

# Part 2 Assistance Units

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## 26 Who has to be in the assistance unit?

An assistance unit is all the members of a household who are counted in determining the amount of the grant.

Certain people have to be in the assistance unit, whether they want to or not. This is a way of forcing their income to be counted in determining the eligibility of other members of the household. Mandatory assistance unit members are

- a natural or adoptive parent, or parents, living with a dependent child, *and*
- most siblings—including half-siblings but not step-siblings—living with the dependent child. 106 C.M.R. § 204.305.

**Example 1:** Ms. Ward has two children, Michael and Rachel. The children have different fathers. Rachel's father pays child support. Ms. Ward would like to exclude Rachel from the TAFDC unit, so that the child support would not count against the grant for Michael and so that she could use the child support for Rachel. Under the rule, however, Rachel has to be in the unit with her half-brother Michael. See **Question 68** for who gets the child support.

**Example 2:** Nina Santiago and her partner Jose Hernandez have one child, Awilda. Ms. Santiago's child, Victor, also lives with them. Jose is not Victor's father, and has no obligation to support him. But under the rule, Awilda has to be in the assistance unit with Victor, and Mr. Hernandez has to be in the assistance unit with Awilda, his daughter. As a result, Mr. Hernandez's income counts in determining everyone's eligibility.

***Advocacy Reminder:***

- ✓ The assistance unit rule is not required by statute. DTA could eliminate the assistance unit rule if it wanted to.

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## 27 Who cannot be in the assistance unit?

Certain people cannot be included in the assistance unit, even if they live in the same household. These people may or may not have their income and assets counted in determining the family's eligibility.

People who are excluded *and whose income and assets do not count* are

- Supplemental Security Income (SSI) recipients *and*
- foster children. 106 C.M.R. § 204.305. The foster parent can get a TAFDC grant for herself if she qualifies as a relative. See **Question 3**.

People who are excluded *and whose income and assets do count if they are otherwise mandatory members of the assistance unit* (see **Question 26**) are

- children who are denied cash benefits because of the family cap rule (see **Question 31**),
- people who are sanctioned (for not cooperating with child support, an Employment Development Plan, the Work Program, Learnfare, immunization, teen parent school attendance, third-party medical insurance, or direct deposit requirements, or for an intentional program violation),
- ineligible non-citizens, *and*
- people who have not met an eligibility rule such as the social security number requirement. 106 C.M.R. §§ 204.305-204.310.

Also, you are excluded if you have an outstanding default or arrest warrant in Massachusetts, you are fleeing prosecution or punishment for a felony, or you are violating a condition of probation or parole. 106 C.M.R. § 701.110. See **Questions 22** and **23**. You may also be excluded if you were convicted of a drug related felony for conduct that occurred after August 22, 1996, you were released from prison less than 12 months ago, and you do not meet any of the other exceptions listed in **Question 23**. Consult an advocate if you need help dealing with any of these problems.

***Advocacy Reminder:***

- ✓ It may be illegal for DTA to remove you from the grant for not cooperating with child support. Consult an advocate if this is a problem for you.

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## 28 What happens if you are excluded from the assistance unit?

**Effect on grant.** If you are excluded from the assistance unit you lose your portion of the grant (usually about \$100). If you are sanctioned for not cooperating with child support, you lose your portion of the grant or 25% of the maximum grant for your family size, whichever is more.

**Effect on education, training, child care and transportation.** If you are excluded from the assistance unit because you are not a citizen, but you are a *lawful* non-citizen, you are eligible for education, training, child care and transportation on the same basis as other TAFDC recipients. See DTA Field Operations Memo 2002-18A (Oct. 10, 2002).

If you are excluded from the assistance unit for some other reason—for example, because you get SSI or you are under sanction—DTA may say you are not eligible to participate in a DTA-funded education or training program and can get child care or transportation only for work, for school (if you are a teen parent), or for another work, education or training activity that DTA mandates.

