

CHAPTER 153. DEPRIVATION OF SUPPORT OR CARE

**DEPRIVATION OF SUPPORT OR CARE
PROVISIONS FOR TANF**

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Cross References

This chapter cited in 55 Pa. Code § 141.21 (relating to policy); 55 Pa. Code § 141.41 (relating to policy); 55 Pa. Code § 141.71 (relating to policy); 55 Pa. Code § 168.17 (relating to eligible children); 55 Pa. Code § 171.21 (relating to policy); and 55 Pa. Code § 183.35 (relating to income deemed available from an LRR, parent of an AFDC minor parent or stepparent).

**DEPRIVATION OF SUPPORT OR CARE
PROVISIONS FOR TANF**

§ 153.41. Policy.

As one of the eligibility criteria for TANF, it must be established that a child is deprived of support of one or both parents as defined in this chapter.

Notes of Decisions

If a child is deprived of the support of one or both parents, the family is eligible for AFDC benefits. *Nelson v. Department of Public Welfare*, 519 A.2d 1062, 1063 (Pa. Cmwlth. 1986).

Cross References

This section cited in 55 Pa. Code § 151.41 (relating to policy).

§ 153.42. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Cash assistance allowance—The monthly family size allowance, reduced by the net income of the budget group. The family size allowance is described under § 175.23(a) (relating to requirements).

Deprived child—One who lacks the support, care or guidance of one parent or both. This means that the child does not have the maintenance, physical care or guidance that one parent or both would ordinarily be expected to provide, or that these have been interrupted.

Uniformed service—The Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration and Public Health Service of the United States.

Authority

The provisions of this § 153.42 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; the Federal TANF regulations in 45 CFR 260.10—265.10; and the Domestic Relations Code, 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418.

Source

The provisions of this § 153.42 amended through October 7, 1983, effective October 8, 1983, 13 Pa.B. 3094; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (253073) to (253074).

§ 153.43. TANF deprivation of support or care requirements.

(a) *General.* If a child is living with both of his natural parents, the incapacity of either parent is the eligibility factor for TANF. If a child has been legally adopted, it is the lack of the support or care of the adoptive parent, and not of the natural parent, that is the eligibility factor for TANF. If a child is living with a parent and a stepparent, lack of support or care by the natural parent is the eligibility factor for TANF. Deprivation of support is not considered to exist in situations where the mother and the putative father of a child born out-of-wedlock are living together with the child and paternity has been established. For public assistance purposes, this is an intact family. The CAO documents a putative father's claim of paternity for a child born out-of-wedlock who was born within this Commonwealth on an *Acknowledgement of Paternity Form* under § 153.44(e)(1) (relating to procedures). When the putative father claims paternity of a child who was born out-of-State, the CAO refers the putative father to the domestic relations section to file a domestic relations section *Voluntary Statement of Paternity Form* in accord with § 153.44(e)(2). When the putative father living with the child denies paternity, TANF may be established based on the absence of the child's legal parent if all other eligibility requirements are met. A child is considered deprived of parental support or care if at least one parent is one of the following:

(b) *Requirements relating to absence from the home.* Continued absence from the home refers to desertion by a parent, legal, or other separation between the parents, and certain other circumstances of absence enumerated in § 153.44. It also describes the situation when a parent of a child born out-of-wedlock is not with the child.

(c) *Requirements relating to physical or mental incapacity.* Physical or mental incapacity exists when either one of the parents living with the child has a

physical or mental defect, illness or impairment which substantially reduces or eliminates the ability of the parent to support or care for the child. The incapacity shall be proved.

(d) *Unemployment of the parent.* The lack of parental support or care for the child because of unemployment refers to the employment status of the parent who is the principal wage earner. The unemployment of the principal wage earner parent, as specified in § 153.44(d), will establish the TANF category for the needy child regardless of the extent to which the other parent is employed.

Authority

The provisions of this § 153.43 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; the Federal TANF regulations in 45 CFR 260.10—265.10; and the Domestic Relations Code, 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418.

Source

The provisions of this § 153.43 amended through February 15, 1985, effective February 16, 1985, 15 Pa.B. 573; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (253074) and (264027).

