

Children's Issues Series: TAFDC Caretaker Exemption

What is the TAFDC Caretaker Exemption Rule?

Under the TAFDC work requirement rule, families must do a work activity for 20-30 hours each week (hours are based on the age of their youngest child) as a condition of receiving TAFDC. The time limit rule says that families can also receive TAFDC for just 24 months in any 5 year period, even if at the end of those 24 months, they have no other income or means to support themselves.

Many parents will not be able to work full-time or to take steps to get ready to work because of a child's physical or mental health issues.

TAFDC rules say that if a parent is not able to work full-time because of needing to care for a child with a disability, the parent is exempt from the TAFDC work requirement and time limit rules. This is called a caretaker exemption. See 106 CMR 203.100(A)(1)(b)(1) and (B)(2).

Having this exemption means that there is no time limit on receiving TAFDC and that a parent cannot be required to work. But note that a parent can still *choose* to do work activity, training or community service.

For general information about TAFDC exemptions and waivers, see:

<http://www.masslegalservices.org/system/files/GBLS-Exemption-Waivflyer12-03.pdf>

How does a parent get exempt from the time limit and work requirement rules because of a child's disability?

A parent has to submit a form completed by the child's medical provider to request this exemption even if the child is getting SSI and even if the parent has told the DTA worker about the child's issues. The medical provider can be a physician, nurse practitioner, psychologist or osteopath. If a child is seen by a social worker, such as for mental health counseling, then a physician or psychologist needs to co-sign the form.

You can download the form at: <http://www.masslegalservices.org/system/files/tafdc-4.pdf>

Does a child have to receive SSI due to the disability for the parent to qualify for a caretaker exemption? Does the parent have to be with the child 24 hours a day to qualify?

No. As a result of lawsuits brought by legal services (*Minnefield v. McIntire* and *Baynes v. DTA*), the rules were changed so that a parent may qualify for a caretaker exemption whether or not the child gets SSI and whether or not the parent can do *some* activity outside of the house. The parent has to show that they can't do full-time work.

What is the standard for a parent to qualify for a caretaker exemption?

A parent has to live with the child and show that they are "prevented from seeking, obtaining or maintaining full-time employment because the child's disabilities make the [parent] essential to the care of the child." 106 CMR 203.100(B)(2). Note that this does not require the parent to be needed 24 hours a day, 7 days a week.

Important: Many types of disabilities require frequent and unpredictable response from a parent- children have asthma attacks, parents are called to school, children are too sick to go to day care, parents are up repeatedly at night with sick children, children may be dealing the trauma symptoms that interfere with regular activities, etc. For a great many full-time jobs, being late or missing a day, even once and even because of a child's medical needs, means being fired. This can be true even if the child is not at the doctor's office very frequently.

Advocacy Tip: It may be important to talk with the child's doctor about the realities of what the child's health issue means for the parent and what the realities of low wage work are.

What does the medical provider need to put on the form?

DTA uses a form that they refer to as a "TAFDC-4" form. It requires a child's medical provider to write what the child's disability is, what extent of care is needed as a result and explain it results in being unable to get or keep a full-time job.

What if the parent can't work because of their own disability?

If a parent can't work because of their own disability, then different rules apply. A parent can ask for a TAFDC disability exemption. The parent has to provide information about their disabilities and the functional impact and provide medical evidence or go to a Consultative Examination (for free) with one of DTA's doctors. See 106 CMR 203.530-203.545 and [masslegalservices link]

***This information is general in nature and not intended as legal advice.
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