

## QUESTION WE'VE BEEN ASKED QB 16/01

### INCOME TAX, WORKING FOR FAMILIES TAX CREDITS – PRINCIPAL CAREGIVER – DEPENDENT CHILD – PRIMARY RESPONSIBILITY FOR DAY-TO-DAY CARE – MEANING OF “TEMPORARY BASIS”

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

#### Question

1. Can a person looking after a child on a temporary basis become eligible to receive Working for Families tax credits (WfFTC)?

#### Answer

2. To be eligible for WfFTC, a person needs to meet a number of requirements, including that they are the **principal caregiver** of a **dependent child**. Generally a person who is caring for a child on a temporary basis would not be eligible for WfFTC because they would probably not meet the principal caregiver requirement, and also the child would likely not be their dependent child.
3. A person will be a principal caregiver for a dependent child when the following criteria are met:
  - the child meets certain age and status requirements;
  - the person is **primarily responsible for the child's care**;
  - the child is **maintained as a member of the person's family**;
  - the child is financially dependent on the person; **and**
  - the person either:
    - (a) has the primary responsibility for the day-to-day care of the child on a more than temporary basis;

**or**

  - (b) they live apart from whoever meets the requirement in (a), and they have the child in their exclusive care for certain minimum periods (so there is shared care of the child).
4. This QWBA provides some guidance on each of these criteria.

**Please note:** The focus of this QWBA is on situations where someone has **taken over the primary responsibility for the day-to-day care of a child** for a time, and the question is whether that is on a more than temporary basis. If it is, that would mean that they are the child's "principal caregiver" and may become eligible for WfFTC.

In situations where the care of a child is divided between **people in different households**, there may be what is known as **shared care**. In a shared care situation, there will be more than one "principal caregiver" for a child. Under the shared care rules, both parents (or other caregivers) may therefore potentially be eligible for WfFTC. Those situations do not involve considering whether the person has primary responsibility for the day-to-day care of the child on a more than temporary basis.

There will be shared care if there is a person who lives apart from someone else who qualifies for WfFTC, and they have the child in their exclusive care for at least a third of a 4-month period, tax year, or (in the case of the parental tax credit) entitlement period.

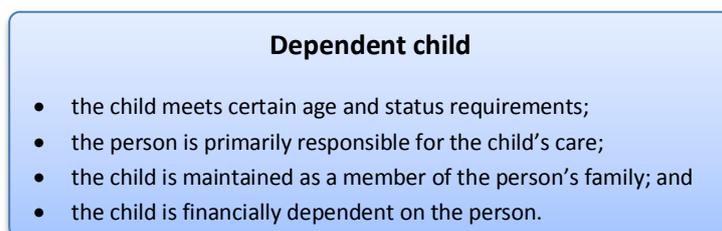
## Explanation

### Background

5. The Working for Families (WfF) regime is aimed at helping families with dependent children, through the provision of financial support to ensure an adequate family income and to help make it easier to work and raise a family. The WfF regime includes four different tax credits: the family tax credit, the in-work tax credit, the minimum family tax credit, and the parental tax credit.
6. There are a number of requirements that must be met for someone to qualify for WfFTC. The main requirements are that the person must be at least 16 years old, satisfy certain residence requirements, and be the principal caregiver for one or more dependent children. In the case of the in-work tax credit and the minimum family tax credit there are also work-based criteria.
7. This QWBA provides guidance on when someone will be a **principal caregiver** for a **dependent child**. The **criteria for a child being a person's dependent child**, and for the person being a principal caregiver of the child, are set out above at [3]. Each of those criteria is discussed below, and summarised in the flowchart in the Appendix to this QWBA.
8. This QWBA **does not consider any of the other WfFTC requirements** (such as those mentioned at [6]).

### When will a child be a person's dependent child?

9. A child will be a person's **dependent child** when:



### What are the age and status requirements the child has to meet?

10. To potentially be a "dependent child" for WfFTC, a child must be:
  - aged:
    - 15 or younger; or
    - 16-18, and not financially independent<sup>1</sup> (and in the case of an 18 year old, attending either school or a tertiary educational institution); and
  - unmarried, and not in a civil union or de facto relationship.
11. It is noted that in some circumstances a child will be excluded from being a "dependent child". This may be the case where a payment is made because the **child is placed in someone's charge under s 362 of the Children, Young Persons, and Their Families Act 1989**, or if an **orphan's or unsupported child's benefit** is paid in relation to the child. Only in-work tax credits may be available in those situations.