Notes of Decisions

Temporary Absence

By concluding that the language of § 151.43 did not allow Department to discontinue mother's AFDC benefits, the Court overlooked § 147.22 which defines "temporary absence" as an absence of less than 30 days, where the revised custody order provided that the child would be out of mother's custody and care for recurring periods far exceeding 30 days. Accordingly, the Department properly applied the general rule requiring the outright discontinuance of benefits if a recipient no longer meets eligibility conditions. *Varner v. Department of Public Welfare*, 736 A.2d 596 (Pa. 1999).

The Commonwealth Court erred by determining that the Department of Public Welfare must temporarily suspend, rather than discontinue, a mother's benefits under the Aid to Families with Dependent Children program, because the regulatory scheme for AFDC requires eligibility to be determined prospectively on a month by month basis where the parents' custody arrangement provided that the son would reside with his mother consecutively for 8 1/2 months of the year and with his father consecutively for the remaining 3 1/2 months of the year and, thus, the son was not temporarily absent, which is defined as an absence of less than 30 days under these circumstances. *Varner v. Department of Public Welfare*, 736 A.2d 596 (Pa. 1999).

Cross References

This section cited in 55 Pa. Code § 151.43 (relating to requirements); 55 Pa. Code § 153.44 (relating to procedures); 55 Pa. Code § 178.11 (relating to categories of NMP-MA); 55 Pa. Code § 178.12 (relating to categories of MNO-MA); 55 Pa. Code § 181.41 (relating to categories of NMP-MA); 55 Pa. Code § 181.42 (relating to categories of MNO-MA); 55 Pa. Code § 181.261 (relating to gross earnings of a child); and 55 Pa. Code § 287.24 (relating to procedures).

§ 153.44. Procedures.

(a) *Absence from the home.* The following procedures relate to absence from the home:

(1) “Continued absence” will be considered to exist whenever the parent is a convicted offender permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday.

(2) When the eligibility of a child for TANF is based on deprivation due to “continued absence,” the Application for Support Services form will be completed at the time assistance is authorized for the child and forwarded to the Bureau of Claim Settlement Child Support Liaison Agent assigned to the CAO for processing as specified in paragraph (1).

(3) There must be proof that a parent is absent from the home and there must be evidence that the absence of the parent deprives the child of, or interrupts the child’s receiving support, care or guidance.

(4) If it is verified that a parent is absent for one of the reasons listed in paragraph (6), the absence will be considered to interfere with the child’s receiving support, care or guidance from the parent. No further evidence on this point will be necessary.

(5) Proof of the circumstances in the subparagraphs of this paragraph consists of the statement of the applicant or recipient supported by other valid evidence. Examples of acceptable evidence are divorce decrees; court orders; official court statements; and official letters from the penal institution or other institution, hospital, and the like. Acceptable evidence of marital separation consists of documentation that husband and wife live at different addresses due to marital discord. Circumstances which establish absence are:

- (i) Divorce.
- (ii) Pending divorce.
- (iii) Desertion.
- (iv) Marital separation.
- (v) Hospitalization.
- (vi) Imprisonment, including a person who is a convicted offender permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday. A person so sentenced is not considered part of the assistance unit and is not eligible to receive assistance.
- (vii) Other institutionalization.

(6) Whenever the CAO finds that a parent is absent from the home, and not for one of the specific reasons listed in paragraph (5), for purposes of eligibility for TANF there must be evidence that temporarily or permanently the parent is not taking responsibility for the support, care or guidance of the child.

(7) Deprivation due to absence does not exist if the absence of the parent from the home is due solely to the parent's performance of active duty in a uniformed service. Deprivation due to absence may be established only if there is evidence that absence for one of the specific reasons listed in paragraph (6) exists.

(8) If pieces of evidence in a case show conflicting information, the county staff will decide which is most reliable; and the decision and the reason for it will be recorded.

(9) Whenever a person applies for assistance on behalf of a child living with him and either or both parents are absent from the home, the CAO shall assure itself that the absent parent or parents have the opportunity to participate in planning for the child unless circumstances make it inadvisable or impossible. If the person applying indicates that the absent parent or parents are not interested in taking part in planning for the child or that it would be inadvisable or impossible for the parent to do so, the CAO will require the person applying to produce some evidence of this fact.

