

## 9.21 WV WORKS ELIGIBILITY DETERMINATION GROUPS

### A. THE ASSISTANCE GROUP (AG)

#### 1. Who Must Be Included

**NOTE:** Whether or not an individual has earned or unearned income sufficient to meet his own needs or the needs of his dependents, is not a factor to consider when determining if the individual is required to be included in the AG.

**NOTE:** Although the individuals listed below are required to be included in the WV WORKS AG, if otherwise eligible, an SSI recipient, age 18 or over, cannot be included in the AG. See item 3 below.

The following individuals are required to be included:

- All minor, dependent, blood-related and adoptive siblings who live in the same household and are otherwise eligible. For this purpose only, otherwise eligible means living with a specified relative.

**EXAMPLE:** Two children who have the same mother but different fathers live with the paternal grandparents of child A. The children are blood-related and would normally be required to be included in the same AG. However, the grandparents of child A are not specified relatives of child B. Therefore, child B is not eligible for WV WORKS.

- The parent(s) of the child(ren) identified above when the parent(s) lives with the child(ren), unless they fall under any of the categories of who may not be included listed in Item 3 of this section.

In cases of joint custody, only the custodial parent is included. The custodial parent is the one with whom the child(ren) lives more than 50% of the time in a given month. The custodial parent of any child may change from month to month. If the child lives with each parent exactly 50% of the time, the parents must decide which is the custodial parent.

Parents who attend school, work, or are looking for work away from home, including those who work out of state, must be included, unless there is a legal separation.

- The legal spouse of the parent described above, regardless of the legal spouse's legal relationship to the child(ren), unless they fall under any of the categories of who may not be included listed in Item 3 below.

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The stepparent may not choose to be excluded when the parent is in the home.

- All minor, dependent, blood-related and adoptive children of the legal spouse of the parent, regardless of the relationship of the children to the other children in the home, provided they are otherwise eligible, i.e., living with a specified relative.
- The non-parent caretaker who has chosen to be included by signing form OFS-WVW-10 within the past 12 months.
- The parent(s) of an unemancipated minor parent, even when the minor parent requests benefits for the child only.

**NOTE:** When the parent(s) of the unemancipated minor parent is included, the blood-related siblings of the minor parent are included. The spouse of the parent and any of his dependent children who are blood-related siblings to each other must also be included.

**NOTE:** When an individual is required to be in two or more AGs, the AGs must be combined.

## 2. Who May Choose To Be Included

**NOTE:** Although the individuals listed below may be included in the WV WORKS AG, if otherwise eligible, an SSI recipient, age 18 or over, cannot be included in the AG. See item 3 below.

The following individuals may choose to be included:

- Caretaker relatives, who are not natural or adoptive parents, and stepparents when the parent is not in the home, may choose to be included or excluded from the AG. If a caretaker relative chooses to be included, the following individuals must also be included:

**NOTE:** When a parent and stepparent are both in the home, the stepparent is required to be included as the legal spouse of the parent. See item 1 above. However, when the parent is not in the home, the stepparent is treated as any other specified relative and may choose to be included or excluded.

- Legal spouse of the caretaker, regardless of the legal spouse's relationship to the child(ren); and

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- All minor, dependent children of the caretaker relative and all of their minor, dependent, blood-related and adoptive siblings living in the household; and
  - All minor, dependent children of the spouse of the caretaker relative and all of their minor, dependent, blood-related and adoptive siblings living in the household.
- If there is another minor child(ren) in the household who is not required to be included by item 1 or this item and the caretaker relative requests WV WORKS benefits for him, the caretaker relative may choose to include him in the AG. A separate case is not established for the child(ren).

The two groups of individuals identified above may choose to be included or excluded at the time of application. Once the decision is made, the decision is binding until the next annual, full-scale redetermination, regardless of changes in the circumstances of the caretaker relative or the child(ren). This must be explained to the caretaker relative at each application and each redetermination. When the case is closed and reopened before completion of a full-scale redetermination, the last decision is binding until one year from the date the last decision was made. Each decision must be made using form OFS-WVW-10. Refusal or other failure to choose by completing the form results in ineligibility for the caretaker relative for at least 12 months. Eligibility continues to be denied beyond 12 months, for as long as the caretaker fails to choose. See "Intake Interview" for WV WORKS in Chapter 1.

This does not apply when the caretaker relative is also receiving WV WORKS for his own children as well as for other children, because parents are required to be included when their children receive WV WORKS.

**EXAMPLE:** A woman applies for WV WORKS for her 5-year-old niece. She works and is not applying for her own 2 children. The case is approved effective February for the niece only; she chooses not to be included in the payment. In May, the woman loses her job and applies for WV WORKS for her own children. She is required to be included in the WV WORKS payment for her own children. She and her 2 children are added to the case for the niece effective June and they all receive WV WORKS until September, when she finds another job. At that time, she and the children are removed from the AG and she continues to receive a payment for the niece only.

