretaker to engage in work. The family receiving child care assistance in lieu of TA to TCC regulation, 18 NYCRR 415.2(a)(1)(ii) is directly related to the TA to TCC regulation, and a child under age 13 is required in order to be eligible for the guarantee.

As such, if a prior TA family or a family who previously received child care assistance in lieu of TA is now ineligible for TA, and has at least one child younger than 13 in need of child care on the date the transitional eligibility determination is made and all other TCC eligibility requirements are met, the family as a whole is eligible for TCC and every child that meets the definition of “eligible child,” including special needs children age 13 or older, must receive the TCC guarantee. However, when such a family does not have a child younger than 13, and only has a child with special needs age 13 or older in need of care to enable the caretaker to engage in work or required activities, the family is not eligible for the TCC guarantee.

Families Who Are Eligible if Funds Are Available

SSL 410-w(1) provides for child care to other types of families if the district has funds available after providing child care to the guaranteed families set forth above. 18 NYCRR 415.2(a)(2) sets forth these types of families in their entirety. A family that includes a child with special needs age 13 or older, whether or not the family includes a child younger than 13 in need of care, will receive child care assistance if they meet the eligibility requirements of any type of family in 18 NYCRR 415.2(a)(2)(i)-(v) and the district has funds available.

Families Who Are Eligible if Funds Are Available and the District Includes Them in the CFSP

SSL 410-w(1)(e) provides for child care to other types of families with incomes up to 200 percent of the SIS that the district designates in its CFSP in accordance with criteria established by the New York State Office of Children and Family Services. Such families may receive child care if the district has designated the type of family as eligible in its CFSP and, after providing child care to the families set forth above, continues to have funds available. 18 NYCRR 415.2(a)(3) sets forth the additional types of families that can receive child care if districts continue to have funds available after providing child care to the families set forth above, and the district opts to provide care to such families.

A family that includes a child with special needs age 13 or older, whether or not the family includes a child younger than 13 in need of care, must receive child care assistance if they meet the eligibility requirements of any type of family in 18 NYCRR 415.2(a)(3)(i)-(viii), the district has funds available, and the district included the family type as eligible in its CFSP.

The attached chart provides a high-level summary of the above and may be used as a desk aid.

IV. Required Action

When all applicable eligibility requirements are otherwise met, districts must authorize child care assistance for children with special needs who are age 13 or older in accordance with the above. Districts must maintain appropriate documentation to support the determination to approve or disapprove hours of child care assistance for children age 13 or older with special needs. Districts must maintain documentation of the child's condition as diagnosed by an appropriate physician or specialist as outlined in 91-ADM-34. Districts must also maintain documentation that the child's special need is to such an extent that the child requires special education or related services.

V. Systems Implications

None

VI. Effective Date

The effective date of this release is upon issuance.

/s/ Janice M. Molnar, Ph.D.

Issued by:

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