(10) For requirements relating to establishing paternity and securing support from a putative father or from parents who are absent from the home, see Chapter 187 (relating to support from relatives not living with the client).

(b) *Locating absent parents.* Procedures are as follows:

(1) Regardless of their living arrangements, parents are legally responsible for the care and support of their dependent children. Absent parents therefore represent possible economic and social resources that must be explored.

(2) When a parent is absent from the home, the first step in exploring the resource that the parent represents to the TANF child or children will be to locate the parent. The purposes of location are to reunite the family when feasible, and to obtain support so far as possible.

(i) *Referral to county domestic relations section (DRS) for support services.* Referral to the DRS will occur under the following circumstances:

(A) If the eligibility of a child for TANF is based on deprivation due to absence of a parent from the home, each applicant or recipient caretaker relative with whom the child is living will be referred, before authorization, to the DRS as specified in § 187.23(d) (relating to requirements).

(B) As a condition of continued eligibility, the caretaker relative will be required to comply with cooperation requirements by appearing at the DRS support interview and providing all verbal or written information known or possessed by him relevant to the identification and location of the absent parent as set forth in § 141.21 (relating to policy). If the caretaker/relative disagrees with a determination made by the DRS support official, with regard to cooperation requirements, he does have a right to appeal and have a fair hearing.

(C) If the applicant or recipient fails to comply with cooperation requirements without good cause, a notice will be provided notifying the

individual of a reduction in the cash assistance allowance by 25% effective 10 days from the date of the notice. At the expiration of the 10-day period, the CAO will impose the cash assistance allowance reduction unless a timely appeal is filed by a recipient.

(D) If the client is in need of transportation expense to report for a support interview at the request of the DRS or Support Liaison Agent, payment in cash or transportation tokens will be provided from the Petty Cash Fund as set forth in § 229.24(e)(9) (relating to procedures).

(ii) *State Parent Locator Service.* A specialized unit in the Bureau of Claim Settlement entitled "Parent Locator Service" carries responsibility for location activity on the local, State and Federal level. The Bureau of Claim Settlement State Parent Locator Service, Claim Settlement Headquarters, Harrisburg, Pennsylvania is responsible for the following:

(A) Developing policies and procedures for locating absent parents on the Local, State and Federal level.

(B) Developing cooperative working relationships with other Commonwealth Departments and agencies engaged in law enforcement or otherwise concerned with location activities.

(C) Developing effective working relationships between County Offices and between this Commonwealth and other states.

(D) Maintaining close liaison with the Information Officer designated in accordance with the Uniform Reciprocal Support of Dependents Law.

(E) Collecting and analyzing pertinent data on absent parents to the degree required by Federal regulations, and updating such data upon receipt of change information.

(F) Maintenance of a Central Registry file on absent parents containing only that information necessary to meet Federal requirements.

(G) Notifying the individual, when located, of the existence of a Central Registry file.

(H) Implementing confidentiality requirements and penalties for improper disclosure of information as provided under Chapter 105 (relating to safeguarding information).

(I) Providing parent locator services to the resident parent, legal guardian, attorney, or agent of a child who is not receiving financial assistance upon application for such services.

(J) Submitting requests for utilization of the Federal Parent Locator Service upon exhaustion of the State and local parent locator resources.

(3) *Sources.* The sources of information available to the State Parent Locator Service include, but are not limited to the following:

(i) Bureau of Old Age Survivors and Disability Insurance.

(ii) Bureau of Employment Security.

(iii) Bureau of Motor Vehicles.

(iv) The United States Internal Revenue Service.