### 3. Who Cannot Be Included

The following situations result in ineligibility for the individual who meets at least one of the following criteria. However, when all members of the AG meet any of the criteria listed below, the entire case is ineligible. In addition, when all otherwise eligible children meet any of the criteria listed below, except receipt of foster care, adoption assistance or SSI benefits dependent child is age 18 or over, the AG is ineligible.

- A currently unmarried unemancipated parent, under age 18, whose youngest child is at least 12 weeks old, and who has not completed high school, unless the parent(s) participates in or, in the case of an applicant agrees to participate in: educational activities directed toward attainment of a high school diploma or equivalent; or, an alternative educational or training program
- A currently unmarried unemancipated parent, under age 18, and the child(ren) of such parent, who do not live with at least one parent of the minor parent in a residence established by the parent.

See Section 15.2,D,2 for the definition of emancipation.

**NOTE:** If the household consists of an adult parent, minor parent, and child(ren), the adult parent does not need to live in an adult supervised setting in order for the adult parent to receive WV WORKS benefits for himself and the child(ren).

#### **EXCEPTIONS:**

- There is no parent whose whereabouts are known;
- No parent allows the unemancipated minor parent to live in his home;
- The unemancipated minor parent lived apart from the parent for at least 1 year before the birth of the child or before the WV WORKS application;
- The unemancipated minor parent or child's physical or emotional health would be in jeopardy from residing with a parent.
- There is good cause for an unemancipated minor parent and child(ren) to receive WV WORKS while not living with a parent. Examples include, but are not limited to:

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- The unemancipated minor parent's return to the home of the parent(s) would cause noncompliance with a fixed lease already negotiated by the parent.
- Education or training opportunities may be available and appropriate for the unemancipated minor parent elsewhere.

When the unemancipated minor parent demonstrates good cause for not living with a parent, eligibility may be established by living with another adult relative, a legal guardian or in an alternative living arrangement that is supervised by an unrelated adult.

When the alternative living arrangement is a maternity or other group home, the home must be supervised and licensed by the State.

When the alternative living arrangement involves living with or living in a setting supervised by an unrelated adult, the supervising adult must meet all of the following requirements:

- Does not receive WV WORKS benefits;
  - Is the same sex as the minor parent, or the unemancipated minor parent lives or is supervised by a married couple;
  - Is employed;
  - Is at least 15 years older than the unemancipated minor parent;
  - Has no Child Protective Services Record or has one that contains no substantiated charges.
  - Has no criminal record, as determined by a CIB report.
- Individuals who are aliens and are ineligible because they have been sponsored by a private or public agency or organization or because of deeming income from sponsor to alien.
  - Individuals who do not meet the citizenship and alienage requirements. See Chapter 18.
  - An individual, age 18 or over, who is eligible for SSI benefits as determined by SSA. This includes individuals who are approved, but who have not yet received a payment and individuals for whom benefits are temporarily suspended due to overpayment.

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**NOTE:** The caretaker relative may receive WV WORKS when there are no children in the AG if all the children are ineligible for WV WORKS only because they are age 18 or over and receive SSI benefits.

- Non-recipient Work-Eligible Individuals are parents or stepparents who must sign the application, complete orientation, a PRC and be participating in a work activity. Neither these individuals nor caretaker relatives may be included in the AG if they:
  - Individuals convicted in federal or state court of having made a fraudulent statement or representation about residence to receive TANF, WV WORKS, Medicaid, SNAP benefits or SSI are ineligible for 10 years from the date of the conviction. The conviction must have occurred on or after 8/23/96.
  - Individuals who are fleeing to avoid prosecution, or custody/confinement after conviction, for a felony or an attempt to commit a felony.
  - An individual convicted of a felony under federal or state law when the offense involves the possession, use or distribution of a controlled substance, as defined in Section 102(6) of the Controlled Substance Act and when the offense occurred on or after 8/23/96.
  - Individuals who are violating a condition of probation or parole which was imposed under federal or state law.
- An individual who is a recipient of federal, state or local foster care maintenance payment

**NOTE:** The caretaker relative may receive WV WORKS when there are no children in the AG if all the children are ineligible for WV WORKS only because they receive foster care payments.

- The child(ren) of a minor parent when the minor parent is a recipient of federal foster care payment.

**NOTE:** The caretaker relative may receive WV WORKS when there are no children in the AG if all the children are ineligible for WV WORKS only because they receive foster care payments.

- An individual who is a recipient of an Independent Living Subsidy through the Division of Children and Adult Services.

