

CHAPTER XIII: – CHILD WELFARE FUNDING MANUAL

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Section 1700 - Guardianship Assistance

I. PURPOSE AND LEGAL BASIS

The purpose of the Guardianship Assistance Program (GAP) is to make funds available for the financial support of youth who are determined to be:

- (i) in a permanent family setting,
- (ii) eligible for legal guardianship, and
- (iii) otherwise unlikely to obtain permanency.

The Guardianship Assistance Program will reimburse for room and board and be set at the same rate as the foster care room and board rates in accordance with rates established under N.C.G.S. § 108A-49.1 (http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_108A/GS_108A-49.1.pdf).

The legislation which forms the legal basis for the Guardianship Assistance Program (GAP) includes the following:

- Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351 <https://www.congress.gov/110/plaws/publ351/PLAW-110publ351.pdf>), which provided that, at the option of states, kinship guardianship assistance payments may be provided on behalf of children to relatives who have assumed legal guardianship of children.
- North Carolina Appropriations legislation from 2013 (Session Law 2013-360 <http://www.ncleg.net/Sessions/2013/Bills/Senate/PDF/S402v7.pdf>) requires the Division of Social Services to design a Guardianship Assistance Program (GAP) in such a manner that no additional expenses are incurred beyond the funds budgeted for foster care.

II. DEFINITIONS

County Child Welfare Agency or simply Agency – County Department of Social Services or Consolidated Human Services Agency responsible for the administration of public child welfare services.

Guardianship Assistance – A monthly cash assistance payment no greater than the graduated amount set by the General Assembly from the Guardianship Assistance Program.

Guardianship Assistance Agreement – A binding agreement between the county child welfare agencies and legal guardian that shall set responsibilities of the agency and of the legal guardian during the time of the child's eligibility for guardianship assistance, shall specify the monthly amount of guardianship assistance and the manner in which the payment may be provided to the legal guardian, and under what circumstances guardianship assistance may be terminated.

Legal Guardian – An individual defined in N.C.G.S. § 7B-600 (http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-600.pdf) who is appointed by the court to serve as the guardian for a juvenile. The guardian shall have the care, custody, and control of the juvenile, or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before the court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including marriage, enlisting in the armed forces, and enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile.

Legal Guardianship – A legal relationship created when a person or persons are assigned by the court to take care of the minor child. This relationship is terminated only if:

- i. the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest;
- ii. the guardian is unfit;
- iii. the guardian has neglected a guardian's duties; or,
- iv. the guardian is unwilling or unable to continue assuming a guardian's duties.

Licensed Home – Private residence of one or more individuals who permanently reside as members of the household who have met all requirements for family foster home licensing in their state of residence and have been issued a license number in the state of North Carolina that remains active at the time of legal guardianship.

Placement Responsibility – Authority granted to the county child welfare agencies by the court to place a child in the custody the agency in a licensed home or facility or any unlicensed home or facility approved by the court.

III. ELIGIBILITY

A child is eligible for GAP payment when:

- a. The Court determines that reunification and adoption are not appropriate permanency options for the child;
- b. The child has been placed in the licensed home for a minimum of 6 months;

- c. The child is in the placement responsibility of a North Carolina county child welfare agency at the time of entry into the GAP;
- d. The child is at least 14 years of age, but not older than 18 years of age and demonstrates a strong attachment to the prospective guardian and has been consulted regarding the guardianship arrangement; or, the child is not yet 14 years of age but is being placed in a legal guardianship arrangement with a sibling who meets the age requirement.
- e. The prospective legal guardian has a strong commitment to permanently care for the child; and,
- f. The prospective legal guardian has entered into a guardianship assistance agreement with the county child welfare agency who holds custody of the child prior to the order granting legal guardianship.

A young person who has been determined eligible for guardianship assistance benefits at 16 or 17 years old is eligible to receive benefits until reaching 21 years of age, provided that the young person is:

- 1. Completing secondary education or a program leading to an equivalent credential;
- 2. Enrolled in an institution which provides post-secondary or vocational education;
- 3. Participating in a program or activity designed to promote, or remove barriers to employment;
- 4. Employed for at least 80 hours per month; or,
- 5. Incapable of doing any of these activities due to a medical condition, which is supported by regularly updated information in the case plan of the young person.