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<sup>1</sup> A child will be considered financially independent if they work an average of 30 hours or more per week, or if they receive a benefit, student allowance, or other similar government assistance.

### ***When will a person be primarily responsible for a child's care?***

12. The person seeking to claim WfFTC **must be primarily responsible for the child's care**. This means that the person has the main obligation or responsibility for ensuring that the health, welfare, maintenance and protection of the child are being provided for. **Often this will be one of the child's parents.**
13. Where there **is a question about whether the primary responsibility for the child's care** has shifted to the other parent, or to another person, it is a matter of judgement whether the person who had the primary responsibility for care has given that responsibility to someone else. This will involve considering who **makes decisions about the child's care (eg, housing, health, education etc)** and takes the main responsibility for ensuring that the child is cared for physically and emotionally.
14. This question often arises when an overseas exchange student is staying with a family in New Zealand. In this situation, the Commissioner considers that the New Zealand host family is typically **not primarily responsible for the child's care**, and so is typically not eligible for WfFTC for the child. Although the child is staying with and being cared for by the New Zealand host family, **the child's parent(s) or (other guardians / caregivers) will usually still have the primary responsibility for ensuring that the child's care needs are met**. There may be some circumstances where this is not the case, and the host parents have taken over the primary responsibility for care.
15. Another common situation is when multiple generations live together as a family **in one household, and a person other than the child's parent(s) provides much of the day-to-day care for the child**. In this situation, if the parent(s) are part of the **family and involved in the child's life**, and are not themselves dependent children, the Commissioner considers that they will not typically have given up their **primary responsibility for ensuring that the child's care needs are met**. There may be some circumstances where they have given up responsibility, but this will not be the case simply because someone else in the family cares for the child while the parent(s) are working, for instance. This means that if anyone can claim WfFTC, it will be the parents, not the extended family member.

### ***When will a child be maintained as a member of a person's family?***

16. The child needs to be maintained as a member of the person's family. This means that the child is treated as **part of the person's family group** and, as with other members of the family, they receive what they need to live, such as **food, shelter, and clothing**. **Being maintained as a member of the person's family** implies that the arrangement is an on-going one, though not necessarily indefinite.

### ***When will a child be financially dependent on a person?***

17. The child needs to be financially dependent on the person seeking to claim WfFTC. This means that the child is not financially independent,<sup>2</sup> and is reliant on the person for financial support to meet their needs.
18. A child may be financially dependent on more than one person. For example, in a two-parent family, a child will be financially dependent on both parents. It does not matter that one of the parents may not have an income source; the child is still dependent on both parents for the provision of their financial needs.
19. On the other hand, a child will not necessarily be financially dependent on a person just because they provide some money to help support the child. There

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<sup>2</sup> See footnote 1 above as to when a child is considered financially independent.

needs to be dependence on the financial support, such that without it **the child's** needs would not be met.

### **When will a person be a child's principal caregiver?**

20. If all of the "dependent child" criteria discussed above are met, the person must also **be the child's principal caregiver** to be potentially eligible for WffTC. This will be the case when:

**Principal caregiver**

- the person either:
  - (a) has the primary responsibility for the day-to-day care of the child on a more than temporary basis;
- or*
- (b) they live apart from whoever meets the requirement in (a), and they have the child in their exclusive care for certain minimum periods (so there is shared care of the child).

21. The "principal caregiver" **cannot be**:
- a body of persons (whether incorporated or not);
  - the spouse or partner of a "transitional resident" (see s HR 8); or
  - a proprietor or employee of certain residences<sup>3</sup> or institutions<sup>4</sup> in which the child is cared for.
22. In addition to not being the spouse or partner of a transitional resident, the person cannot get WffTC if they are themselves a transitional resident. If an application for WffTC is made by a transitional resident, it is treated as being an election to no longer be a transitional resident (see s HR 8(5)).

