

Joint Custody

What it means for public assistance benefits

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GENERAL CAVEATS

- True 50/50 custody was rare when I was a caseworker (when dinosaurs roamed the earth)
- Court orders establishing 50/50 physical custody aren't always the best indicator of actual, lived experience
- When true 50/50 physical custody exists, can create problems for both SNAP and KTAP benefits, but it depends on the type of arrangement

SNAP

SNAP policy on joint custody is fairly sparse

- State regulations in Title 921, Chapter 3 do not address joint custody
- The Family Support Operation Manual addresses joint custody in Vol. II, MS 2040, “Irregular Household Members”
(<https://chfs.ky.gov/agencies/dCBS/dfs/Documents/OMVOLII.pdf>)
- Based on the general provision of “where the individual takes the majority of their meals”, it states: “If a child involved in a joint custody arrangement receives an equal number of meals from each parent’s household, the parents must decide which household will apply for SNAP benefits for the child. If an agreement between the parents cannot be made, the child will be included in the household that applies first.”

Other states go into further detail

New Hampshire's policy manual:

(https://www.dhhs.nh.gov/fsm_hm/html/211_13_shared_child_custody_situations.htm)

“The child remains in the current household, unless **all** of the following occur:

- the child's circumstances change and the child now primarily resides in the second household;
- the second household requests Food Stamp benefits for the child; and
- the second household provides verification that the child primarily resides in the second household.”

Other states go into further detail

Oregon:

“When children live in shared physical custody or "parenting time" situations, unless there is a dispute about the physical custody/parenting time/meals arrangement, there is no need to question the person applying for the child. You may accept their statement regarding household composition. If the child is on another SNAP case, send an appropriate notice to remove the child from the other case. However, if there is then a dispute about the child, it must be determined whose household they receive the majority of their meals from. Determine the number of the 21 meals the child receives in each home each week. The parent whose house the child leaves to go to school that morning receives credit for breakfast and lunch.”

K-TAP

K-TAP policy goes a little further

Again, no specific joint custody provisions in K-TAP state regulations, either (Title 921, Chapter 2)

Section 6 of 921 KAR 2:006 states “a child shall be in need and shall be deprived of parental support or care” in order to be eligible for K-TAP. This could be due to the absence, death, incapacity or unemployment of one or both parents.

Family Support Operation Manual Vol. III, MS 2340 addresses joint custody situations.

(<https://chfs.ky.gov/agencies/dcbs/dfs/Documents/OMVOLI II.pdf>)

Two Main Points for K-TAP

1. The parents have a 50/50 joint custody order and are following the order; **deprivation of the child does not exist.**” (emphasis added by me)
2. “If the joint custody order is something other than 50/50...or is not being followed, deprivation **may** exist. The parent residing with the child the majority of the time may receive KTAP, if all other eligibility factors are met.” (emphasis on “may” as shown in the manual)

One case example for #2 is an 8-mo/4-mo split. Deprivation exists for the 8-mo period, but not for the 4-mo period.

MAGI Medicaid

In general, household composition is determined by tax filing units, which doesn't always comport with the physical custody of the child.

There is an exception in Vol IV when children live with a custodial parent but the noncustodial parent is able to claim the child on their taxes (FSOM Vol IVB, MS 2900 B, found at:

<https://chfs.ky.gov/agencies/dcbs/dfs/Documents/OMVOLIVB.pdf>)

Closing Thoughts

- Programs have provisions where a short absence from the home (30 days or less, generally) will not impact a child's/household's eligibility.
- Joint custody issues most problematic when truly 50/50 shared custody is for short periods of time, such as one week with one parent, the next with another.
- Also most problematic when both parents live in households that are applying for/would be eligible for benefits, or when the noncustodial parent objects to the custodial parent receiving benefits

Questions?

(And I'd love to hear what situations you all are seeing!)

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