

# Living with a Relative or Guardian

Revised ~~February 10, 2023~~ May 18, 2023

## Purpose:

This category explains the requirements for a child to live with a relative, guardian, or custodian to be eligible for Temporary Assistance for Needy Families (TANF) or State Funded Assistance (SFA).

WAC 388-454-0005 Can I get TANF or SFA benefits for the child living with me?

- Clarifying Information and Worker Responsibilities

WAC 388-454-0006 ~~The department makes background checks on adults who are acting in place of a parent without court-ordered custody.~~ How can I receive TANF/SFA as an *In Loco Parentis* caregiver?

- Clarifying Information and Worker Responsibilities

WAC 388-454-0010 Do I have to be related to a child in order to get TANF or SFA for the child?

- Clarifying Information and Worker Responsibilities

WAC 388-454-0015 Temporary absence from the home.

- Clarifying Information and Worker Responsibilities

WAC 388-454-0020 Temporary absence to attend school or training.

- Clarifying Information and Worker Responsibilities

WAC 388-454-0025 The department notifies a child's parent when we approve assistance and the child is living with someone other than their parent.

- Clarifying Information and Worker Responsibilities

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Clarifying Information - WAC 388-454-0005

1. **Court Ordered Custody:** The parent that a child actually lives with for the majority of the time is treated as the child's caretaker no matter which parent has legal custody under a court order. The exception is when a child stays with a non-custodial parent as part of the parent's visitation rights and this visit lasts less than 180 days (see [WAC 388-454-0015](#)). Occasionally, you can use a court-ordered parenting plan to resolve questions about a child's residence or day-to-day care and control. For example, a parent named as the custodial parent in a "shared-parenting" plan (i.e., equal residential time with each parent) is the child's caretaker when this does not conflict with the child's actual circumstances.
2. **Dependency Orders:** We can use a court order that places a child with a non-parental relative (e.g., a dependency order issued by a juvenile court) to show a caretaker relationship.
3. **When a tribal court is the child's guardian or custodian:** A tribal court may be the legal guardian or custodian of a child and then assign a tribal member as the custodian. A tribal member who cares for a child in this circumstance may get TANF for the child even though the tribal member is not the guardian or custodian on the court papers.
4. **When an adult is acting *in In loco Parentis*:**
  - Case law defines *in In loco Parentis* as "in the place of a parent".
  - An adult must have intentionally taken over the duties of a parent and be responsible for exercising the day-to-day care and control of the child for us to consider them acting *in In loco Parentis*.
  - This includes unrelated adults and relative adults who are not eligible to receive TANF for a child due to the degree of relation (see [Clarifying Information – WAC 388-454-0010 #3](#)).
  - The adult who is acting *in In loco Parentis* without court-ordered custody must do the following.
    1. pass Complete a financial interview to determine eligibility of the child in care per WAC 388-400-0005,
    2. The child meets all of the criteria under WAC 388-400-0005,
    3. The care giver and all adults the age of 18 years or older, residing in the home must complete, sign and provide the department a background check authorization form - a background check 09-653, and 14-436 form under WAC 388-454-0006,
    4. An adult who is acting In Loco Parentis must still assign rights to child support and cooperate with DCS. If there are safety concerns to the child or caregiver, CSD staff will share information on Good Cause from DCS with the caregiver.

~~for the child to be eligible for TANF/SFA. If there is a background check on file that is less than 90 days old and the previous background check letter indicated "no record", a new one is not required.~~

- ~~An adult who is acting in loco parentis must still assign rights to child support and cooperate with DCS.~~

~~Reminder: Relatives who are not eligible to receive TANF for a child must follow the process for TANF *In Loco Parentis* caretakers for their TANF application on behalf of that child to be considered.~~

5. **When a TANF child becomes a ward of the court:** For TANF or SFA, we count a child who is a ward of the Juvenile Court or delegated agency as still living with a relative **only when the relative continues to carry out the day-to-day care and control of the child.**

