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| LOCAL COMMISSIONERS MEMORANDUM |  
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DSS-4037EL (Rev. 9/89)

Transmittal No: 91 LCM-5

Date: January 11, 1991

Division: Family and Children  
Services

TO: Local District Commissioners

SUBJECT: Zebley Decision: Listing of Foster Children Potentially  
Eligible for SSI

ATTACHMENTS: Attachment A: Listing of Federally Non-Participating  
Children by District is not available on-line.

This is a follow up to 90 LCM-133 which concerned the Sullivan v. Zebley U. S. Supreme Court decision. This decision has forced a revision of the policy for children's eligibility for Supplemental Security Income (SSI). Although not all of the Interim Final Standards for SSI disabled children have been published yet, it is expected that a substantial number of children, including foster children, will now be determined SSI eligible.

For SSI purposes in general, a child is considered to be an unmarried person under age 18, or under 22 and a student regularly pursuing a course of study in an educational or vocational training institution expected to result in gainful employment. For SSI disability determination purposes, a child is a person under 18 regardless of marital or educational status.

We are providing (attached) a listing of all non-federally funded (CW) foster children. We strongly encourage all local districts to file SSI applications for those non IV-E children who have any disabling condition. The filing of these applications promptly will ensure a protective filing date and protect any retroactive benefits which could accrue in the interim.

As a result of the Zebley decision, cases which were previously denied for SSI will be identified by the Social Security Administration (SSA) and will be eligible for re-review of the prior determination. Information on these former denials will be provided later.

Upon receipt of the attached list, each district should begin contacting (either by calling or personal visit) the local Social Security Office with the names, addresses and Social Security numbers of those children who could be eligible. When SSA is contacted, make clear that the child (children) wants to file for SSI. SSA will then consider the date of the contact as the child's "protective filing date". As long as a signed written application, is filed with SSA within 60 days, either by mail or delivered in person, SSI eligibility will be backdated to the protective filing date. Procedures should be in place to ensure that applications are filed within the 60 day period.

Priority should be given to assuring that applications are filed for children in higher levels of foster care, i.e., institutional care, and special or exceptional levels of family foster care. Consideration should be given to factors such as physical and mental impairments, and participation in special education programs. If there is any question regarding filing an application, you should err on the side of submission.

Medical data, and data related to the child's activities of daily living which are contained in the file should be submitted to SSA with the application.

Additional information is contained in 90 LCM-133. Any questions you have should be addressed to: Veronica Lynch at 1-800-342-3715, extension 4-9452.

If you wish assistance in establishing criteria for selection and review, you may contact Lloyd D. Moses, Associate Commissioner, Office of Disability Determinations at 1-800-342-3715, extension 3-0360.

Sincerely,

Joseph Semidei  
Deputy Commissioner  
Division of Family & Children  
Services