IV. GUARDIANSHIP ASSISTANCE PROGRAM REQUIREMENTS

A. Guardianship Assistance Checklist

Establishing eligibility for guardianship assistance is the task of the child welfare staff of a child's resident agency. The agency is required to use the Guardianship Assistance Eligibility Checklist (DSS-xxxx). Documentation sufficient to establish eligibility can be in the form of court reports and court orders, statements of the youth and prospective guardian, and case narrative.

B. Guardianship Assistance Agreement

The Guardianship Assistance Agreement (DSS-xxxx) must be completed before guardianship assistance benefits can be provided. This agreement is a written instrument that is binding for all parties. It is entered into by the prospective guardians and the child's agency (the agency responsible for determining eligibility).

The agreement must be signed by all parties to the agreement (namely, the prospective guardian and a county agency representative) before the final order for guardianship to meet the requirements for a guardianship assistance agreement. Fingerprint-based background checks of the National Crime Information Databases (NCID) and a check of the Central Registry are required for all individuals 18 or older in the home.

C. Non-Recurring Costs

Legal guardians can be reimbursed up to \$2,000 for the expenses incurred by the prospective guardian in obtaining legal guardianship of the child. Non-recurring expenses are defined as the reasonable and necessary court costs, attorney fees and other expenses which are directly related to the legal guardianship of a child who meets eligibility requirements for guardianship assistance, which are not incurred in violation of State or Federal law, and which have been not been reimbursed from other sources or funds. As a general rule there will be no expenses since the child welfare agency is responsible for achieving permanence for the youth in agency custody and costs related to achieving permanence would be the county's responsibility.

D. Reimbursement Process

Guardianship Assistance benefits for a child shall become effective the first month following the month in which legal guardianship is granted by the court. Claims for monthly GAP assistance shall be reimbursed in accordance with the Department of Health and Human Services and county child welfare agency reimbursement process.

E. Successor Guardianship

In the event of the death or incapacity of the legal guardian, the eligibility of a child for guardianship assistance is not affected by reason of the replacement of the guardian with a successor guardian named in the Guardianship Assistance Agreement. Is it not a requirement for a successor guardian to be named, but doing so allows for the continuation of benefits with only a short suspension while the child welfare agency assists the successor guardian in obtaining legal guardianship and completing the necessary paperwork and safety checks.

The legal transfer of guardianship can be addressed by the child welfare agency filing a motion to review on the existing case or the agency can provide non-recurring costs, not to exceed \$2,000.00, to assist the new guardian in legalizing the relationship with the youth. The agency will be responsible for obtaining an RIL check and fingerprint-based criminal record check prior to the receipt of IV-E dollars by the successor guardian and a new Guardianship Assistance Checklist and Guardianship Assistance Agreement would need to be completed with the successor guardian. The conversation about successor guardianship should begin as early as

possible to allow the prospective guardian an opportunity to consider options and discuss the implications with the named individual.

V. DOCUMENTATION AND PERIODIC REVIEWS

The final step in the eligibility process is to have a completed, signed guardianship assistance agreement with the kinship guardian. This can be entered into any time after placement, but must be signed before the court order for guardianship is issued. Once a child has been determined eligible for guardianship assistance, no redetermination of his or her eligibility is necessary; however, the child's agency must review the

Guardianship Assistance Agreement on a periodic basis to ensure that the child remains in the financial responsibility of the legal guardian(s). It is the responsibility of the legal guardian to notify the child welfare agency of any changes affecting their legal and financial responsibility for the youth. As long as the legal guardian(s) remain financially and legally responsible, even if the child is out of the home, guardianship assistance can continue. Agencies must send a yearly notice to legal guardians to determine the status of the child. See the DSS-xxxx Sample Letter for Annual Guardianship Assistance Eligibility Review. Notification increases to twice a year for youth 18-21 that continue to receive benefits.

VI. GUARDIANSHIP ASSISTANCE CASE RECORD

When a child is placed into a home with a legal guardian, a new file must be created which will reflect the guardianship assistance information and documentation. The file must contain a cross-reference to the child's original file so that should the case be audited, documentation establishing the child's eligibility for benefits can be made readily available to the auditors.