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- The child(ren) of a parent, when the parent is a recipient of an Independent Living Subsidy through the Division of Children and Adult Services.
- A parent(s) or other included caretaker who does not report that a child is, or will be, out of his home for at least 30 consecutive days. The parents or other caretaker must report the absence within 5 calendar days of the date it becomes known to the parent(s) or other caretaker that the child will be absent for at least 30 consecutive days. The individual(s) who fails to report is permanently removed from the WV WORKS benefit and becomes a non-recipient Work-Eligible Individual(s).
- A child who is absent from his home for 30 consecutive days. A child may be absent from his home for more than 30 consecutive days and remain a WV WORKS recipient only if the reason for the absence is one of the following:
  - Medically substantiated mental or physical illness of a parent or other caretaker necessitates other temporary living arrangements for the child.
  - Medically substantiated mental or physical illness of the child necessitates other temporary arrangements for the child
  - The child receives education or training at a special-needs school and residence outside the home is required to begin or continue such education.
  - A natural disaster forces the child to live apart from the parent(s) or other caretaker(s).
  - The PRC has targeted a family problem that requires the child to be absent from the home for more than 30 consecutive days.
- Individuals who were applicants or recipients of WV WORKS or TANF at the time of receipt of a lump sum payment and for whom an unexpired period of ineligibility remains.
- The entire AG when the parent(s) or included non-parent caretaker does not meet the 24-month limit for being engaged in work, according to the definition in Section 15.7, and who does not have good cause for the failure.

**NOTE:** When the 12-month period during which the non-parent caretaker chooses to be included ends, the non-parent caretaker may again receive WV WORKS for the otherwise eligible child(ren), even when not meeting the 24-month work requirement, so long as he chooses to be excluded from the AG. If he reapplies during the 12-month period for which he chose inclusion, or after the 12-month period ends and he again chooses to be included, he must meet the 24-month work requirement to receive WV WORKS for the child(ren); he may not receive WV WORKS for only the children without meeting the 24-month work requirement.

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- The non-parent caretaker when he refuses to sign form OFS-WVW-10.
- The non-parent caretaker(s) when he has elected not to be included within the past 12 months.

#### 4. Treatment Of The Minor Parent (mp) In The AG

When an unemancipated minor parent lives with Major Parent(s) (MP), the minor parent must be included in the AG with: the MP(s); the minor parent's child(ren); the minor parent's minor, blood-related and adoptive siblings, if otherwise eligible; the legal spouse of the MP and the blood-related and adoptive siblings who are minor children of the spouse of the MP.

When a minor parent, who is emancipated, lives with MP(s), the minor parent and the child(ren) are a separate AG but must be included with all the emancipated minor parent's children, spouse or legal parent of the mp's child(ren). The income of the MP(s) is not counted or deemed.

When an unemancipated minor parent lives with an adult relative other than a parent, the minor parent and the child(ren) are a separate AG, as long as the other adult relative does not wish to receive a WV WORKS payment. If the other adult relative wants to receive WV WORKS, he must be a specified relative and the minor parent must be included in the AG with: the adult relative; the spouse of the adult relative; the adult relative's minor children who are blood-related or adoptive siblings and who are otherwise eligible; the minor children of the spouse of the adult relative, who are blood-related or adoptive siblings and who are otherwise eligible. Only when the other adult relative is included in the AG is his income counted for the minor parent.

When an emancipated minor parent lives with an adult relative other than a parent, the minor parent and the child(ren) are a separate AG. None of the income of the other relative or his spouse or a parent is counted for the minor parent.

When the mp does not live with the MP(s), the amount the MP(s) contribute to the mp is counted as unearned income. In addition, when the mp is not emancipated, a referral to BCSE is required to pursue child support from the MP(s).

The WV WORKS check must be made payable to an MP or other adult with whom the mp lives or who supervises the living situation of the mp.

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## B. THE INCOME GROUP

The non-excluded income of all AG members is counted.

The non-excluded income of the ineligible and disqualified non-recipient Work-Eligible Individuals who would normally be required to be included in the AG must be counted when determining eligibility, but disqualified and excluded SSI individuals are not counted in the Needs Group.

See Chapter 10 to determine how the income is counted.

## C. THE NEEDS GROUP

Countable income is compared to the income limits for the number in the AG to determine eligibility and the amount of the benefit.

## D. EXAMPLES OF AG COMPOSITION

**EXAMPLE:** Household consists of a mother and her two dependent children. All are included in the AG.

**EXAMPLE:** Household consists of a mother who was convicted of a drug felony in 1999, a father and their two dependent children. Only the father and children are included in the AG, but both the father and mother are required to complete orientation, a PRC, and be assigned to a work activity or the AG is ineligible for WV WORKS.

**EXAMPLE:** Household consists of Ms. Jones and her two nephews who are blood-related siblings. Both children are included. Ms. Jones can choose to be either included or excluded. If she is included, her income and assets are counted.

**EXAMPLE:** Household consists of a married couple and their three children. One of the three children receives SSI. All are included in the AG. The SSI payment is not counted as income for WV WORKS.