Consult an advocate if you are denied services because you are excluded from the assistance unit.

**Effect on how income is counted.** DTA may try to count gross earnings of someone excluded from the assistance unit against the reduced grant (without any deductions for work expenses, child care, or earned income disregards). 106 C.M.R. §§ 204.270, 204.275, 204.310. Consult an advocate if DTA tries to deny you earnings deductions because you are excluded from the assistance unit.

- Because of a lawsuit, DTA no longer denies earnings deductions if you are excluded from the assistance unit because of a drug felony conviction. Because of a change in law, you may now be included in the assistance unit even if you have a drug felony conviction. See **Question 23**.
- See **Question 70** for how DTA counts income if you are excluded from the assistance unit because you are an ineligible non-citizen.
- Income of SSI recipients and non-parents who are not receiving TAFDC does not count. See **Questions 27** and **29**.

***Advocacy Reminder:***

- ✓ It may be illegal for DTA to remove you from the grant for not cooperating with child support. Also, if you have income that is being counted in figuring the grant amount, DTA may be reducing your grant for not cooperating with child support by more than the amount permitted by law. Consult an advocate if you have a problem with the sanctions for not cooperating with child support.

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## 29 Who has a choice about whether to be in the assistance unit?

Certain people can choose whether to be in the assistance unit:

- **A grantee relative who is not a parent**, such as a grandparent aunt, or stepparent, does not have to be included in the assistance unit. The income and assets of the grantee relative do not count unless she or he is included in the unit. (The spouse of a grantee relative who is not a parent

cannot be included.) 106 C.M.R. § 204.320. A grantee relative who is not a parent is exempt from the time limit, family cap and work program if the grantee relative chooses *not* to be included in the unit. See **Question 38**. A grantee relative can make this choice at any time.

- **Non-sibling children**, such as a niece or nephew, can choose whether to be in the assistance unit. A child who is not included but still needs TAFDC can get her own full grant if she can show that being in the unit (getting about \$100 as an additional person) will cause homelessness or serious hardship. 106 C.M.R. § 204.305(B).
- **A child getting adoption assistance payments** has a choice about whether to be included in the assistance unit. 106 C.M.R. § 204.305(E)(3). Usually, adoption assistance payments are more than the child's share of the grant, so it makes sense for the adoptive child to be excluded.
- **Children of a woman who qualifies for benefits for herself on the basis of pregnancy** have a choice about whether to be included in the assistance unit. 106 C.M.R. § 204.305(D). For example, if child support is more than the child's share of the grant (about \$100) plus the \$50 pass through, it is probably better for the child not to be in the assistance unit. But once the baby is born, the mother cannot get benefits for herself unless all children are included in the assistance unit.
- **A child of a teen parent who is getting TAFDC on her parent's grant** can be excluded from the assistance unit. The teen parent might want to do this if she is getting child support or Social Security benefits for the child. See DTA Transitions, Aug. 2004, p. 3.
- **A non-citizen who does not wish to be included in the assistance unit** because of her immigration status. See **Question 30**.

**Example 1:** Jane lives with her aunt and cousins who get TAFDC benefits. Jane has income from child support, so her aunt does not include her in the TAFDC unit and her income does not count in determining the aunt's and cousins' TAFDC eligibility.

**Example 2:** Reggie lives with his aunt and cousins who get TAFDC benefits. Reggie has no income, so his aunt needs to get TAFDC for him. If Reggie is included in the assistance unit with his aunt and cousins, his aunt will get about \$100 a month for him. His aunt can get a full single person

grant for Reggie if she can show that giving him only a \$100 grant would result in his becoming homeless (because she cannot afford to have him continue to live with her) or would otherwise cause Reggie serious hardship.

**Example 3:** Wretha is taking care of her grandchild, Laurene, who is six years old. Wretha has no income but chooses to receive a grant only for Laurene. Laurene's grant is based on the "exempt" standard, see **Question 81**, and Wretha does not have to meet the Work Program requirements. Benefits for Laurene will also not be subject to the time limit.

