

Clarification: NON-CITIZEN ELIGIBILITY FOR TANF Based on Domestic Violence

References: ORS 411.117; OAR 461-135-1200 and 461-120-0125

A policy question regarding waiving of TANF requirements that frequently arises in training and in phone calls from the field is around waiving TANF requirements for non-citizens. We are able to waive citizenship/legal residency requirements for victims of domestic violence who are applying for TANF, as well as TA-DVS. We cannot waive requirements for food stamps or medical.

The non-citizen would still need to be a caretaker relative or be pregnant. The family does not need to contain an "eligible" (i.e. citizen) child to have eligibility requirements waived for TANF when there is a safety risk due to domestic violence.

The primary issue in serving victims is safety. Waiving requirements should be to help a victim escape a violent situation or to keep them safe from further risk of domestic violence.

In these situations, a non-citizen who would otherwise qualify for TANF, except for their citizenship status, is eligible for the waiver of TANF requirements for as long as there is a safety issue. Waivers must be reviewed at a minimum of every six months, but can be extended if there is a continued safety concern.

To establish whether or not there is a continued safety concerns, the worker should meet with the client to discuss their current situation.

A safety concern could include...

- any concern that puts an individual in danger or at risk of continuing or future abuse;
- abusive behaviors that put an individual at risk or in fear;
- escalating verbal, emotional or controlling behaviors that put an individual at fear or risk of physical abuse.

A risk of future abuse would exist if the victim were put the position of having to return to the abuser without TANF support.

As in all DV cases, there should be a Domestic Violence Assistance Agreement (DHS 1543) created with the client.

Coding: When waiving TANF citizenship requirements due to domestic violence add a WDV case descriptor.

If this is a combination TANF/TA-DVS case the special pay reason code 2N should be used when making TA-DVS payments.

Resource: Under the Violence Against Women's Act (VAWA) there may also be federal assistance to help a victim gain legal residency. This resource allows for victims self-petitioning for permanent residency to receive a work permit even before status is determined. It is currently taking 6 months to 1 year before the work permit is issued.

If a client would like to see if they qualify to self petition for permanent residency under VAWA or to apply for other immigration supports under VAWA, they can contact their local legal aid office or Immigration Counseling Services through Catholic Charities, their phone number is (503) 542-2855.

Note: Once a person has self-petitioned under the Violence Against Women's Act as being battered or subjected to extreme cruelty they may be eligible for TANF based on being a qualified non-citizen. You would no longer have to waive TANF citizenship requirements.

To meet the qualified alien status based on battery and cruelty and to receive public benefits (TANF) the following four considerations must be addressed:

1. Based on Federal regulations if the person has been approved, or has an I-360 self-petition pending which sets forth a prima facie case, the person meets qualified alien status. Documentation of a prima facie status includes an I-797, *Notice of Action* that specifically states that the non-citizen is: I-360 Self-petitioning spouse/child of USC (US Citizen) or LPR (Legal Permanent Resident). The original notice of action will show an "Establishment of Prima Facie Case." The status is valid for a period of 180 days from the date of the notice. An expiration date is given on the bottom of the notice. An I-797 may also indicate an "Extension of Prima Facie Case" with a new expiration date. An I-797, like the DHS 456 is a decision notice. It can be used for other information that is provided to immigrants by immigration services. Only the I-797 with the specific information about the prima facie case would be considered documentation.

The prima facie notice of action is issued once an I-360 self- petition has been filed under 204(a)(1)(A) or (B).

2. To maintain TANF & ERDC eligibility during this self-petitioning process the client or children who have been “battered and subjected to extreme cruelty” can not live in the same household as the abuser.
3. The need for benefits would have a substantial connection to the battering or extreme cruelty.
 - a. A substantial connection means the benefits are needed to enable the applicant, the applicant’s child, and/or (in the case of an alien child) the applicant’s parent:
 - i. To become self-sufficient following separation from the abuser;
 - ii. Where the benefits are needed to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the applicant, the applicant’s child or the applicant’s parent from the abuser.
 - iii. Where the benefits are needed due to a loss of financial support resulting from the separation from the abuser;
 - iv. Where the benefits are needed because of a reduction in earnings or job loss related to the battery or cruelty and/or the applicant or applicant’s parent (who is not the abuser) had to leave a job for safety reasons.
4. The abuse needed to happen in the United States.

If you are working with a survivor who meets the above criteria you would document their information and enter a “QNC” case descriptor. If you had previously been waiving citizenship requirement, you would remove the “WDV” case descriptor and replace it with the “QNC” case descriptor.

Qualified status for battered individuals creates potential FS and Medicaid eligibility, but they must meet other eligibility conditions in addition to meeting qualified alien status. Refer to WG-NC-1 for details.