

1979 WL 43194 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 4, 1979

***1 SUBJECT: Child Support**

(1) A caretaker adult relative who is not the legal parent of a needy child receiving aid to families with dependent children (AFDC) is granted by the law of South Carolina the right to sue the parents of that child for child support. That right must be assigned to the South Carolina Department of Social Services in order to be eligible to receive AFDC.

(2) The caretaker adult relative is the person required to make the assignment of child support rights to the Department regardless of whether or not his or her needs are included in the AFDC budget.

Virgil L. Conrad
Commissioner
South Carolina Department of Social Services

QUESTION:

1. What are the responsibilities and rights of a caretaker adult relative who is not the legal parent of a needy child receiving AFDC payments with respect to the assignment of child support rights required by South Carolina Code of Laws (1976), § 43-5-65(a)(1)? 2. Do these responsibilities and rights differ depending on whether or not the needs of that caretaker adult relative are included in the AFDC budget?

AUTHORITIES CITED:

South Carolina Code of Laws (1976), §§ 43-5-65(a), 43-5-65(a)(1), 43-5-65(a)(2), 43-5-65(f), 43-5-65(g), 14-21-820 as amended by Act 71 of 1979, 14-21-840, [Green v. Philbrook](#), 427 F. Supp. 834 (1977), 82 C.J.S. Statutes § 316 a. & b., 45 Code of Federal Regulations § 232.10(f).

DISCUSSION:

1. South Carolina Code of Laws (1976), § 43-5-65(a)(1) requires that any applicant or recipient for AFDC assign to the State any rights which he or she may have to support from another person for any other family member for whom he or she is applying for aid. In the case of an adult relative applying for aid for a needy child of whom he or she is not the parent, this code section means that that adult must assign to the State any rights which he or she may have to receive child support from anyone else for that child.

It must first be determined what legal rights are granted to that adult relative to receive child support from another person for a child in his or her care. South Carolina Code of Laws (1976), § 14-21-820 as amended by Act 71 of 1979 makes both the mother and the father legally chargeable to provide support for their child. South Carolina Code of Laws (1976), § 14-21-840 says that 'any interested persons may file a petition to the court requesting the court to order persons legally chargeable to provide support as required by law.' It is an obvious and logical conclusion that the adult with whom a child is living and who is furnishing that child with the necessities of life would fall within the category of 'interested persons' who are granted by this code section the right to sue the persons legally chargeable for the support of that child,

that is, the child's parents. Thus, § 14-21-840 grants to the caretaker relative the right to receive child support from the child's legal parents, and that right must be assigned to the State under § 43-5-65(a)(1) in order to be eligible for aid.

***2** 2. Section 43-5-65(a) requires that the assignment be made by the 'applicant or recipient.' If the caretaker adult's needs are included in the budget, it is clear that he or she would be the 'applicant' or 'recipient' referred to by this code section. The question of who is the 'applicant' or 'recipient' arises when application for aid is made only for a needy child, and not for the adult with whom that child lives.

Under general rules of statutory construction, the terms 'applicant' and 'recipient' would mean the caretaker adult regardless of whether or not his or her needs are included in the AFDC budget. It is presumed that identical words used in different parts of a statute are intended to have the same meaning unless they are used in such different circumstances as to compel the opposite conclusion. 82 C.J.S. Statutes § 316 b. The words 'applicant' and 'recipient' are used several times in § 43-5-65 and are frequently used in other sections of Title 43.

Section 43-5-65(a) states that the certificate of eligibility must state 'the names, birth dates, and Social Security numbers of all children receiving aid' and 'of the adult or emancipated minor applicant.' The use here of the word 'applicant' clearly refers to the adult making application for the needy child.

Section 43-5-65(f) requires that the certificate contain a statement 'that the applicant or recipient understands that he has an obligation to report immediately to the department any changes in income or resources, composition of household, address, or any other factor which may affect eligibility and that the declarations in the certificate are correct and complete to the best of the applicant or recipient's knowledge or belief and are made under penalty of perjury.' The words 'applicant' and 'recipient' as used in this code section cannot be interpreted as meaning the child, since the section requires an understanding of the obligations involved in the application for aid which is beyond the scope of understanding of many children, as well as an oath by the applicant or recipient that the information given is true.

Section 43-5-65(g) requires that the caseworker 'insure that the applicant or recipient understands his rights and duties under this section.' Here again, the words 'applicant' and 'recipient' can only be interpreted as meaning an adult. There are numerous other uses of these two words in Title 43 where the only logical interpretation of the words is that they refer to the adult who is actually making the application. It follows from the above examples that the legislature must have intended that the words 'applicant' and 'recipient' as used in § 43-5-65(a)(1) mean the adult who is applying for aid for the child living with him or her.

Weight is given to this argument by the case of [Green v. Philbrook](#), 427 F. Supp. 834 (1977). In that case, the Federal Court in Vermont said that the words 'applicant' and 'recipient' as used in the section of the Social Security Act on which South Carolina Code of Laws (1976), § 43-5-65(a)(2) is based may not be used to include children receiving AFDC benefits. Section 43-5-65(a)(2) requires that Social Security numbers of AFDC applicants and recipients be given on application for aid, and directly follows § 43-5-65(a)(1) with which this opinion is concerned. The Court in [Green](#) held that 45 Code of Federal Regulations § 232.10(f), which is the federal regulation section where 'applicant' and 'recipient' are defined for this entire section of the Social Security Act, is inconsistent with the Act itself because the children are included in the definition. The Court went on to say that '[c]ommonly accepted tenets of statutory construction lead to the conclusion that dependent children are not 'applicants or recipients of aid' as those terms are used' in the section of the Social Security Act on which § 43-5-65(a)(2) is based. It would follow that that statement should apply to the section of the Social Security Act on which § 43-5-65(a)(1) is based, since the definition in the regulations applies to both sections.

***3** It is presumed that statutes were written with the intention of avoiding absurd consequences. 82 C.J.S. Statutes § 316 a. To interpret the words 'applicant' and 'recipient' in § 43-5-65(a)(1) as meaning the needy child where the caretaker relative is not receiving aid, and, as a result, to require that the assignment of child support rights against the parents be obtained from the parents themselves, as suggested by the Office of Family Assistance, is an absurd result and is,

therefore, not a proper legal interpretation of § 43-5-65(a)(1). To argue that the law requires that they cannot be sued for child support unless they sign documents which implement law suits against themselves is an absurdity. To so interpret this statute would effectively deny those children any support from their parents.

CONCLUSION:

1. A person applying for AFDC payments for a needy child who is not his own child has a statutory right under the law of South Carolina to sue the parents of that child for child support. That right must be assigned to the State in order to be eligible to receive AFDC payments.
2. Even when the custodial adult's needs are not included in the AFDC budget, that adult is the proper person to make the assignment of rights to the State for support for children receiving AFDC.

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