- (v) Armed Forces.
 - (vi) Veterans Administration.
 - (vii) The Federal Parent Locator Service.
 - (viii) The data provided from tax records shall be limited to full name, residence or address, name and address of employer, and the social security account number of the absent parent.
- (c) *Procedures relating to determining incapacity or impairment.* The following procedures relate to the determination of incapacity or impairment:
- (1) *Incapacity.* The incapacity must be proved. If the necessary data is not already available in the case record or from the parent, the CAO will provide help, if requested, to get the necessary verification. If the services of a competent authority are not available without cost, the CAO will authorize a medical examination. If capacity of either parent cannot be determined from the available information, the CAO will make a preliminary decision regarding the incapacity. If the decision is that a parent appears to be incapacitated, and if the grant group meets the other TANF eligibility requirements, the CAO will authorize TANF presumptively as provided in Chapter 227 (relating to central office disbursement). When there is a question of incapacity, the individual shall cooperate with the CAO in providing verification of incapacity as a condition of eligibility for the family. To prove incapacity, an impairment expected to last at least 30 days must be verified by competent medical information, such as the following:
 - (i) An explanatory statement from the family physician, other medical data such as hospital and clinic reports, including a current complete medical examination, if indicated.
 - (ii) Psychological data, including a psychiatric evaluation or psychometric test results, if indicated. A finding of eligibility for OASDI or SSI benefits because of disability or blindness is proof of impairment. No further determination will need to be made.
 - (2) *Impairment.* Impairment will be governed by the following:
 - (i) The impairment of the parent must be of such severity that it substantially reduces or eliminates the ability of the parent to support or care for the child. Therefore, it is necessary to establish that the impairment is directly related to and has more than just a minor effect on the ability of the parent to support or care for the child. Since the impairment must be expected to last at least 30 days, any condition that is expected to last less than 30 days would not result in substantial deprivation.
 - (ii) In making the determination of ability to support, the County Office must take into account the limited employment opportunities of handicapped individuals.
 - (iii) In using medical or other technical reports to determine whether the parent has an impairment, it will be important that staff use the contents of the reports, if such use can be constructive, to help the person know what he

can do in relation to his impairment. In some cases, before using the medical information with the person, it may be advisable for staff to consult with the physician on whether the information should be used and how. The use of the findings with the client is directed at helping him to learn the extent of his present capacities, what he may need to do, or what treatment or other measures he may have to take to improve or restore his impaired capacities. If his impairment is such that his capacities cannot be improved or restored, he shall need to know what his limitations are, and what adjustment he has to make in the amount and kind of his activities. This information is to help him in taking responsibility for himself and his family, and in working toward some goal.

(iv) Among the services staff may offer or refer the person to are those available under the medical program of the Department. The Department is concerned that the person with an incapacity avail himself of these services and follow medical recommendations. The Department recognizes, however, that no medical treatment can be of any value to a person in restoring him to health and self-support unless he wants the treatment and makes constructive use of it. Pressures on a person to use treatment cannot hold him to it or to a consistent effort to get well. Rather, the sense of coercion may seriously interfere with his own will to recover. By having and sharing concern for the person as a person, not only as a means of support for himself and his family, and by readiness to help him, staff will help to strengthen him in his will to use medical service and regain self-dependence if possible.

(d) *Procedures relating to the unemployed principal wage earner parent.* The following procedures relate to an unemployed parent determined to be the principal wage earner:

(1) *General.* The following is a general statement relating to the principal wage earner parent:

(i) The principal wage earner is an employable parent in a home in which both parents of a dependent child reside, who earned the greater amount of income in the 24-month period immediately preceding the month in which application for assistance is made. If both parents earned an identical amount of income in the 24-month period, the principal wage earner is that parent who earned the greater amount of income in the last 6 months of the 24-month period. If both parents earned an identical amount of income in the 6-month period, either parent may be designated the principal wage earner. The principal wage earner parent shall meet the conditions in this subparagraph on the effective date of the initial authorization for TANF. The conditions are as follows:

(A) The principal wage earner parent has had a work record. Reference should be made to paragraph (2).

(B) The principal wage earner parent has not without good cause refused a bona fide offer of employment or training within the period of unemployment.

(C) The principal wage earner parent does not refuse to apply for or accept unemployment compensation which the parent is qualified to receive under an unemployment compensation law of a state or of the United States.

(D) A nonexempt parent shall participate in RESET as provided in Chapter 165 (relating to road to economic self-sufficiency through employment and training (RESET) program).

