

15.2 DEFINITION OF A DEPENDENT CHILD

In order to receive cash assistance, AFDC/U Medicaid or AFDC/U-Related Medicaid as a dependent child the following requirements must be met.

A. AGE

1. AFDC Medicaid, AFDC/U-Related Medicaid

Children must be under the age of 18, whether or not they are attending school or training. A child who reaches age 18 on the first day of the month is not eligible for benefits for that month.

However, a child over age 18 may be included in the benefit group when he:

- Is a full-time student in a secondary school, or the equivalent level of vocational or technical training, including summer breaks; and
- Can be reasonably expected to complete the program before reaching age 19; and
- Meets all other eligibility requirements.

Graduation ceremonies need not take place prior to the child's 19th birthday. As long as all courses or training programs are fully completed prior to the child's 19th birthday, the child is eligible.

2. WV WORKS

Children must be under the age of 18, whether or not they are attending school or training. A child who reaches age 18 on the first day of the month is not eligible for benefits for that month.

However, a child over 18 may be included in the benefit group up to age 19 while he:

- Is full-time student in a secondary school, or the equivalent level of vocational or technical training, including summer breaks; and
- Meets all other eligibility requirements.

A child who reaches age 19 on the first day of the month is not eligible for that month.

B. LIVING WITH A SPECIFIED RELATIVE (WV WORKS, Medicaid, AFDC-Related Medicaid)

The child must be living with a specified relative in a place established as the relative's home. A specified relative is defined below.

- Natural or adoptive parents. Adoption procedures must be finalized in order for an adoptive parent to qualify as a specified relative. If a child is living with his natural father and paternity has been legally established, the father is considered a specified relative;

NOTE: When an adoption is finalized the ties between the natural parent(s) and the child are severed. The natural parent(s) do not retain a specified relationship as a parent.

EXAMPLE: A set of paternal grandparents legally adopts a grandchild. The father of the child no longer has a specified relationship of parent to the child, but now has a specified relationship as the child's brother.

NOTE: When parental rights have been severed, but no adoption has been finalized, the parent is no longer a specified relative, but all other relationships of the child are unaffected.

EXAMPLE: A father has all parental rights severed by a court order. The child goes to live with the father's sister. The sister is still an aunt to the child and therefore a specified relative.

Spouses of step-parents are not specified relatives.

EXAMPLE: A man and his wife have living with them a child from his previous marriage. They get a divorce, and the child continues to live with the wife, and she remarries. She still qualifies as a specified relative, as she is a former step-parent, but her new husband does not.

- Blood relative: Those of half-blood, brothers or sisters, grandparents, great-grandparents, great-great grandparents, great-great-great grandparents, uncles or aunts, great-uncles or aunts, great-great uncles or aunts, nephews or nieces, first cousins, first cousins once removed;
- Legal step-parent, step-brother or step-sister;
- Legal spouses of any person named in any of the above groups except for spouses of step-relatives. The specified relationship exists even though the marriage terminated in death or divorce.

EXAMPLE: If a step-grandmother has 2 step-grandchildren living with her and she divorces her husband, she is still the former legal spouse of the children's grandfather, who is a specified relative. She is, therefore, a specified relative

NOTE: Legal custody or guardianship of a child does not, in itself, qualify a person as a specified relative. A relative of the father of a child born out-of-wedlock can qualify as a specified relative only if the child's paternity has been established.

Under certain circumstances, eligibility continues during periods of separation of the child and the specified relative. Refer to Chapter 8.

NOTE: For WV WORKS, it may be impossible for a relative to establish a home for a child who is in a foster home, or other place, without financial assistance before the child enters his home. The payment may be initiated any time within 30 days prior to the date the child actually goes to live with the specified relative. If the Department made an AFDC Foster Care payment, a WV WORKS payment cannot be initiated for the same period because this results in a duplication of payments.

C. DEPRIVED OF PARENTAL SUPPORT AND CARE (AFDC Medicaid, AFDC-Related Medicaid)

The dependent child must be deprived of parental support and care and the cause of this deprivation must be identified as described in the following sections.