### **Shared care**

23. As noted above, if the care of a child is divided between parents (or other caregivers/guardians), there may be **what is known as "shared care"**. In a shared care situation, there will be more than one "principal caregiver" for a child. Under the shared care rules, both parents (or other caregivers) may therefore potentially be eligible for WffTC.
24. **A person will be another "principal caregiver" under the shared care rules if they live apart from someone else who qualifies for WffTC, and they have the child in their exclusive care for at least a third of a 4-month period, tax year, or (in the case of the parental tax credit) entitlement period.**<sup>5</sup>
25. Those situations do not involve considering whether the person has primary responsibility for the day-to-day care of the child on a more than temporary basis.

### **When will a person have primary responsibility for the day-to-day care of a child on a more than temporary basis?**

26. In situations where someone has **taken over the primary responsibility for the day-to-day care of a child** for a time, they may potentially become eligible

<sup>3</sup> Residences established under the Children, Young Persons, and Their Families Act 1989.

<sup>4</sup> Any institution in which a child is cared for, including residential disability care institutions as defined in s 58(4) of the Health and Disability Services (Safety) Act 2001.

<sup>5</sup> This is the first 70 days after the child's birth date (s MD 11(1)(b)(i)).

for WFFTC. This requires considering whether their primary responsibility for the day-to-day care is on a more than temporary basis.

### ***Primary responsibility for day-to-day care of the child***

27. To meet this requirement, the person must be the one who is primarily responsible for providing or ensuring the provision of what the child needs on a daily basis for their health, welfare, maintenance and protection.
28. To decide if a person has the primary responsibility for the day-to-day care of a child, you must consider the extent to which the person performs the day-to-day responsibilities for the child, or ensures that these responsibilities are met. These day-to-day responsibilities include things such as taking the child to and from school or childcare, preparing their meals, supervising their leisure activities, taking care of their daily routines (such as bathing, hygiene and sleep), and caring for them when sick.
29. This does not mean that the person has to perform all of these responsibilities themselves (though invariably they will perform at least some). For example, the fact that another family member or a paid caregiver performs some, or even most, of these day-to-day tasks does not mean that the person does not have the primary responsibility for the provision of that care. The fact that they have arranged for someone else to perform these tasks while they are at work, or because they require assistance, does not mean they do not have primary **responsibility for the child's day-to-day care**.
30. In a sole-parenting situation, it will often be easy to determine who has the primary responsibility for the day-to-day care of the child and so is the **child's principal caregiver**. In a joint-parenting situation, where the parents live in the **same household, the child's principal caregiver** must still be determined, as this is the person who will receive the WFFTC. The above factors will be relevant to deciding who this is.
31. Where parents (or other caregivers) who do not live together share the care of a child, only one of them can have the primary responsibility for the day-to-day care of the child. However, in a shared care situation both parents (or other caregivers) may be principal caregivers of the child, and so potentially eligible for WFFTC. The requirements for the other parent/caregiver in a shared care arrangement to **also be a "principal caregiver" are noted** above from [23].

### ***Temporary basis***

32. A person will **not be a "principal caregiver" for a dependent child<sup>6</sup>** if they have primary responsibility for the day-to-day care of the child only on a temporary basis.
33. **The Act does not define what a "temporary basis" is, and the Commissioner has been asked to provide some guidance around this.**
34. The *Concise Oxford English Dictionary* (12th ed, Oxford University Press, New York, 2011) defines "temporary" as "lasting only for a limited period". The ordinary meaning of "temporary" indicates that day-to-day care will be on a "temporary basis" if it lasts for a limited (and usually short) period of time.
35. **The courts have not considered the meaning of the term "temporary" in s MC 10(1)(a). However, the Australian courts have considered the meaning of "temporary" in the context of social security legislation. In *Hafza v Director General of Social Security* (1985) 60 ALR 674 (FCA), Wilcox J considered whether a person's absence from Australia was temporary only, which would mean that**

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<sup>6</sup> Shared care situations aside – see further from [23] in that regard.

the person would remain entitled to a child endowment under the (then) *Social Services Act 1947 (Cth)*. Wilcox J stated (relevantly) at 682:

The *Shorter Oxford Dictionary* defines 'temporary' as 'lasting for a limited time; existing or valid for a time (only); transient; made to supply a passing need'. The *Macquarie Dictionary* definition is to similar effect, with the addition of 'not permanent'. In one sense any absence from Australia, which in fact comes to an end, is temporary; it turns out to have lasted for a limited — as distinct from an unlimited — time and to have been not permanent. In this sense everything in human affairs, including life itself, is 'temporary'. But it is doubtful whether the word 'temporary' was used in this wide sense in s. 103(1)(d). As I have pointed out, had it been intended to protect the endowment rights of persons absent abroad for lengthy periods, who ultimately return to Australia and who, in the meantime, maintain some association with Australia, it would have been enough to refer to residence in Australia. Plainly it was intended to be more restrictive than that. **I think that the adjective 'temporary' was used to denote an absence that was, both in intention and in fact, limited to the fulfilment of a passing purpose. The purpose might be of a business or professional nature; it might be for a holiday or for compassionate or family reasons. But, whatever the purpose, it seems to me to be implied in the concept of 'temporary' absence that the absence will be relatively short and that its duration will be either defined in advance or be related to the fulfilment of a specific, passing purpose.** [Emphasis added]

36. The Commissioner considers that "temporary" in the context of s MC 10(1) should be given a similar meaning. That is, primary responsibility for the day-to-day care of a dependent child would be on a **temporary basis** if:
- it was for a relatively short period; and
  - the duration for which the person has the responsibility for day-to-day care is either defined in advance or related to the fulfilment of a specific, passing purpose.
37. Based on the statutory context of the WffTC provisions, the Commissioner considers that if someone has primary responsibility for the day-to-day care of a child for a period (or expected period) of at least three to four months, that will be more than "relatively short". **In those circumstances**, the person might therefore have primary responsibility for the **child's** day-to-day care on a more than "temporary basis". However, it is also necessary to consider the **circumstances of any given situation — including whether the period for which the person has the primary responsibility for day-to-day care is defined in advance or is related to the fulfilment of a specific, passing purpose.**
38. The Commissioner considers that if someone has primary responsibility for the day-to-day care of a child for a period expected to be less than three to four months, that is not enough to be more than temporary. It is unlikely that a person will meet the level of responsibility for a child to be their "dependent child" (which is required by the legislation) if the intended timeframe for them having the primary responsibility **for the child's day-to-day care** is less than that. **In the Commissioner's view, the other WffTC eligibility requirements, including that the child is the person's dependent child, give some context to the sort of indicative time period that might be regarded as more than temporary.**
39. Conversely, this means that a person who has the primary responsibility for the day-to-day care of a dependent child for a period that is, or is expected to be, more than three to four months is likely to be **the child's principal caregiver**. However, if the responsibility for care is for a defined period, or for a specific, passing purpose, that will need to be taken into consideration in determining whether the responsibility for the care is nonetheless only on a temporary basis.

### **Change of arrangements**

40. If the arrangements for the care of a child change and this means that a person will no longer be a principal caregiver for the child, that person must notify the Commissioner of the change in care arrangements immediately (see s MC 10(6)).

## Other requirements for WfFTC eligibility

41. As noted above, this QWBA is only looking at the requirements for being a principal caregiver for a dependent child. It **does not consider any of the other WfFTC requirements** (such as those mentioned at [6]).

## Examples

42. The following examples are included to assist in explaining when a person will be a principal caregiver for a dependent child by virtue of having primary responsibility for the day-to-day care of the child, other than on a temporary basis. These examples do not consider whether there is shared care of the child, or whether the other WfFTC eligibility requirements (such as age and residency) are met.