A. Contents of the Child's Guardianship Assistance Case File

The guardianship assistance case file must contain the following:

1. A copy of the DSS-5120 verifying foster care eligibility;
2. Guardianship Assistance Eligibility Checklist (DSS-xxxx). This form must indicate those components of the program for which the child is eligible;
3. Copies of the Guardianship Assistance Agreement (DSS-xxxx) and Periodic Review Letters;
4. Copy of the Guardianship Court Order;
5. Service Client Information Change Notice (DSS-5027);

6. Child Placement and Payment System Form (DSS-5095);
7. All correspondence pertaining to the receipt of nonrecurring costs to include documentation of expenses and reimbursements; and,
8. All correspondence pertaining to the child's receipt and termination of Guardianship Assistance Benefits.

VII. GUARDIANSHIP ASSISTANCE APPEALS

Guardians of a child or youth have the right to appeal the agency's denial, failure to inform them of the availability of assistance, the amount, a decrease, or termination of Guardianship Assistance benefits for the child or youth.

Grounds for a Guardianship Assistance appeal include, but are not limited to:

- Relevant facts regarding the child were known by the State agency or child-placing agency and not presented to the guardian prior to the finalization of the guardianship;
- Denial of assistance based upon a means test of the guardian(s);
- Guardian(s) disagree with the determination by the State that a child is ineligible for guardianship assistance;
- Failure by the State agency to advise potential guardian(s) about the availability of guardianship assistance for children in the State foster care system;
- Decrease in the amount of guardianship assistance without the concurrence of the guardian(s);
- Denial of a request to change in payment level due to a change in the guardian's circumstances; and,
- Failure of the State agency to complete the required paperwork prior to the finalization of the guardianship.

If applicants or potential recipients of financial benefits or service programs believe they have been wrongly denied financial assistance, not informed of the availability of a program of assistance, or excluded from a service program, they have a right to a hearing. They shall be informed in writing of their rights to a Guardianship Assistance Appeal at the time of their request and at the time of any action affecting their guardianship assistance benefits. It is the responsibility of a fair hearing officer to determine whether extenuating circumstances exist and whether the applicant or recipient was wrongly denied eligibility.

A. Process of Appeals

Policy requires that eligibility for guardianship assistance monthly case payments be established prior to the child's placement for guardianship and requires, also, that the Guardianship Assistance Agreement be signed prior to issuance of a court order for guardianship. Requests for monthly cash assistance made for children not

covered under the provisions described in this policy must follow the appeals process for resolution.

The Guardianship Assistance appeals process is the same as that used for other Public Assistance appeals and would be resolved through the same channels. The Guardianship Assistance appeals must be conducted by an impartial official or designee of the agency. The official or designee cannot have been directly involved in the determination of eligibility for guardianship assistance benefits. The county child welfare agency staff member assigned to hear Public Assistance appeals is the person who should conduct the hearing. At no time shall someone in a decision-making capacity regarding the child's eligibility serve as the hearing officer.

The following procedures should be followed when a parent requests guardianship assistance cash payments:

1. The guardian(s) should be advised to submit a written request to the child's agency for guardianship assistance monthly cash payments.

Within five days of notification, the county child welfare agency must notify the guardians that a hearing will be held and hold the hearing.

If the guardians request benefits that have not previously been provided and the agency agrees that the child should have been found eligible, the agency may not administratively change its eligibility determination, but may avoid a trial-type evidentiary hearing. The undisputed documentary evidence could be presented to the hearing officer for his or her review and determination made on the written record (ACYF-CB-PA-01-01).

2. At the hearing the agency may make a determination as to whether or not sufficient information has been presented to substantiate that, based on eligibility requirements in place prior to the guardianship placement, the child could have been found eligible for Guardianship Assistance monthly cash payments at that time.
3. If the agency finds the child to be eligible, negotiations can be made at that time with the guardian(s) to determine the beginning date and amount of payment for the child. If the agency and the guardians cannot reach an agreement, the agency shall advise the guardians of their right to appeal the agency's decision in regard to the amount and beginning date. The guardians should be advised to notify the agency of their decision to appeal within fifteen days of the mailing of the agency's letter. If the agency determines that the child would not have been found eligible, the guardians must be notified of this by the agency in writing. The agency shall advise the guardians of their right to appeal the denial of assistance within fifteen days of the mailing of the agency's letter.