## Worker Responsibilities - ~~WAC 388-454-0005~~ WAC 388-454-0006

1. Verify who lives in the home to decide if the child lives with the person who claims to be caring for the child.
2. Resolve any questions about where the child lives the majority of the time and who carries out the child's day-to-day care and control (see below for temporary absence situations).
3. Decide if an unrelated adult is acting ~~*in In loco Loco parentis*~~ *Parentis*:
  - a. If an unrelated adult or related adult who is not eligible to receive TANF for the child due to the degree of relation, who isn't a court-ordered guardian or court-ordered custodian, states they are acting in the place of a parent, you must decide if they are acting ~~*in In loco Loco parentis*~~ *Parentis*. To decide if the adult carries out the daily care and control of the child, have them review and sign the **Statement of Adult Acting In Loco Parentis (DSHS 14-436)** and ask them the following questions (as appropriate for the child's age):
    - Do you provide basic food, shelter and clothing for the child?
    - Do you get the child up and ready in the morning?
    - Do you make sure the child gets to school or daycare?
    - Do you help the child bathe?
    - Do you prepare meals for the child?
    - Do you attend parent/teacher conferences?
    - Do you take the child to regular medical or dental appointments?
    - Do you act as the emergency contact at school?
    - Do you sign up and take the child to extra-curricular activities?
    - Do you provide guidance and discipline to the child?

**NOTE:** An adult doesn't have to do all the above activities to be acting ~~*in In loco Loco parentis*~~ *Parentis*. These are just examples of some of the things an adult acting ~~*in In loco Loco parentis*~~ *Parentis* may do.

4. The department must do the following steps:

a. Determine financial eligibility;

- ~~o Refer the case to social services for assistance if you aren't sure if the adult is acting *in loco parentis*.~~
- ~~o TVerify the child is eligible for TANF/SFA if the adult is acting *in loco parentis*, and passes the background check required under WAC 388-454-0006; meets all of the eligibility criteria under WAC 388-400-0005.~~

Verify the caregiver and all adults the age of 18 years or older, residing in the home completed, signed and provided the department a background check authorization form 09-653, and 14-436 form under WAC 388-454-0006.

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- ~~o Document which child(ren) the adult acts as a parent for in the remarks ~~for in~~ the AU page.~~

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- ~~o Refer the adult(s) for a background check as required under WAC 388-454-0006; and~~
- o Notify the child's **biological** parent(s) of the TANF/SFA approval as required in the Worker Responsibilities under WAC 388-454-0025.
- o Provide the caregiver information of exemptions under WAC 388-422-0020, the requirement to collect child support from the non-custodial parents, where there are safety concerns for the caregiver or the child.
- o Process the background check for all adults 18 years of age or older residing in the household and evaluate the findings with a Character, Competence and Suitability review for the caregiver to provide care to the child in the home.
- o Accept a certificate of parental improvement, from the In Loco Parentis caregiver, as described in WAC 110-05-0001.
- o Provide voluntary assessment, voluntary home visit and offer resources to the child in the home of the *In Loco Parentis* caregiver.

1. If the courts place a child with a non-parental relative by court order (e.g., a dependency order) and a parent of the child moves into the home:
  - a. Count the parent, not the relative the court placed the child with, as the child's parent, and redetermine eligibility for TANF or SFA. (See [WAC 388-408-0015](#) to decide who must be in a TANF/SFA AU.)
  - b. Refer the client (the parent) for a protective payee if you have a reason to believe the parent won't use the assistance for the child's benefit. (Note: Don't change the payee until you receive notification that the AU needs a protective payee under [WAC 388-460-0035](#).)
  - c. Notify the Department of Children, Youth and Families (DCYF), Child Welfare, Child Protective Services (CPS) **Regional Contact** or call the statewide **Child Abuse**

and Neglect Mandatory Reporter hotline (**1.886.ENDHARM [1.886.363.4276]**) if the court order restricts contact between the child and a parent or if there is a history of abuse or neglect of the child by a parent.