### Example 1: The primary responsibility for the day-to-day care does not change to another person

43. Tane is five years old. He lives with his parents, Anahera and Justin. Anahera is **Tane's** principal caregiver. She works as a bus driver and receives WfFTC. Anahera and Justin are undertaking major renovations to their home, and they decide that Tane should stay at his grandmother's house for approximately five months while the renovations are carried out.
44. For the following five months, Tane sleeps at his **grandmother's house and spends** most of his free time there. Anahera drops Tane off to school in the mornings, and his grandmother picks him up after school. After work, Anahera and Justin spend the evenings at **Anahera's mother's house with Tane**. They eat dinner with him, help him with his homework, and put him to bed. **Tane's** grandmother **prepares Tane's meals**, and Anahera and Justin contribute towards the cost of groceries and other bills. Anahera takes Tane to soccer, birthday parties, and to **friends' houses to play**. When Tane is sick during this time, Anahera takes him to doctor's appointments and looks after him at her **mother's house**. **She spends** the weekends with Tane at her **mother's house**, while Justin works on the house renovations.
45. There is no question that **Tane is Anahera's "dependent child"** – Anahera is primarily responsible for ensuring that he is cared for, she maintains him as a member of her family, and he is financially dependent on her.
46. Anahera wants to know if she is still considered **Tane's "principal caregiver"** during the five-month period of the renovations, and so remains eligible for WfFTC during that time.
47. Anahera continues to have the primary responsibility for **Tane's** day-to-day care during the period of the house renovations, while he is staying at his **grandmother's house**. This is because she is the person with the main responsibility for ensuring that Tane is physically cared for on a daily basis. It is predominantly Anahera who performs the day-to-day responsibilities involved in caring for Tane, or ensures that these responsibilities are met. While **Tane's** grandmother helps provide day-to-day care for Tane, Anahera continues to have primary responsibility for the provision of that care.
48. Because Anahera **continues to have the primary responsibility for Tane's day-to-day care, it is irrelevant that he is living at his grandmother's house for a length** of time that would potentially be regarded as more than temporary in terms of s MC 10(1). **Tane's** grandmother does not have the primary responsibility for **Tane's** day-to-day care. Anahera remains eligible for WfFTC during the renovation period.

### **Example 2: Having primary responsibility, but only on a temporary basis**

49. Michelle is a single mum with a seven-year-old daughter, Isabella. Michelle works in a call centre and, **as Isabella's principal caregiver**, receives WfFTC. Michelle has to undergo major surgery, and will not be able to look after Isabella for approximately one month after the surgery. **During Michelle's recovery period**, Isabella is going to live with her aunt, Olivia. For that month, Olivia will take on **all of the responsibilities involved in Isabella's day-to-day care**. She will be responsible for Isabella's meals, will take Isabella to school and pick her up from after school care, will help her with her homework, supervise her leisure activities, and care for her in the evenings and on the weekends. Michelle will be **unable to ensure that Isabella's day-to-day care needs are met**, and Olivia will be taking on responsibility for ensuring that they are.
50. Michelle wants to know if Olivia will be **Isabella's principal caregiver for WfFTC** purposes for this period of time.
51. Olivia will have the primary responsibility for **Isabella's day-to-day care** during the time she will be living with her. However, **Olivia's primary responsibility for Isabella's day-to-day care** is only on a temporary basis. This is because it is for a relatively short period (approximately one month), and is for a specific, temporary purpose, as Michelle recovers from her surgery. Olivia will therefore **not be Isabella's principal caregiver** during this period, and Michelle will remain **Isabella's principal caregiver**.
52. **In any event, it is noted that Isabella would be unlikely to be Olivia's "dependent child" during Michelle's recovery period.** Olivia is unlikely to assume primary responsibility for high level care decisions for Isabella (such as housing, health, education etc) during this period, and Isabella is unlikely to be financially dependent on her aunt just because her aunt is caring for her temporarily.
53. This means that Michelle will continue to receive WfFTC for Isabella during this period.

### **Example 3: Parental caregiver changes**

54. James, a single dad, is receiving WfFTC. He is unable to look after his ten-year-old son, Hayden, as his new job requires him to travel extensively. **James'** sister, Margaret, who works as a retail assistant, agrees to have Hayden come and live with her until **James'** circumstances change. James will only look after Hayden during his annual leave, and every few weekends when he is in town. At this stage, James does not know when he will be able to look after Hayden on a full-time basis again. Margaret looks after Hayden as if he were her own son, and James sends some money to Margaret to help with the costs of looking after Hayden. To work out who is entitled to WfFTC, James and Margaret want to know who is **Hayden's principal caregiver** while this arrangement remains in place.
55. While this care arrangement exists, James will not **be Hayden's** principal caregiver. He does not have the primary responsibility for Hayden's day-to-day care during this time; Margaret does. Margaret has the main responsibility for ensuring that Hayden is physically cared for on a daily basis. She performs (or ensures the performance of) the day-to-day responsibilities involved in caring for Hayden. Margaret is taking on the responsibility of caring for Hayden for an undefined period of time, because James does not know when his work will enable him to look after Hayden on a full-time basis again. This means that Margaret is taking on the primary responsibility for **Hayden's** day-to-day care on a more than temporary basis. As such, James will no longer be **Hayden's** principal caregiver and will no longer be eligible for WfFTC. James is required to notify the Commissioner of the change in care arrangements immediately (see s MC 10(6)).

