

Children's Issues Series: The TAFDC Family Cap Rule

What is the TAFDC Family Cap Rule?

The Family Cap rule means that you can get TAFDC for a child only if the child was already born or the mother was pregnant with the child when the family first started to get TAFDC. Families with a child subject to the Family Cap rule are denied about \$100 in TAFDC each month. (They can receive child support for that child, but every dollar after the first \$90 is deducted from the rest of the family's TAFDC grant.)

Time limit and work requirement rules also apply to families sooner if a child is under the family cap rule. Families are exempt from these rules until their youngest child turns 2, but if their youngest child is under the family cap rule, then the time limit and work requirement apply after that child turns 3 months old.

Can a child subject to the family cap rule receive any benefits?

Yes. A child subject to the Family Cap rule still receives Food Stamps (now called "SNAP benefits"), MassHealth and child care.

Why is it important to know about the Family Cap Rule?

The Family Cap Rule denies about \$100 each month in benefits to families simply because of the date their child was born. It also subjects families to time limit and work requirement rules 2 years sooner.

Since Family Cap rules were passed as part of welfare reform, there has not been a demonstrated impact on the number of children born to families receiving cash assistance. However, even a short-term loss of income can have profound adverse consequences on long-term child health.

For information about the connection between welfare sanctions generally and higher rates of emergency room visits and hospitalization for children, see <http://www.childrenshealthwatch.org/page/PublicationsTopic/#TANF>.

Are there any exceptions to the family cap rule?

Yes. There are two sets of exceptions. See 106 CMR 203.300(C)

A child can be added to the TAFDC grant if the child was born because of forced sex, sexual assault or incest. Given the high rate of domestic violence amongst families receiving TAFDC—2/3 of families on TAFDC have experienced domestic violence -- it is important to check whether it was the mother's free choice to have sex or become pregnant.

A child should also be included in the TAFDC grant if the child was born during an extended period when the family had stopped receiving TAFDC. For this provision to apply, the rules require that the child be born at least 20 months after the family stopped receiving TAFDC, the TAFDC case was closed for at least 12 months, and if the family returned to TAFDC, the family received TAFDC for less than 10 months before the birth of the child.

What's a domestic violence waiver of the family cap rule?

In addition to exceptions, there are waivers due to domestic violence. A family can ask to have the child added to the TAFDC grant if the family cap rule punishes the family because of past domestic violence, places the family at risk of domestic violence, or makes it harder to escape domestic violence. The most common reason people ask for a waiver due to domestic violence is when there was domestic violence at the time a mother became pregnant. See 106 CMR 203.110.

What's the difference between an exception and a waiver? How do you apply for one?

Forced sex in an ongoing relationship is considered rape, so there is substantial overlap between when exceptions due to rape and waivers due to domestic violence may apply.

There is a statutory right to an exception whereas waivers due to domestic violence are discretionary.

Both require filing requests for the child to be added (which can be prepared with the help of advocates), but the paperwork to request an exception is shorter and requires revealing less information than a waiver due to domestic violence does.

The domestic violence waiver typically involves a referral to a DTA domestic violence specialist who meets with the client assists with the filing of the request and provides a recommendation to a centralized committee that makes the ultimate decision. (In some cases, having to meet with someone to discuss the domestic violence has been a barrier that prevented clients from being able to proceed. In such cases, advocates have been able to bypass this step by asking DTA management to intervene. In other cases, clients welcome meeting with the domestic violence specialist who may be able to provide referrals to relevant services.) Even if a client does not seek a waiver due to domestic violence, domestic violence specialists are available as a resource.

Is there any other way to ask for a child to be added to a TAFDC grant despite the family cap rule?

Yes. The DTA regulations allow the DTA commissioner to waive the family cap rule at her discretion due to compelling circumstances. Unfortunately, to date, this provision has been widely applied. See 106 CMR 203.300(D)

***This information is general in nature and not intended as legal advice.
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