**NOTE:** There isn't an overpayment for the period before the date you redetermine eligibility even if the effective date for the change (e.g., a parent moving into the home) was before the payment action.

2. When you find out a recipient child doesn't live in the home:
  - a. Decide if the child's absence is temporary or permanent. (Note: Don't reduce or terminate assistance until you decide the absence isn't temporary.)
  - b. Use the first of the month after the month the absence became permanent as the effective date if the child's absence started out as temporary but became permanent. (e.g., when the parents agree to a custody change during a visit.)
  - c. Notify the **DCYF, Child Welfare, CPS Regional Contact** if the court placed the child with a relative under a dependency order and the order limits contact with the relative who currently has physical custody of the child.
3. When a relative applies to get assistance for a child and the child currently gets assistance with another relative, decide which relative is the child's caretaker:
  - a. Determine if the child is on a visit and will return to the custodial parent at the end of the visitation period (180 day limit) if the relative who applied for the child is a non-custodial parent. (Note: The non-custodial parent is ineligible for assistance for the child during a visit.)
  - b. Provide the current payee with advance and adequate notice before you change the grant if the parents decide to change physical custody during a visit. (Note: There isn't an overpayment for the period before the grant change if you reduce or terminate assistance within 180 days of the start of the visit. **Don't** authorize assistance for the current custodian before the effective date for the end of assistance for the child to the other parent.)
  - c. Decide when the living arrangement changed, redetermine the child's eligibility and establish an overpayment if appropriate if a child's living situation changes at a time other than a visit.
    - i. Authorize benefits for the current caregiver effective the date you determine eligibility.
    - ii. Set up an overpayment for any overlapping assistance.

**EXAMPLE:** Mother has legal custody of the child and gets SFA. She contacted the worker on 6/5 to tell them the child left to visit her father for two months during the summer. The father applied for the child on 7/10 saying the child chose to live with him during the coming

school year. When the worker contacted the mother, she verified that the child wouldn't return at the end of the summer. The worker must terminate the mother's grant effective 7/31 following advance notice requirements and authorize benefits for the child and her father effective 8/1.

**EXAMPLE:** Grandmother applied for her grandchild on 7/5. The child's father gets TANF for the child. The grandmother says that the father left the child with her on 5/10 and hasn't made plans to take the child back. According to the grandmother, he lives with his new girlfriend and she doesn't want the child in the home. The father didn't respond to the worker's request for information about physical custody of the child sent on 7/5. The grandmother provided the needed information to establish eligibility on 7/10. Terminate assistance to the father on 7/31 following advance and adequate notice requirements and set up an overpayment for June and July because the father didn't report the change per Change of Circumstance rules in [WAC 388-418-0007](#) (6). The worker would then authorize assistance for the grandmother effective 7/10.

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## Clarifying Information - WAC 388-454-0006

~~The background check must be completed and reviewed on an adult how is acting *In Loco Parentis* without court ordered custody before approving TANF/SFA for the unrelated or distantly related child.~~

### *What is a Certificate of Parental Improvement?*

- A Certificate of Parental Improvement removes a barrier for individuals with a founded finding of child abuse or neglect made by the Department of Children, Youth, and Families (DCYF) or a Washington state court.
- Certificates of Parental Improvement are accepted as part of the TANF *In Loco Parentis* background check process, if the caregiver has one. In these situations, the DSHS Background Check Central Unit (BCCU) verifies these Certificates directly with DCYF – so there is no need for an applicant to provide a copy to the worker.
- For more information, refer to the [DCYF Certificate of Parental Improvement website](#).

