

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

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

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

January 24, 2002

CSS LETTER: 02-04

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

SUBJECT: ASSEMBLY BILL 891

This letter is to inform you of the provisions of Assembly Bill (AB) 891, Chapter 651, which became effective January 1, 2002. AB 891 provides that disabled non-custodial parents receiving Supplemental Security Income/ State Supplemental Payments (SSI/SSP) or Social Security Disability Insurance (SSDI) payments or those eligible to receive such payments, but for certain excess income as provided in Federal law, may:

- Receive credit toward child support obligations for certain derivative payments received by the child(ren) of those disabled obligors,
- Have no more than 5% of the disabled obligor's SSDI benefits withheld for arrearage payments,
- Have current child support obligations modified when appropriate, and
- Have certain collection actions by Franchise Tax Board (FTB) withdrawn or rescinded by the local child support agency (LCSA)

Following are the provisions of AB 891 and the respective amended codes:

Section 4504, Family Code:

Existing law provides that payments for the support of a child made by the Social Security Act and Railroad Retirement Act be credited towards court ordered child support, unless the payments made by the federal government were taken into consideration by the court in determining the amount of child support to be paid. AB 891 amended Section 4504, Family Code to include benefits paid by the Department of Veterans Affairs and requires the non-custodial parent receiving SSDI,



DO YOUR PART TO HELP CALIFORNIA SAVE ENERGY
 For energy saving tips, visit the DCSS website at
www.childsup.cahwnet.gov

Railroad Retirement or Veterans benefits to notify the custodial party or local child support agency in Title IV-D cases. Upon proof of the obligor's receipt of or eligibility of SSDI, Railroad Retirement, or Veterans Affairs benefits, the custodial parent or LCSA must contact the appropriate federal agency within 30 days to verify the eligibility of the child(ren) to receive payments from the federal government. Furthermore, if the child is eligible for federal payments and the custodial party fails to cooperate with the appropriate federal agency in seeking such payments, then the non-custodial parent may provide proof to the LCSA of the amount the child(ren) are entitled to receive, and shall receive credit for the payment towards the child support amount ordered by the court. The credit for the child support payments shall continue until the child or children would no longer be eligible for those benefits or the child support order is no longer in effect, whichever occurs first.

Section 5246, Family Code:

AB 891 establishes that the Order/Notice to Withhold Income for Child Support may not reduce the current amount withheld for court ordered child support. In regards to arrearages owed by a disabled obligor, this bill specifies that an Order/Notice to Withhold Income for Child Support issued by a LCSA for the liquidation of arrearages shall not exceed 5 percent of the obligor's total monthly SSDI payment, if the disabled obligor meets the SSI resource test, and would receive SSI/SSP benefits but for excess income, and provides proof of his or her eligibility for SSI/SSP or SSDI benefits.

Section 17400.5, Family Code

AB 891 added a new section to the Family Code (Section 17400.5) which requires LCSAs to file a motion with the court for a modification of a support order within 30 days of receiving proof from the obligor or any other source that he/she is receiving or is eligible to receive SSI/SSP or SSDI benefits. The LCSA must serve both the custodial and non-custodial parents with the motion.

Section 17500, Family Code

Section 17500 (c), Family Code was amended to include a statement that makes reference to the new language specified in Section 19721 (e)(3), Revenue and Taxation Code.

Section 19271, Revenue and Taxation Code

AB 891 amended Section 19271, Revenue and Taxation Code by specifying that if an obligor is disabled, meets the SSI resource test and is receiving SSI/SSP benefits or the obligor meets the SSI resource test and would receive SSI/SSP benefits but for excess income, and provides the LCSA with proof of his/her eligibility, then the LCSA shall not refer the case to the (FTB) for collection. If already referred, then the LCSA shall

withdraw or rescind the case from FTB. Furthermore, FTB must not take any collection action, or if it has already commenced collection, shall cease collection actions for all withdrawn, rescinded, or otherwise recalled cases.

The following summarizes the main provisions of AB 891 that directly affect LCSAs:

If a disabled obligor receives SSI/SSP or meets the SSI resource test, and would receive SSI/SSP benefits but for excess income, and the obligor provides proof to the LCSA of his/her eligibility for, and if applicable, receipt of SSI/SSP or SSDI benefits, then the LSCA shall:

- ✓ Contact the appropriate federal agency within 30 days to verify the child's eligibility for federal payments based on the non-custodial parent's disability and/or the non-custodial parent receiving Retirement or Veterans benefits.
- ✓ If applicable, issue an Order/Notice to Withhold Income for Child Support for the liquidation of arrearages not to exceed 5% of the obligor's total monthly SSDI payments.
- ✓ File a motion with the court for a modification of the support order within 30 days and serve both the custodial and non-custodial parent with the motion.
- ✓ Not refer cases to the FTB for collection or if already referred, withdraw or rescind the case from the FTB.

If you have any questions or concerns regarding AB 891, please contact the Policy Branch at (916) 464-5055 or by e-mail at policy.branch@dcss.ca.gov .

Sincerely,

SHAR SCHROEPFER, Chief
Policy Branch

cc: Susan Turek