**EXAMPLE:** Household consists of Mr. and Mrs. Edwards, Mr. Edwards' two children from a previous marriage and Mrs. Edwards' child from a previous marriage. All are included in the same AG.

**EXAMPLE:** Household consists of Mr. and Mrs. Fry, their two children and Mrs. Fry's niece. Mr. and Mrs. Fry have applied for benefits for their family and their niece, so all are included in the AG.

**EXAMPLE:** Household consists of Major mother, minor mother and minor mother's child. Major mother applies for WV WORKS for minor mother's child. Major mother is considered the caretaker for both her daughter and grandchild and all must be included in the AG.

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**EXAMPLE:** Household consists of Mother and her two sons who receive WV WORKS. Mother's emancipated daughter returns to the household with her child. The daughter and her child are a separate AG because she is emancipated.

**EXAMPLE:** Household consists of Mr. Jones, his wife and her two children from a previous marriage. Mr. and Mrs. Jones and her two children must all be included in the AG.

Mr. Jones' ex-wife and her two children move into Mr. Jones' home and apply for WV WORKS. Mr. Jones is the father of his ex-wife's children. All must be included in the same AG.

**EXAMPLE:** Household consists of a mother, her daughter and grandchild. The mother legally adopts her grandchild. The mother applies for WV WORKS and the AG consists of the mother and her two daughters.

**EXAMPLE:** Household consists of Mr. and Mrs. Lane and their son. Their divorced minor daughter and her child move back into the home. Mr. and Mrs. Lane and their son are included in one AG. A separate AG is established for their divorced daughter and her child because she is legally emancipated.

**EXAMPLE:** Mrs. Mays and her 3 children move in with her parents after her divorce. The household consists of Mrs. Mays, her 3 children, and her parents. The WV WORKS AG consists of Mrs. Mays and her 3 children. None of the income of her parents is counted.

**EXAMPLE:** Miss Smith applies for a WV WORKS check for her nephew. She has recently lost her job and chooses to be included in the payment. Two months later Miss Smith finds another job. Her earnings are excessive and she tells the Worker she wants to be removed from the payment. The Worker explains that she must still be included, based on her decision at application and closes the case, after proper notice. Eight months later Miss Smith is laid off and reapplies. She and her nephew are both included in the payment because one year has not elapsed. The following month, Miss Smith again finds employment and the case is closed. A year after the original application, she applies for her nephew only and is approved with none of her income counted.

**EXAMPLE:** Household consists of a married couple and their 4 minor children. The father and 2 of the children are SSI recipients. The mother and all of the children are included in the AG. The father is not included in the AG. The SSI payments of the father and the 2 children are not counted in determining the amount of the WV WORKS check.

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**EXAMPLE:** Household consists of Mrs. Pine, her grandson and his sister. Mrs. Pine's son is the father of the grandson, but not of his sister. The children have the same mother. Mrs. Pine does not choose to be included in the AG. The AG includes only Mrs. Pine's grandson. His sister does not live with a specified relative and is not otherwise eligible.

**EXAMPLE:** Ms. Queen has 2 minor children and is employed full-time. In February Ms. Queen's sister abandons her 5-year-old son and Ms. Queen takes him to live with her. Ms. Queen applies for WV WORKS and signs the OFS-WVW-10 indicating that she does not want to be included in the check. The case is approved only for her nephew beginning in February. In July, Ms. Queen loses her job because the business was closed. She applies for WV WORKS for herself and her 2 children. The 3 of them are added to the nephew's AG. Even though Ms. Queen signed the OFS-WVW-10 stating that she did not want to be included, she is required to be included when her own children receive benefits.

In September the father of Ms. Queen's children takes the children out of state to live with him. The only child left in the home is Ms. Queen's nephew. She requests to be included in the check because she has no other income. Because she signed the OFS-WVW-10 in February, Ms. Queen cannot be included. The child, however, remains eligible.

**EXAMPLE:** Miss Ray and her minor child apply and are found eligible for WV WORKS in June. In September Ms. Ray's minor nephew runs away from home and comes to live with her. Miss Ray requests he be added to the WV WORKS case and this is done effective October. In January Miss Ray obtains employment and her salary makes her family ineligible for WV WORKS. However, she wants the check to continue for her nephew. At this point Miss Ray must sign an OFS-WVW-10 to indicate whether or not she wants to be included in the payment as a non-parent caretaker relative. This choice is binding from January-December, unless Miss Ray begins receiving WV WORKS for her own children.

**EXAMPLE:** Household consists of Mr. and Ms. Green, their 2 children and Mrs. Green's child from a previous relationship. Both Mr. and Mrs. Green were convicted of drug felonies in 2001. The AG includes only the children but both parents must complete a PRC, orientation, and a work activity.