1. Relationship of Deprivation Factor to Living Arrangements

The living arrangements of the child determine the broad category of deprivation applicable to the child.

a. Child Lives With Both Parents

The deprivation factor must be incapacity of either parent or unemployment of the parent who is the principal wage earner.

b. Child Lives With One Parent

The deprivation factor must be either death or continued absence of the other parent. This is true even though he may have half siblings in the home who are included in the AG and whose deprivation factor is unemployment or incapacity of the common parent.

Specific AFDC/U Requirements

c. Child Lives With A Relative(s) Who Is Not A Parent

The deprivation factor must be continued absence of a parent(s), unless both parents are dead.

2. Establishment of a Deprivation Factor

The following is a list of situations which may or may not establish a deprivation factor. When deprivation is based on the absence of a parent, the specific cause must be established for AFDC Medicaid, but not for AFDC-Related Medicaid. Deprivation factors have no bearing on WV WORKS eligibility, even though all AG's that contain a child with an absent parent are mandatory BCSE referrals.

a. Death

A child may be deprived of parental support and care because of the death of either parent.

If the child is living with a relative other than a parent, the deprivation factor is death only if both parents are dead.

Deprivation due to the death of the father applies only to the legal father of the child.

b. Continued Absence

Continued absence means:

- The parent is physically absent from the home for any reason; and
- The nature of the absence is such as to either interrupt or terminate the parent's functioning as a provider of maintenance, physical care or guidance for the child; and
- The known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the child.

NOTE: When two or more children in the same home share a legal parent, and that parent meets the definition of continued absence for one child, the parent is absent for all of his children in that home, unless there is substantial evidence to the contrary. Conversely, when the legal parent does not meet the definition of continued absence for one of his children in the home, he is not absent for any of his children who live in the same home.

Specific AFDC/U Requirements

The following sections list specific causes of absence and other situations which may or may not meet the definition of absence.

(1) Desertion

The specific cause of absence is desertion when the child is born of a legal marriage, adopted or paternity has been legally established and one of the following conditions exist:

- The location of the absent parent is unknown.
- The location of the absent parent is known, but there is no existing court order or provision relating to child support included in an existing order.
- There has been successful legal action to establish support but the parent is not complying with the court order.
- There has been a written or oral voluntary agreement to support, whether or not the absent parent is adhering to this agreement.
- The parents are divorced, or the marriage annulled, but there is no provision for child support in the court order.

(2) Separation or Divorce

The specific cause of absence is separation or divorce when:

- The parent has been legally absolved of the responsibility for support, and this is noted in the court order; or
- The parent has been ordered by the court to support and is adhering to that court order; or
- The parents are not married to each other, but paternity has been legally established, and one of the situations outlined in this item exists.

Specific AFDC/U Requirements

(3) Incarceration

NOTE: This does not include court-ordered home confinement or house arrest. See Section 15.2,D.

The specific cause of absence is incarceration when:

- The parent is absent because he is in jail, prison or other penal institution; or
- The parent is incarcerated, but, as specified by the court, is allowed to work during the day and return to jail at night.

The Worker must verify the parent's incarceration and expected release date. A control must be set to verify the parent's residence following release.

If the parent was absent prior to incarceration, the cause of absence does not change during incarceration. If the incarcerated individual is the alleged parent, paternity must be established before the absence can be based on incarceration.

(4) Paternity Not Established

(a) Definition

The specific deprivation factor is paternity not established when paternity has not been legally established. Paternity not established is the cause of absence assigned to a child:

- Who was born out-of-wedlock or whose legally presumed father has been excluded from paternity; and
- Whose paternity has not been established; and
- Whose paternity has not been decided in a court of law.

Specific AFDC/U Requirements

(b) Establishment of Paternity

Paternity is considered legally established when any one of the following conditions exist:

- Both parents have signed a Declaration of Paternity Affidavit.

The father may be included in the benefit group and deprivation is based on unemployment or incapacity, provided he lives with the child(ren).

The Affidavit must be completed either at the hospital, by Vital Statistics, or by BCSE and signed by the client before the application is approved or before the child is added to an active case.

NOTE: The statement of unmarried couples is not sufficient to establish paternity. If a man claims to be the father of a child for whom a legal father has been determined, the legal relationship is the prevailing factor until such time as it is changed by a court of law.