4. If the guardians wish to appeal the agency's decision, the agency completes the Request for State Appeal form DSS-1473 (<https://www2.ncdhhs.gov/info/olm/forms/dss/dss-1473-ia.pdf>). When completed, the form and other required materials are sent to the State Hearings and Appeals Section, Division of Social Services. The State Hearings Officer will make arrangements with the guardians and agency for the date and time of the hearing, which will be held in the agency. Following the hearing, the State Hearings Officer will notify the guardians of the decision in regard to Guardianship Assistance. If the guardians are dissatisfied with the decision, the appeal for review can be submitted to the Chief of the Hearings and Appeals Section, Division of Social Services.
5. Final decisions of the Hearings and Appeals Section, if not to the satisfaction of the guardians, can be appealed to the Superior Court in accordance with N.C.G.S. 108A-79(k) (http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_108A/GS_108A-79.pdf), provided such appeal is filed within thirty (30) days of the date of receipt of the final decision. The decision by the Chief Hearing Officer is the final decision of the agency.

B. Results of Successful Appeals

If the child is found eligible for guardianship assistance, the county child welfare agency, in conjunction with the State Division of Social Services, is responsible for negotiating with the parents to establish the effective date of initiating benefits, unless the date is otherwise established by the State Hearings Officer or the Superior Court.

A guide to an appropriate retroactive beginning date would be either:

- The month following issuance of a court order granting guardianship in the case of a child with a known physical, mental, emotional, or other condition creating on-going expense for proper care/treatment at that time; or,
- The month in which the guardians first requested the monthly cash payment, in the event of an appeal that overturns the agency's denial of benefits.

A Guardianship Assistance Agreement (DSS-xxxx) must be prepared and reflect the beginning date of the retroactive payments on page 2 of the agreement. The guardian(s) and agency director or designee will sign and note the date of signature on the agreement. A copy of the hearings officer's findings should be attached to the agreement to indicate why the agreement was signed after the guardianship was ordered by the court.

The county child welfare agency shall notify the Division of Social Services of the decision in writing. The letter should include the address of the guardian(s), the social security number(s) of the guardian(s), the child's SIS I.D. number, the funding source, a

copy of the decision as a result of the appeal, the beginning date for retroactive payments, and the monthly and yearly break-down of payments.

Payment will be issued from the Division, with a sight draft sent to the county child welfare agency for its share of the payment. The state may claim Federal Financial Participation for IV-E eligible children from the earliest date of eligibility as reflected in the signed agreement. For continuing payments to the legal guardians, the guardianship information must be entered on the DSS-5095.

VIII. LOST OR STOLEN GUARDIANSHIP ASSISTANCE CHECK

If for some reason the check is not delivered to the guardian, it is returned to the county office. It is important to determine if the check has been returned to the county before requesting a replacement check. A request for a replacement check, DSS-8129, must be completed by the agency if a check is lost or stolen and mailed to:

DHHS- Controller's Office
2019 Mail Service Center
Raleigh, NC 27609-2019

The Controller's Office will not issue a replacement check until it has been shown that the original check has cleared. Therefore, guardians must be advised that a request for a replacement check cannot be paid before the 10th of the month. Replacement checks are mailed to the agency and not the guardian. If a guardian is in need of cash assistance, the agency may provide the payment and request reimbursement from the guardian when the replacement check is issued. This agreement must be between the guardian and the agency. The Controller's Office will not issue replacement checks payable to the agency.

IX. OVERPAYMENT OF GUARDIANSHIP ASSISTANCE

When it is determined that an overpayment to a Guardianship Assistance recipient has occurred, the county should establish a repayment agreement and repayment schedule with the family at that time.

When payments are made by the family, the county should complete a DSS-1656 Refund Receipt, and send a copy of the receipt and a county check to the following address:

DHHS Controller's Office
Program/Benefit Payments Section
2019 Mail Service Center
Raleigh, NC 27699-2019

The repayment will be credited to the child's check history screen in the Child Placement and Payment System. Agencies may verify the adjustment through the PQA 403 Cash Adjustment Register report.

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