## Worker Responsibilities - WAC 388-454-0006

Take the following actions to process background checks for TANF *In Loco Parentis* caregivers:

1. ~~PBS staff Have the~~ verify the caregiver and all adults the age of 18 years or older, residing in the home complete, sign and provide the department the Background Check Authorization form 09-653, and a 14-436 form under WAC 388-454-0006. ~~primary caregiver acting in loco parentis complete the Background Check Authorization form (DSHS 09-653).~~ Workers access this form through Barcode - CBI Application. PBS staff will also request a completed Statement of Adult Acting *In Loco Parentis* (DSHS 14-436) form from the caregiver.
2. PBS staff will send to biological parents a General Correspondence Letter using canned text, Notice to Parents 14-402.

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~~2.3.~~ When a caregiver reports a conviction or being charged with a crime and does not indicate a degree, DSHS BCCU assumes the highest degree. This may affect the background check decision. If the caregiver knows the degree of the crime:

- a. Have them complete the **Applicant Affidavit form (DSHS 27-109)**.
- b. Send the form to DSHS BCCU
- c. BCCU reruns the background check and issues a result letter based on the updated information provided by the caregiver.

~~3.4. After the adult caregiver completes and submits the Background Check Authorization form, a background check request is submitted to DSHS BCCU by CSD Headquarters staff will submit the Background Check Authorization form(s) to BCCU for processing.~~

**NOTE:** When needed, DSHS BCCU may request additional information directly from the caregiver to complete the background check.

4.— Once the background check results are received by CSD Headquarters, ~~staff are notified of the results and eligibility for TANF/SFA is determined.~~

~~5.4. A child is not eligible for TANF/SFA benefits when the background check shows that the adult further review of the background check may be needed by Headquarters staff due to the following:~~

- i. Has a pending charge for a disqualifying crime (WAC 388-06-0170),
- ii. Has a conviction for a past disqualifying crime,
- iii. Is not of sufficient physical, emotional, or mental health to meet the needs of the child, as determined by CSD Headquarters review, or
- iv. Is considered at risk of harming the child based on available information.

~~b. TANF/SFA benefits are denied when the background check disqualifies the adult(s).~~

**NOTE:** If the primary caregiver discloses they were issued a DCYF Certificate of Parental Improvement, and it is verified by DSHS BCCU, the finding will not show up as part of the background check record.

5. If the background check shows there is a record but no disqualifying crime, CSD Headquarters is notified and will:

- a. Review the information and determine whether the individual has the character, suitability and competence to take care of the unrelated child.
- b. Notify and make a referral to Social Service -staff Specialist in the caregiver's local area of the decision so that TANF/SFA eligibility determination can be completed.

c. The Social Service Specialist will offer and complete a voluntary assessment, a voluntary home visit and offer local resources.

5. If the background check has no findings the CSD Headquarters staff will

a. Notify and make a referral to Social Service staff in the caregiver's local area.

b. The SS Staff will offer and complete a voluntary assessment and offer local resources.

**NOTE:** When a background check record exists for a caregiver, DSHS BCCU provides the caregiver a copy of their background check results, directly. Results are provided by mail or email (the latter, if authorized by the caregiver on the **DSHS 09-653**). For more information, see [BCCU - Applicant Resources](#).

7. If there is **any** reason to suspect that the child is at risk of abuse or neglect, immediately notify the Department of Children, Youth and Families (DCYF), Child Welfare, Child Protective Services (CPS) [Regional Contact](#) or call the statewide [Child Abuse and Neglect Mandatory Reporter](#) hotline (**1.886.ENDHARM [1.886.363.4276]**). Examples of when the child may be at risk include:

a. The background check shows the adult caregiver has a disqualifying charge or conviction for a violent crime.

b. The background check **or other information** shows that the adult caregiver has a DCYF founded finding of abuse or neglect.

1. If more information is needed before deciding about a DCYF referral, refer the case to social services for further evaluation of the home situation. Workers are to document if action is taken, including whether the Social Service Specialist made a DCYF referral or completed an evaluation of the home situation.

NOTE: TANF/SFA will not be closed due to the background check findings. The only time the grant will close would be if the child(ren) are no longer in the home of the caregiver providing *In Loco Parentis* care.

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