If a man who claims to be the father applies for a child born out-of-wedlock and the child's mother is absent, the requirement concerning acknowledgment of paternity by completion of the Affidavit is applicable. The section of the form for the mother's signature must be completed even if she is not present to sign.

- The original or amended birth certificate on record with Vital Statistics shows the father's name. It is not necessary for the child's last name to be the same as the father's.
- A court of law has determined paternity.
- The child was born to a legal marriage and the legally presumed father has not been excluded from paternity.

Specific AFDC/U Requirements

- The child was born to a legally married couple within one year of their separation and the legally presumed father has not been excluded from paternity.
- The mother was pregnant at the time of the marriage and the legally presumed father has not been excluded from paternity.
- The child was born to a common-law marriage in a state that recognizes common-law marriage.

West Virginia does not have a provision in State law regarding common-law marriage. Any individual that establishes this type of relationship in a state that recognizes common-law marriages is considered married for the Department's purposes. Children born in this situation not considered to have the cause of absence as paternity not established; therefore, action must be initiated to gain support and the deprivation factor must reflect the appropriate situation.

The states and cities which recognize common-law marriages are:

Alabama	Oklahoma
Colorado	Pennsylvania
Iowa	Rhode Island
Kansas	South Carolina
Minnesota	Texas
Montana	District of Columbia

The following are recognized if established by the date shown.

Georgia	1/97
Idaho	1/96
Ohio	10/91

(5) Court-Ordered Home Confinement

A parent is considered absent when he is living in the home, but is a convicted offender serving a court-ordered sentence of home confinement and ordered to perform unpaid public work or unpaid community service. The child is deprived because the parent is unable to provide support through paid employment.

To meet the definition of absence in this situation, all of the following criteria must be met:

- The parent must be a convicted offender under sentence of the court.
- The sentence requires that the individual perform unpaid public work or unpaid community service during normal work hours. If the sentence does not require the individual to perform unpaid public work or unpaid community service, the deprivation of absence is not met.
- The parent is not working 100 hours or more per month in paid employment.
- The number of hours per week he is scheduled and actually performs unpaid work or community service under the court sentence precludes the possibility of working at least 100 hours or more per month in paid employment.

A two-parent family must be evaluated based on incapacity or unemployment when the deprivation of absence is not met.

(6) Other Absences

There are other situations which may constitute continued absence when there is only one parent in the home, such as, but not limited to, single parent adoptions, political detainees, hostage situations, etc.

Specific AFDC/U Requirements

(7) Military Service

A parent whose absence is solely due to active duty in the uniformed services of the United States is not considered absent from the home. Unless the parents were separated prior to enlistment of the parent into the military service, eligibility based on absence cannot be established. If the parents separate after the parent's enlistment, verification must be provided to prove they are legally separated and/or divorcing before absence of the parent can be the deprivation factor.

Cases in which paternity of the child has not been established are exceptions to this definition. The fact that paternity has not been established confirms the deprivation factor of continued absence.

(8) Joint Custody

Cases involving joint custody of a child require a case-by-case determination of whether or not the definition of absence is met. This decision is made by the Worker and Supervisor, and a complete case recording explaining the decision must be made. When the child is physically in the home of each parent for portions of each month, the absence is not of a continuous nature and both parents continue to act as parents to the child. On a regular basis, they make decisions and arrangements in the child's best interest. Therefore, absence does not exist when:

- The parents have legal joint custody of the child; and
- The child is physically in the home of each parent for portions of each month; and
- There is an ongoing, continuing relationship between the child and the parents, with both parents involved in providing parental support and care.

c. Incapacity

In order for the deprivation factor to be based on incapacity, both parents must be residing in the home with the children for whom the application is made.

Specific AFDC/U Requirements

A child may be deprived of parental support and care by reason of the physical or mental incapacity of the parent. The incapacity must be supported by medical reports and substantially reduce or eliminate the parent's ability to support or care for the child. The incapacity must be expected to last for a minimum of thirty (30) days.