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## 30 Can you get TAFDC just for your children if you are a non-citizen?

**Yes.** You have the right to exclude from the TAFDC application any non-citizen family members who do not want to apply. DTA will give you a form to list family members who do not wish to apply. See DTA Field Operations Memo 2004-24 (Sept. 24, 2004).

- You can apply just for your U.S. citizen children or for children who meet non-citizen eligibility requirements. See **Questions 8-10**.
- You do not have to give information on your immigration status or an SSN.
- You can opt out for any reason, such as you do not have legal status or an SSN, or you do have legal status but you do not meet TAFDC non-citizen rules. You do not have to give a reason for opting out.
- Even if you opt out, you must still give DTA information on your income and assets, the other parent, and other TAFDC eligibility factors.
- DTA will not report you to immigration authorities unless you tell DTA you are under a final order of deportation and show DTA a copy of the final order. 106 C.M.R. § 203.675. If you are not sure about your status, consult an immigration specialist.

***Advocacy Reminders:***

- ✓ Non-citizens can also opt out of the food stamp (SNAP) application. But you may be eligible for higher benefits if you do not opt out. And even if you opt out of TAFDC and food stamps, your children may be eligible for higher food stamp benefits if you have legal status and show DTA proof of that status. See 106 C.M.R. §§ 362.220, 365.520(B).
- ✓ See **Question 54** on the work rules for non-citizen parents who are not included in the TAFDC assistance unit.

# 31

## What is the “family cap”?

In general, you can receive benefits for a child only if the child was already born when your family first applied for TAFDC or if the child was born fewer than 10 months after you applied for TAFDC. A child born more than 10 months after you first applied for TAFDC will not be added to the cash grant unless the child meets an exception. This rule is called the “family cap” or “child exclusion” rule. 106 C.M.R. § 203.300.

A child who is excluded under the family cap is barred from receiving cash benefits (including layette and clothing allowances) as a child. See **Questions 85 and 88**.

What if you go off TAFDC, get pregnant, and later reapply for TAFDC? The family cap rules bar benefits for a child conceived after the family left TAFDC, unless three conditions are met: (1) the child was born at least 20 months after the family left TAFDC, (2) the TAFDC case was closed for at least 12 consecutive months, and (3) if the family returned to TAFDC, it received less than 10 months of TAFDC before the birth.

***Advocacy Reminders:***

- ✓ If you are a parent caring for a child excluded by the family cap, you can receive benefits for yourself even you do not have any other eligible children living at home.

- ✓ The family cap should not apply to your first born child even if you previously received assistance for yourself and a sibling, grandchild or other child who is not your biological child. DTA Field Operation Memo 2008-60 (Nov. 18, 2008).
- ✓ The family cap should not apply to a child who was included in your assistance unit but then left your home and returned. The family cap should not apply to a child who was eligible in someone else's assistance unit but is now living with you. The family cap should not apply to a child who comes to live with you who was born before your "child of record." Although the family cap should not apply, DTA may say the child is excluded unless you get a waiver. Consult an advocate.

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## 32 Are "family cap" children eligible for any benefits?

Children excluded under the family cap can qualify for food stamps (SNAP), WIC and MassHealth. They are eligible for child care if their parents are working or doing any approved Work Program or education or training activities.

The income and assets of an excluded child must be counted in determining the family's eligibility, except for the first \$90 of the child's income. 106 C.M.R. § 203.300(B)(5).

Do you have to assign the family cap child's child support rights? The regulations say you have to assign to the state the family cap child's right to medical insurance, but do not require you to assign the family cap child's right to cash support. 106 C.M.R. §§ 203.700, 203.710. Consult an advocate if you do not want to assign child support rights for a family cap child.

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## 33 What is the “family cap date”?