(E) The principal wage earner parent is not a participant in a strike.

(ii) Unemployment is defined as: having no work, having work in which the net income, after allowable deductions under §§ 183.94 and 183.98 (relating to eligibility for TANF earned income deductions; and unearned income and lump sum income deductions) is less than the family size allowance for the budget group, as defined in § 168.2 (relating to definitions) or having “on-the-job” training in a project that is approved or recommended by the JS or RESET.

(iii) If a principal wage earner parent has refused an offer of employment or training for employment, the following factors are considered in deciding whether the offer was bona fide or whether there was good cause to refuse it: the capacity of the parent to do the type of work required; the travel distance, and transportation available; the fact of a definite offer of employment at wages meeting applicable minimum wage requirements and which are customary for work in the community; working conditions, such as risks to health, safety or lack of workers’ compensation protection. If the offer of employment was made directly to the parent through JS or through a manpower agency, the determination as to whether the offer was bona fide or whether there was good cause to refuse it is made by JS or the manpower agency. This determination is binding on the CAO.

(iv) The family will be ineligible for TANF with respect to any week for which the principal wage earner parent qualifies for unemployment compensation under an unemployment compensation law of a state or of the United States but refuses to apply for or accept the UC.

(2) *Work record requirement.* Eligibility for TANF depends on the unemployed principal wage earner parent having had a work record. A work record shall be proved. To prove a work record, there shall be evidence that the principal wage earner parent meets one of the following conditions:

(i) The parent received UC benefits from a state or from the United States within the 12-month period prior to the date of application or was qualified for UC which means that the parent would have been eligible if the parent had filed application for benefits or if the parent’s employment had

been covered under Unemployment Compensation Law (43 P. S. §§ 751—914) within the 1-year period.

(ii) The parent worked for 6 or more calendar quarters in a 13-calendar quarter period ending within the 12-month period before the date of the application. Activities as specified in clauses (D) and (E) may be used to qualify for no more than 4 of the required 6 calendar quarters. In a calendar quarter, which is defined as a period of 3 consecutive calendar months ending on March 31, June 30, September 30 or December 31, the parent shall have:

(A) Earned \$50 or more.

(B) Participated in a community work and training program; which means programs of a constructive nature, encouraging the conservation of work skills and the development of new skills for individuals who are 18 years of age or older and are receiving TANF and under conditions which are designed to assure protection of the health and welfare of these individuals and the dependent children involved, or other work and training program under governmental auspices.

(C) Participated in the Work Incentive Program before October 1, 1989, or in ETP or RESET on or after October 1, 1989, while receiving AFDC or TANF.

(D) Attended, full-time, an elementary school, a secondary school or a vocational or technical training course designed to prepare the individual for gainful employment.

(E) Participated in an educational or training program established under the Job Training Partnership Act of 1982 (29 U.S.C.A. §§ 1501—1781).

(F) A quarter of coverage based on earnings in the calendar year, as determined under section 213(a)(2) of the Social Security Act (42 U.S.C.A. § 413(a)(2)).

(3) *Transfers between U and C grant groups.* Transfers between U and C grant groups will be governed by the following:

(i) U grant groups will be transferred to C if deprivation occurs for reasons other than the unemployment of the principal wage earner parent. Similarly, C grant groups will be transferred to U if deprivation no longer exists except for the unemployment of the principal wage earner parent as specified in § 153.43(d) (relating to TANF deprivation of support or care requirements).

(ii) A *Form PA 122, Authorization*, is required for each transfer. The executive director or his delegate will sign the Form PA 122 authorizing GA.

(e) *Procedures relating to the Acknowledgement of Paternity form.* When assistance is requested or received on behalf of a child born out-of-wedlock, the CAO will explore with the caretaker relative the putative father's willingness to sign an *Acknowledgment of Paternity Form*.

