

COLORADO DEPARTMENT OF HUMAN SERVICES 1575 SHERMAN ST., DENVER, COLORADO 80203-1714 AGENCY LETTER	NUMBER: TCW-12-1-P CROSS REFERENCE NUMBER:
DIVISION OR OFFICE: -Office of Economic Security	DATE: March 26, 2012
PROGRAM AREA: TCW- Colorado Works	DIVISION DIRECTOR:  Levetta Love
TITLE: The Definition of a Specified Caretaker and Clarification of Legal Custody and Parental Rights TYPE: P- Procedure	OFFICE DIRECTOR:  Julie Kerksick

Purpose:

The purpose of this agency letter is to notify County Departments of Social/Human Services of the changes resulting from the specified caretaker definition. Specifically, this letter addresses changes to eligibility determination and clarifies issues related to legal custody, parental rights, and determining household composition for eligible Colorado Works families. Your immediate attention is required. Please provide the information contained in this letter to all individuals on your staff responsible for assisting applicants and recipients receiving public benefits under the Colorado Department of Human Services Colorado Works Program.

Background:

Senate Bill 10-068 effective January 1, 2011 and Volume III rules adopted January 7, 2011 streamlined eligibility policies for Colorado Works applicants, recipients, and county Departments of Human/Social Services staff by matching some criteria with those of other programs such as Food Assistance, Child Welfare, and Medicaid. A significant change made through this legislation was to replace the caretaker relative definition with the new definition of a specified caretaker. The legislation and regulations define a specified caretaker as a parent or guardian, or a relative in the fifth degree who cares for the child in the relative's home, or if no appropriate relative can be located, a non-relative who exercises responsibility for the child.

Procedure or Information:

Definitions:

The following definitions exist in Section 3.605 of the Income Maintenance rules (9 CCR 2503-1):

Dependent child: Is a person who resides with a parent or a specified caretaker and who is:

- a. under eighteen (18) years of age; or,
- b. between the ages of eighteen (18) and nineteen (19) who are full-time students in a secondary school or in the equivalent level of vocational or technical training and expected to complete the program before age nineteen (19). Such children are eligible through the month of completion.

Guardian: is a person appointed by court order to be the guardian of another person. A guardian has a choice to request assistance for himself or herself.

Parent: is an adoptive or natural parent, including an expectant parent. Work eligible parents must participate in the program work requirements.

Participant: is an individual who receives any form of assistance or services who participates in a specific component of the Colorado Works Program.

Responsibility or Exercising Responsibility: is the accountability for and obligation to make decisions.

Specified Caretaker: is a person regardless of the relationship to the child who exercises the responsibility for the child (ren). A specified caretaker may also include a person with legal documentation of custody (responsibility) for the child (ren).

Determining the Assistance Unit:

The following hierarchy shall be followed:

1. a parent;
2. a relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child(ren) (not to be separated due to death or divorce) or is appointed by the court to be the legal guardian or legal custodian of the dependent child(ren), who has the opportunity to choose to be a member of the assistance unit.;
3. if those identified in a or b, are not available, a person who exercises responsibility for a dependent child(ren) within the person's home and provides verification of such responsibility (the person has a family like relationship to or a pre-existing relationship with the child). This person has the opportunity to choose if they are a member of the assistance unit.

Work Program Participation:

Work eligible parents must participate in program work requirements. A relative must participate in program work requirements if they choose to be a member of the assistance unit. An unrelated individual who exercises responsibility for a dependent child(ren) must participate in program work requirements if they choose to be a member of the assistance unit. Participation in program work requirements for a specified caretaker is defined in Section 3.603.5 of the Income Maintenance rules (9 CCR 2503-1).

Procedure:

Applications:

Applications for Colorado Works shall be made by a specified caretaker with whom the dependent child is living (per rule Section 3.603.1). At application, the county department shall take all proper actions to determine eligibility which includes determining the household composition for an assistance unit. The hierarchy as described in the definition of a specified caretaker (per rule Section 3.605) shall be followed:

1. A parent, legal guardian, or step parent;
2. A relative within the fifth degree;
3. The county department shall determine and verify the unrelated caretaker/ specified caretaker's responsibility of the dependent child.

Shared Parental Responsibility:

For circumstances where parental responsibility is shared equally the following hierarchy may be followed to establish who may claim responsibility for the child for the purposes of a Colorado Works application:

1. The parent with more parenting time and/ or decision making per a parenting plan established through the court; and/or
2. The parent who receives support from an established support order; and/or
3. If equal parental responsibility still exists after the above two elements of the parental responsibility hierarchy is followed, the county department may wish to exercise prudent person principle by making an informed decision on whom can receive Colorado Works assistance. The county department's ability to exercise the prudent person principle is intended to be sufficiently flexible to allow the eligibility worker to exercise reasonable judgment in executing his/her responsibilities.

In this regard, the concept of a prudent person can be helpful. The term refers to reasonable judgments made by an individual in a given case. In making a certification decision, the eligibility worker should ask whether his/her judgment is reasonable, based on experience and knowledge of the program. The eligibility worker is also responsible for exercising reasonable judgment in determining if given individuals applying for Colorado Works fit the Colorado Work's definition of a specified caretaker.