(1) Determining Incapacity Without Medical Reports

The Worker makes the decision that the parent is incapacitated, without obtaining medical reports or referring the case to the Medical Review Team, when it is verified that:

- The parent is receiving SSI or RSDI based on his blindness or disability; or
- The parent is receiving Railroad Retirement benefits based on his permanent and total disability.
- The parent is receiving SSI-Related Medicaid based on disability.

(2) Determining Incapacity With Medical Records

In all other situations, medical reports and a referral to the Medical Review Team are required to establish incapacity. The instructions for this process are found in Chapter 12.

(3) Referrals to the Department of Rehabilitative Services (DRS)

The member of the AG who is the incapacitated parent must be referred to DRS.

Any individual who is a mandatory referral to DRS and refuses the referral or refuses further services after the referral (except surgery) is no longer eligible to be included in the AG and must be removed. If he is the only individual in the AG, the case must be closed.

All referrals to DRS are made by the Worker using the HS-3. The Worker completes this form, attaches any existing pertinent medical and social information and forwards it to DRS.

d. Unemployment

NOTE: If either parent claims incapacity, the deprivation factor of incapacity must be explored first. However, if there will be a delay in establishing incapacity and the client agrees to the process, the deprivation factor of unemployment must be explored. If the client is otherwise-eligible based on the deprivation factor of unemployment, he is temporarily exempt from registration provided he satisfies this requirement as found in Chapter 13.

A child is considered to be deprived of parental support and care when both parents are in the home and the Principal Wage Earner (PWE) is unemployed. The definition of PWE depends on whether the client is an applicant or a recipient:

- For applicants, the PWE is the parent who earned the greater amount of income in the 24 months immediately preceding the month of application.
- For active cases, the PWE is the parent who earned the greater amount of income in the 24 months immediately preceding the month the determination is being made.

NOTE: The parents need not have been married or living together during this 24-month period.

NOTE: UCI benefits are not counted as earned income. Receipt of cash public assistance benefits cannot be used to determine who is the principal wage earner.

When both parents earned equal amounts during this 24-month period, the one working less than 100 hours per month is the PWE. If both work under 100 hours per month, they must choose who is the PWE.

Once it is determined which parent is the PWE, he must be considered the PWE for each consecutive month for which the AG receives benefits.

When the parents choose the PWE, the other parent cannot be PWE until the case is inactive for two consecutive months, unless the other parent now meets the definition of PWE.

To meet the definition of unemployment, the parent must not have full-time employment which is defined as working 100 hours per month or more.

Specific AFDC/U Requirements

A parent working less than 100 hours a month is not considered to be employed full-time. Also, the parent is not considered employed full-time if he works more than 100 hours in a given month, if the excess work in that month is of a temporary nature. The excess work is temporary if the parent worked less than 100 hours in the previous month and is expected to work less than 100 hours during the following month.

The above definition applies to a parent who is employed for wages or is self-employed. A self-employed parent is considered to be employed during those hours he actually performs work.

e. Strikers

Strikers and their families are not eligible for , AFDC Medicaid and AFDC-Related Medicaid by virtue of the fact that at least one natural or adoptive parent in the home is on strike. For WV WORKS, if a caretaker relative, who has chosen to be included in the payment, is on strike, the AG is ineligible. Even when a deprivation factor is established, the family is not eligible. The individual does not have to be on strike from full-time employment in order to be considered a striker. Regardless of the number of hours of employment prior to the strike (i.e., full-time, part-time, occasional work), the family of the striker is ineligible. The definition of a striker used for Food Stamps and found in Chapter 14 is used for AFDC Medicaid and AFDC-Related Medicaid.

D. EMANCIPATION

1. AFDC Medicaid, AFDC-Related Medicaid

The emancipation status of a child has no bearing on eligibility for AFDC Medicaid or AFDC-Related Medicaid.

A child who leaves his home to live independently or marry may return to the home of a specified relative and be eligible as a dependent child as long as he remains otherwise eligible.

2. WV WORKS

The definition of dependent child for WV WORKS includes the requirement that any child, included in the AG as a dependent child, be unemancipated.

Under WV State law, emancipation occurs when:

- A child has been declared emancipated by a court; or
- A child marries.