



U.S. Department of Health and Human Services

Administration for Children & Families

Search:



ACF Home | Services | Working with ACF | Policy/Planning | About ACF | ACF News | HMS Home

Questions? | Privacy | Site Index | Contact Us | Download Reader™ | Print

**THE OFFICE OF CHILD SUPPORT ENFORCEMENT**

*Giving Hope and Support to America's Children*

**POLICY INTERPRETATION QUESTIONS**

**PIQ-08-02**

**DATE:** May 23, 2008

**TO:** State and Tribal IV-D Directors

**FROM:** Margot Bean, Commissioner, Office of Child Support Enforcement

**SUBJECT:** Closing cases under 45 CFR 303.11(b)(5) when the noncustodial parent is receiving Supplemental Security Income (SSI) benefits, under Title XVI of the Social Security Act (the Act), and is unable to pay child support

The Federal Office of Child Support Enforcement (OCSE) has received inquiries from State IV-D agencies asking for guidance on case closure due to the noncustodial parent's inability to pay as a result of a medically-verified total and permanent disability. IV-D agencies have also asked what circumstances define the phrase "medically-verified total and permanent disability" pursuant to 45 CFR 303.11(b)(5).

**Question #1:** If the State IV-D agency verifies through an interface with the Social Security Administration (SSA) that the obligor is receiving SSI benefits, under Title XVI of the Act, can the State presume a permanent disability to close the case? (emphasis added)

**Response #1:** No. PIQ-90-11 states that "Receipt by the absent parent of SSI benefits does not, in and of itself, constitute a criteria for case closure." In order to close a case because of the obligor's permanent disability pursuant to 45 CFR 303.11(b)(5), a State must determine that "the noncustodial parent cannot pay support for the duration of the child's minority because the parent... has a **medically-verified total and permanent disability with no evidence of support potential.**" (emphasis added)

All of these conditions must be met in order to close a case because of a permanent disability under 45 CFR 303.11(b)(5).

OCSE has not explicitly defined the circumstance that could result in a medically-verified total and permanent disability pursuant to 45 CFR 303.11(b)(5). It is up to the State to make this determination for child support enforcement purposes.

**Question #2:** If the State cannot presume a permanent disability and must secure medically-verified evidence and the Health Insurance Portability and Accountability Act (HIPAA) prohibits physicians from providing information to the State and SSA does not provide the information to the State, what would be considered an acceptable verification?

**Response #2:** As explained in Response #1 of this document, States have the discretion to determine what circumstances could result in a "medically-verified total and permanent disability" pursuant to 45

CFR 303.11(b)(5).

States also have the discretion to determine appropriate methods of medically verifying that a disability is total and permanent. Refer to PIQ-04-03 for information regarding how States may access HIPAA protected information when the agency has issued a National Medical Support Notice. The State could also request the noncustodial parent to obtain his or her medical records pursuant to 45 CFR 164.524(b).

**Question #3:** If the court makes a finding in a court order that the obligor is permanently and totally disabled, is that acceptable for case closure?

**Response #3:** As stated in Response #1 of this document, the State has the discretion to determine what constitutes a "medically-verified total and permanent disability" pursuant to 45 CFR 303.11(b)(5). A State may determine that a court order is acceptable verification that an obligor is permanently and totally disabled. However, in order to meet case closure criteria under 45 CFR 303.11(b)(5), the State must also determine that the obligor has no support potential and no income or assets available which could be levied or attached for support.

**Question #4(a):** If there are arrearages due which accrued during the period for which the obligor was permanently disabled, can the IV-D agency still close the case?

**Response #4(a):** Yes, if the case meets at least one of the case closure criteria found in 45 CFR 303.11(b).

Section 466(a)(9) of the Social Security Act states that, "any payment or installment of support under any child support order... is (on and after the date it is due)— a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced." Notwithstanding case closure by a IV-D agency, the child support order (including any payment or installment of support such as arrearages) remains in effect and legally binding.

**Question #4(b):** If the arrearages accrued **before** the obligor became totally and permanently disabled is the response different?

**Response #4(b):** No. A child support enforcement case that meets criteria under 45 CFR 303.11(b)(5) may be closed regardless of whether arrearages accrued before or after the obligor became totally and permanently disabled.

**Question #4(c):** Does case closure depend upon whether the obligor has income or assets available to pay or does that apply to current support only?

**Response #4(c):** In determining whether a case is eligible for case closure, 45 CFR 303.11(b)(5) stipulates that, "the State must also determine that no income or assets are available to the noncustodial parent which could be levied or attached for support." If a State finds that the noncustodial parent has income or assets which may be levied or attached for support, then the case must remain open, even if the case is an arrearages-only case.

---

Download [FREE Adobe Acrobat® Reader™](#) to view PDF files located on this site.

[OCSE Home](#) | [Press Room](#) | [Events Calendar](#) | [Publications](#) | [State Child Support Agency Links](#)  
[Site Map](#) | [FAQs](#) | [Feedback](#)

Systems: [FPLS](#) | [FIDM](#) | [State and Tribal](#) | [State Profiles](#)

Resources: [Grants Information](#) | [Información en Español](#) | [International](#) | [Federal/State Topic Search \(NECSRS\)](#) | [Tribal](#) | [Virtual Trainer's Library](#)

[ACF Home](#) | [Questions?](#) | [Site Index](#) | [Contact Us](#) | [Accessibility](#) | [Privacy Policy](#) | [Freedom of Information Act](#) | [Disclaimers](#)  
[Department of Health and Human Services](#) | [USA.gov: The U.S. government's official web portal](#)

Administration for Children and Families • 370 L'Enfant Promenade, S.W. • Washington, D.C. 20447

This is a [Historical Document](#).