Parent Returning to the Home:

For circumstances where a custody order exists and the court has granted parental responsibility to someone other than the parent, and the parent is in the home, the custody order shall be honored by the Colorado Works Program. The parent's income will be considered when determining eligibility and payment for that assistance unit as a member of the household, but the court-appointed guardian shall be the specified caretaker.

For circumstances where parents lose legal custody of their child (ren) or their parental rights have been terminated, the following definitions exist in the Colorado Children's Code (19-1-103 C.R.S.):

"Legal custody" means the right to care, custody and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. "Legal custody" may be taken from a parent only by court action.

For circumstances where a parent loses legal custody of a child or the parent-child legal relationship is terminated, a grandparent, relative, or specified caretaker who has responsibility for a dependent child is considered the specified caretaker. Although, parental ties/relationships may be severed, sibling ties/relationships continue.

For Colorado Works cases where court orders exist that revoke legal custody from a parent and the parent returns to live with the dependent child, the parent is a mandatory member of the assistance unit. A mandatory member does not receive assistance, but any income is considered as available to the assistance unit. The

parent may be a part of the assistance unit only after legal custody has been awarded back to the parent.

Unrelated Specified Caretakers:

For circumstances where there is no relationship within the fifth degree, responsibility for the child must be verified. Verification should consist of the following information which proves that the unrelated/specified caretaker exerts the responsibility for the child in their care:

1. Medical records, school records, legal documents; and/or,
2. Collateral contact; and/ or,
3. Other documents as outlined in each county department's county policy.

Workforce Development Requirements:

For all circumstances described above, all members of an assistance unit who are receiving a grant must participate in the workforce requirements of the program.

Referrals to Child Support Enforcement:

Appropriate specified caretaker cases shall be referred to Child Support Enforcement (CSE) when an assignment of rights has been executed. CSE will work the appropriately referred cases to establish paternity, establish child support orders, and enforce child support orders. Collections made against any assigned balances will be retained to reimburse public assistance expended for the child's benefit.

Questions & Answers:

Q1: A mother has one child. Her parental rights have been terminated. The grandparent has legal custody of the child. If parental rights have been terminated are they still considered a specified caretaker (a parent or a relative within the fifth degree- part 1 or 2 of the hierarchy)?

A1: The specified caretaker who exerts responsibility for the child and provides verification of such responsibility shall be considered the specified caretaker on the case. In this scenario, if a grandparent has the custody of the child the grandparent is considered the specified caretaker. If the biological parent returns to the home, the grandparent is still considered to be the specified caretaker on the case. If the parent whom returns has income, that income will be considered as available to the household and will be used to determine eligibility. If the parent returns to the home and custody is awarded back to the parent, the specified caretaker on the case is then the biological parent.

Q2: A father has two children from a previous marriage and marries again- his wife becomes the stepparent to his children. They later divorce. The step-mom gets custody and has the responsibility for her two stepchildren. She then has a child with her new boyfriend who lives in the home. What are the possible assistance units in this scenario?

A2: There are a few options: 1) Step mom could choose to receive assistance for herself, her boyfriend, and their children (2+1). Her two stepchildren are not required members of the assistance unit; or 2) the assistance unit could include, step mom, her two stepchildren, her boyfriend, and their child. (2+3). All income available to the household shall be considered when determining eligibility.

- Q3: Can a stepparent be on the grant as the specified caretaker when an SSI biological parent is in the home?
- A3: When there is a parent in the home who continues to exert the responsibility of the child, he/ she is considered a mandatory member (per rule Section 3.603.5, 3.605, and 3.606.1) - which in this example is the SSI parent. Colorado Works considers this parent to have the responsibility of the dependent child for whom the parent is applying. At that point, the stepparent cannot be a member of the assistance unit because the stepparent is not the specified caretaker and the parent and stepparent have no child in common. The income of the stepparent living in the home of the dependent child is considered in determining eligibility and payment for the assistance unit (per rule Section 3.609.2). If the courts made the determination to transfer custody of the dependent child (ren) to the stepparent because the SSI parent's inability to provide continued responsibility of the dependent child(ren) the stepparent has the option of being included or excluded in the assistance unit. All income of the step-parent is considered available to the household and shall be considered when determining eligibility.
- Q4: Parents have shared custody and responsibility. Both parents apply with separate applications because they live in separate households. Who has the responsibility for a dependent child and is eligible to receive TANF/Colorado Works?
- A4: The county department shall exercise the prudent person principle described in this agency letter to determine who has the responsibility for the dependent child.
- Q5: An unrelated specified caretaker applies for Colorado Works and claims responsibility for a child. The specified caretaker does not have any documents but states that he or she has had the responsibility for several years after the death of a family member of the child. What are the possibilities in this scenario?
- A5: The county department shall follow the verification rules as specified in rule Section 3.604.1 and assist the applicant in obtaining all necessary verifications to determine eligibility, such as obtaining information from a medical provider, the child's school, or Child Welfare Services. If approved, the specified caretaker has the option of receiving assistance as (0+1) or (1+1), the specified caretaker is required to participate in the Colorado Works work program requirements.

Effective:

Immediately

Supercedes:

TCW -02-7-I

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