Each family on TAFDC has a “family cap date.” Any child born after the family cap date will be excluded unless the child meets an exception. For families receiving TAFDC on November 1, 1995, the family cap date is September 1, 1996. For families who apply for TAFDC after November 1, 1995, the family cap date is 10 months after the family applied for TAFDC. 106 C.M.R. § 203.300.

A teen who was already pregnant or a parent when her family applied for TAFDC has the same family cap date as her family if DTA told the teen herself about the family cap date. The family cap date for a teen who becomes pregnant after her family applied for TAFDC is the birth date of her first child.

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## 34 Who is the “child of record”?

The “child of record” is the youngest child who can receive TAFDC—that is, the last child born before the “family cap date.”

**Example:** Charlene Davis applies for TAFDC for herself and her child, Samantha, in December 2005. Her “family cap date” is 10 months later, in October 2006. In June 2006, she gets married and goes off TAFDC. In August 2007 she and her husband have a child, Georgette. Three years later, Charlene’s husband dies and she reapplies for TAFDC. Georgette is excluded, because she was born after Charlene’s “family cap date.” Samantha is Charlene’s “child of record.”

### ***Advocacy Reminders:***

- ✓ In the example, if Georgette had been born in December 2007 she would not be excluded because she would meet the exception for a child conceived after the family left TAFDC (born 20 months after the family left TAFDC, case closed for at least 12 consecutive months, and family

did not return to TAFDC before the birth or received less than 10 months of TAFDC before the birth). See **Question 31**.

- ✓ A later born child should not be excluded when there is no “child of record,” for example, when the so-called “child of record” was never born (because of miscarriage or abortion), was stillborn, or died after birth.

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## 35 Can you get a waiver or exception to the family cap?

The family cap does not apply to

- a child born as a result of rape, incest or sexual assault. 106 C.M.R. § 203.300(C).
- a child born to a grantee relative who previously was not included in the assistance unit (see **Question 29**). The “child of record” is the first child born to the grantee relative. Her “family cap date” is 10 months after this child is born. 106 C.M.R. § 203.300(A).
- a child born at least 20 months after the family went off TAFDC, if the case was closed for at least 12 months and the family was back on TAFDC for fewer than 10 months before the birth. 106 C.M.R. § 203.300(C).
- the first born child of a teen parent who previously received TAFDC on her parent’s grant. 106 C.M.R. § 203.300(A).

DTA must waive the family cap for a child who had to leave her parent’s home and move in with you because the parent she was living with died, became too disabled to care for the child, gave up legal custody, or is in jail, prison or a mental health facility. 106 C.M.R. § 203.300(D).

You may also ask the Commissioner of DTA to waive the “family cap” rule because of “extraordinary circumstances.” The regulations do not define extraordinary circumstances. 106 C.M.R. § 203.300(D). “Extraordinary circumstances” may include situations where you used birth control but it

didn't work, where you have a religious objection to abortion, and where you or your child has serious health problems. DTA Field Operations Memo 2007-35 (July 16, 2007) includes a form for requesting a family cap exception or waiver.

You may also get a waiver if the family cap rule for domestic violence reasons. See **Question 43**.

***Advocacy Reminders:***

- ✓ If DTA grants a family cap waiver or exception, you are exempt from the time limit and Work Program until the child is two years old. See **Question 38**.
- ✓ The family cap rape exception applies if someone had sex with you without your consent. For example, it is rape if you were intoxicated (drunk) and someone had sex with you without your consent. G.L. c. 265, § 22.
- ✓ The family cap rape exception also applies if someone had sex with you (with or without your consent) if you were under age 16. G.L. c. 265, § 23.
- ✓ The family cap sexual assault exception applies in situations where you were afraid someone would hurt you or your children if you did not have sex with him, if you used contraception, or if you got an abortion. The sexual assault exception applies whether or not you knew the person.
- ✓ DTA has discretion to grant exceptions or waivers in many more circumstances. Consult an advocate if you think you have special circumstances that should qualify for an exception or waiver.