56. For Margaret to be eligible for WfFTC, Hayden must be her dependent child (see [9] to [19]), and the other WfFTC requirements must be met (see for example [6]).
57. To determine if **Hayden is Margaret's "dependent child"**, it will be necessary to consider whether she has taken on primary responsibility for his care. It will be a matter of judgement whether James has given up this responsibility. This will **involve considering who makes decisions about Hayden's care (eg, housing, health, education etc)**, and takes the main responsibility for ensuring that Hayden is cared for physically and emotionally. In this case, it may be that Margaret has assumed such responsibility. Hayden must also be maintained as a member of **Margaret's family. This criteria would be met in this case. Finally, Hayden** must be financially dependent on Margaret. While James provides some money to help with the costs of looking after Hayden, it may well be that Hayden is financially dependent on Margaret as well as James – more information about the financial arrangements would be required to determine this.

## References

### Subject references

Income Tax, Working for Families, principal caregiver, primary responsibility for day-to-day care, temporary basis

### Legislative references

Income Tax Act 2007 – ss MC 2, MC 4, MC 10, and the definition of "dependent child" in s YA 1.

### Case references

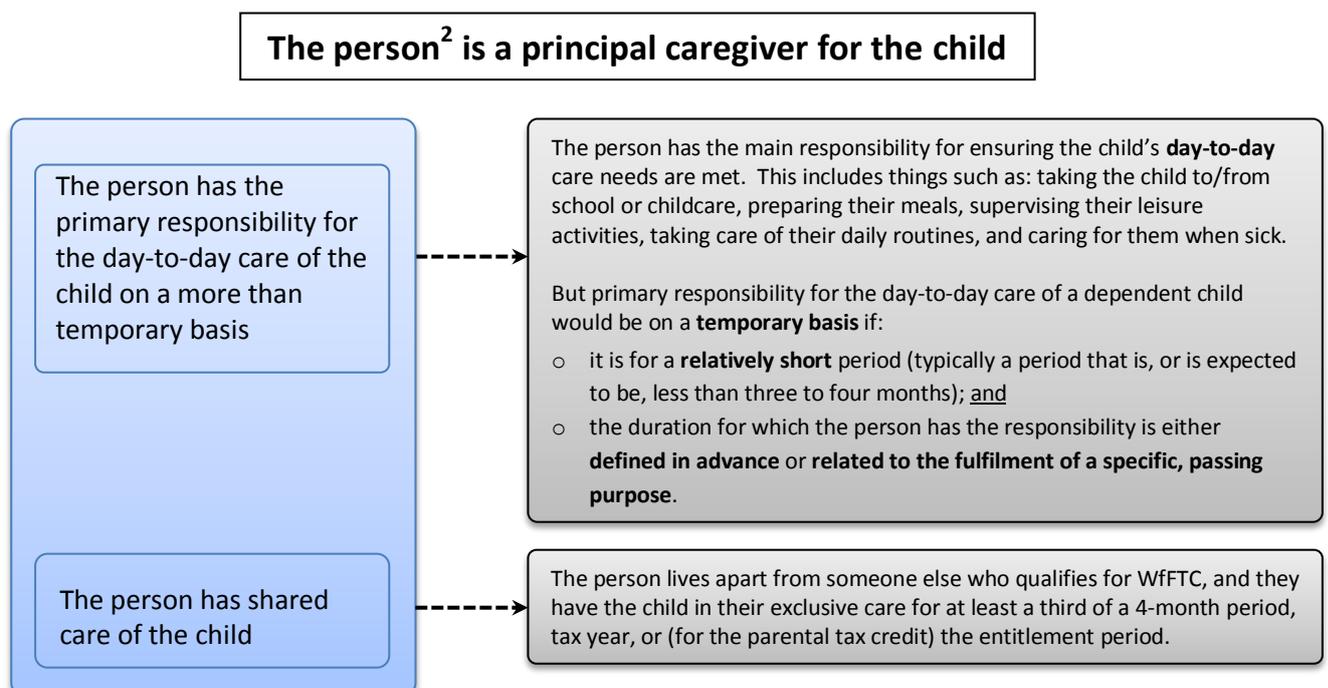
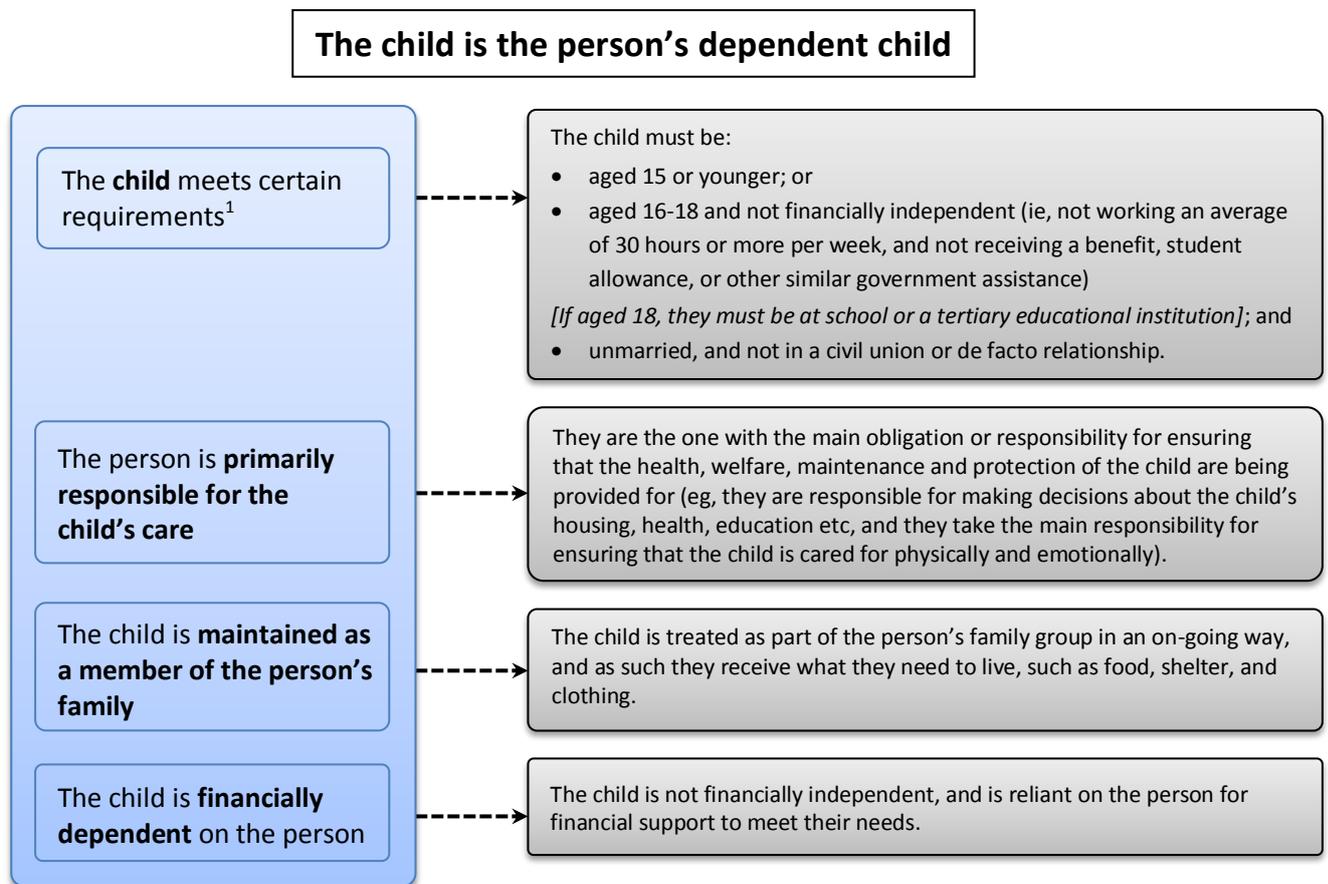
*Hafza v Director General of Social Security* (1985)  
60 ALR 674 (FCA)

### Other references

The *Concise Oxford English Dictionary* (12th ed, Oxford University Press, New York, 2011)

## Appendix

A person will be a “principal caregiver” for a “dependent child” when:



<sup>1</sup> **Note:** The child might be **excluded** where certain benefits are paid – see [11]

<sup>2</sup> **Note:** The person cannot be: a body of persons, a tax “transitional resident” or the spouse/partner of one, or the proprietor or employee of an institution that cares for the child.