(1) For children born in this Commonwealth, the following procedures apply:

(i) The *Acknowledgment of Paternity Form* is used to establish paternity of a child born out-of-wedlock when assistance is requested or received on behalf of a child born out-of-wedlock and the putative father voluntarily consents to establishing a claim of paternity by signing the form. The following procedures apply:

(A) When the putative father establishes a claim of paternity by signing the form, the worker also obtains the mother's signature on the form. To be valid, the signatures of the mother and putative father shall be witnessed by a third party. The third party may not be the mother or the putative father. The CAO forwards the form to:

THE PARENT LOCATOR SERVICE SECTION
CHILD SUPPORT PROGRAMS OFFICE
POST OFFICE BOX 8018
HARRISBURG, PENNSYLVANIA 17105

(B) Upon completing and forwarding the form to the Parent Locator Service Section, the CAO will consider the putative father as an LRR to the child. The CAO will apply appropriate LRR regulations.

(ii) When a putative father is not willing to sign an Acknowledgement of Paternity form, the support procedures in Chapter 187 apply.

(iii) If the mother is a recipient of assistance or is receiving assistance for the children only, she is required to sign the Acknowledgement of Paternity form under § 187.23 and to cooperate, unless she denies the putative father's claim of paternity.

(iv) In cases where the mother is also an absent parent, the CAO attempts to secure her signature on the Acknowledgement of Paternity form if her whereabouts are known, after the putative father has signed it.

(v) For situations in which the mother denies the putative father's claim of paternity and refuses to sign the form, the father cannot be considered an LRR until paternity is legally established by the court.

(vi) For situations in which the putative father denies paternity of the child and the court later determines this same man to be the father of the child, the putative father may not be considered an LRR prior to the date of the court decision.

(vii) Upon forwarding of the Acknowledgement of Paternity form by the CAO to the Parent Locator Service Section, the CAO can assume that the Parent Locator Service Section will file the Acknowledgement of Paternity form with the Department of Health. If additional information is required by the CAO regarding the Acknowledgement of Paternity, it is obtained by request through the Parent Locator Service Section, rather than directly from the Department of Health.

(2) For children born out-of-State the following procedures apply:

(i) If the putative father is willing to acknowledge paternity, the CAO refers the putative father to the local DRS for filing of a DRS Voluntary Statement of Paternity form. Paternity will then be established by court action.

(ii) If the putative father is not willing to acknowledge paternity, § 187.23(a)(1)(i) applies.

Authority

The provisions of this § 153.44 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; the Federal TANF regulations in 45 CFR 260.10—265.10; and the Domestic Relations Code, 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418.

Source

The provisions of this § 153.44 amended through February 15, 1985, effective February 16, 1985, 15 Pa.B. 573; amended October 2, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4875; amended March 19, 1993, effective upon publication and applies retroactively to April 1, 1991, 23 Pa.B. 1315; amended June 18, 1993, effective immediately and apply retroactively to October 10, 1992, 23 Pa.B. 2836; amended September 13, 2002, effective retroactively to March 3, 1997, with the exception of subsection (b)(2)(i)(C) which is effective September 14, 2002, and subsection (d)(1)(i)(B), (ii) and (iii) which is effective retroactively to July 3, 2000, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (264027) to (264029), (253077) to (253084) and (268313).

Notes of Decisions

Petitioner had to include in her AFDC filing unit a child living with her whose father was totally disabled by a severe arthritic condition, as well as the father and his social security benefits, which put petitioner over the income limit for AFDC. *Kiess v. Department of Public Welfare*, 537 A.2d 102 (Pa. Cmwlth. 1988).

This section requires proof that a parent is absent from the home and that the child is deprived of support, care or guidance before AFDC benefits are awarded. The hearing officer must decide whether to believe the evidence based upon the totality of the presentation and this decision will not be reversed absent a capricious disregard of competent evidence. *Nelson v. Department of Public Welfare*, 519 A.2d 1062 (Pa. Cmwlth. 1986).

Under this section, an applicant for AFDC benefits must prove a parent's absence from the home, not the absent parent's actual residence. *Nelson v. Department of Public Welfare*, 519 A.2d 1062 (Pa. Cmwlth. 1986).

A claimant did not establish her husband's continued absence from the home, since she indicated that his absence was not continuous and he corroborated her statements. *Fetrow v. Department of Public Welfare*, 407 A.2d 487 (Pa. Cmwlth. 1979).

A claimant's ability to support or care for her children was not substantially reduced even though she suffered constant severe headaches, because she was usually able to take care of her children and had participated in a work training program which she had quit because she lost the services of her babysitter. *Thornburg v. Department of Public Welfare*, 406 A.2d 1224 (Pa. Cmwlth. 1979).

In light of the full-time employment of the claimant, the results of a county board of assistance-sponsored medical examination which indicated that the claimant suffered from no significant physical or mental impairments and the own testimony of the claimant that he was able to cope with his job, the hearing examiner was justified in finding that the claimant was not substantially incapacitated. *Royer v. Department of Public Welfare*, 400 A.2d 913 (Pa. Cmwlth. 1979).

Cross References

This section cited in 55 Pa. Code § 141.21 (relating to policy); 55 Pa. Code § 141.21 (relating to policy); 55 Pa. Code § 141.71 (relating to policy); 55 Pa. Code § 141.81 (relating to eligibility policy for Medically Needy Only); 55 Pa. Code § 153.43 (relating to TANF deprivation of support or care requirements); 55 Pa. Code § 153.45 (relating to joint or shared custody eligibility determination—statement of policy); 55 Pa. Code § 178.11 (relating to categories of NMP-MA); 55 Pa. Code § 178.12 (relating to categories of MNO-MA); 55 Pa. Code § 181.41 (relating to categories of NMP-MA); 55 Pa. Code § 181.42 (relating to categories of MNO-MA); 55 Pa. Code § 183.901 (relating to putative father/voluntary child support—statement of policy); 55 Pa. Code § 187.23 (relating to requirements); and 55 Pa. Code § 291.21 (relating to policy).

§ 153.45. Joint or shared custody eligibility determination—statement of policy.

(a) *Cash assistance eligibility.*

(1) In defining absence, emphasis was placed on the amount of time spent with each parent rather than on the nature of the absence and the effect on the care and control of the child. Effective with this statement of policy, treatment of a joint or shared custody situation is no different from that of a regular custody situation. The parent who requests assistance for himself, and his children is designated as the caretaker relative and the other parent is considered the absent parent under § 153.44(a) (relating to procedures). The caretaker relative shall comply with TANF requirements to establish TANF eligibility including taking support actions.

(2) In joint or shared custody situations, when both parents are determined cash eligible, one parent will be designated as the caretaker relative to receive TANF as the payment name for the children's benefit and be included on the TANF grant. The TANF grant is to meet the children's needs for the entire period not just when in the physical custody of the parent designated as the payment name. It is not the responsibility of the CAO to mediate disputes between the parents as to the use of the grant.

(3) If the caretaker relative fails or refuses, without good cause, to cooperate in obtaining support, the caretaker relative shall be ineligible for TANF but benefits to the TANF dependent children may not be delayed, denied or terminated because a caretaker relative fails to comply with the support requirements under §§ 141.21(e) and 187.24(b)(1)(ii) (relating to policy; and reserved).

(4) Special arrangements for physical custody of a child on holidays, birthdays, vacations and similar special occasions will be considered as regular visits to the absent parent.

(5) For consistency these requirements will be extended to GA children also.

Example of a joint or shared custody situation:

Mr. and Mrs. Greene, who are divorced, are under a joint custody court order for the custody of their two children. The children live with each parent every other week. Mrs. Greene applies for cash assistance for herself and the two children, because her U. C. benefits are now exhausted and she has no other income. Mrs. Greene is designated the caretaker relative and Mr. Greene the absent parent. Mrs. Greene complies with all eligibility requirements and AFDC is authorized for her and the two children.

(b) *Food stamp eligibility.* The authorized parent will be told of his responsibility to see that the food coupons he receives for the child will be used to purchase food in order to meet the child's needs throughout the month, and not just when the child is in the physical custody of the parent receiving the food coupons.

Source

The provisions of this § 153.45 adopted August 26, 1988, effective September 1, 1988, 18 Pa.B. 3850.

APPENDIX A

[Reserved]

Source

The provisions of this Appendix A reserved July 11, 1986, effective July 12, 1986, 16 Pa.B. 2524. Immediately preceding text appears at serial page (97848).

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