

## Chapter HSS 201

### AID TO FAMILIES WITH DEPENDENT CHILDREN

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Note: Chapter HSS 201 was created as an emergency rule effective 12-31-82.

#### Subchapter I General Provisions

**HSS 201.01 Authority and purpose.** This chapter is adopted pursuant to s. 49.50 (2), Stats., for the purpose of administering the aid to families with dependent children (AFDC) program.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**HSS 201.02 Applicability.** This chapter applies to all applicants for AFDC and recipients of AFDC, to all persons engaged in the administration and supervision of AFDC, and to all persons who are legally or financially responsible for any applicant or recipient of AFDC.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**HSS 201.03 Definitions.** In this chapter:

(1) "AFDC" means aid to families with dependent children, a public assistance program under Title IV-A of the Social Security Act of 1935, as amended, and ss. 49.19 to 49.41, Stats.

(2) "AFDC group" means those persons whose financial eligibility for AFDC is determined together.

(2m) "AFDC-regular case" means an AFDC group in which the child or children are deprived of parental support or care because a parent has died or is continually absent from the home or, if both parents are in the home, a parent is incapacitated or is an offender working without pay.

(3) "AFDC unemployed parent group" means an AFDC group in which the child or children are deprived of parental support because the principal wage earner in the group is unemployed.

(4) "Agency" means the county department of social services or human services, or a tribal agency which administers economic support programs.

(5) "Assistance standard" means the monthly dollar amounts under s. 49.19 (11) (a) 1. and 2., Stats., used in determining need and the amount of the family allowance in the AFDC program.

(6) "Caretaker" means a qualified relative who has a child under his or her care as specified in s. HSS 201.17.

(7) "Child-in-common" means any child who is the legal responsibility of the primary person and the primary person's spouse, or the other parent when there is no marriage, when all of them are living together.

(8) "Deemed" means, in reference to income and assets, considered available to applicants or recipients for purposes of determining eligibility and grant amount.

(9) "Department" means the department of health and social services.

(9m) "Economic support specialist" means a person employed by a county agency or tribal agency whose duties, as specified in his or her position description, include determination or redetermination of economic support eligibility and benefits.

(10) "Exempt assets" means those assets which are not considered when determining financial eligibility for AFDC.

(11) "Family allowance" means the percentage of the assistance standard under s. 49.19 (11) (a) 1. and 2., Stats., designated as the monthly payment level in the AFDC program.

(11m) "JOBS" means the job opportunities and basic skills training program established under 42 USC 682 and s. 49.50 (7b), Stats., for the purpose of assisting AFDC recipients to develop marketable work skills and obtain gainful employment.

(12) "Legally responsible relative" means a person liable for the support of another person as specified in s. 52.01, Stats.

(13) "Primary person" means the person whose name is listed first on the application form as the person applying for AFDC.

(14) "Principal wage earner" means the person who is listed on line one or 2 of the application for AFDC in an AFDC unemployed parent group, who earned the most income during the 24 month period preceding the most recent application, and who meets the requirements for past and current employment under 45 CFR 233.100.

(15) "Registrant" means a person registered for WEOP.

(16) "SSI" means supplemental security income, the assistance program in section 1613 of Title XVI of the Social Security Act of 1935, as amended, and s. 49.177, Stats.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; emerg. r. (14), renun. (13) to be (14), cr. (13) and (15), eff. 6-1-86; r. and recr. (14), renun. (3) to (13) to be (4) to (13) and (16), cr. (3), (15) and (17), Register, November, 1986, No. 371, eff. 12-1-86; emerg. cr. (2m) and (11m), eff. 7-1-89; cr. (2m) and (11m), Register, Feb-

ruary, 1990, No. 410, eff. 3-1-90; emerg. am. (4), cr. (9m), eff. 7-1-94; am. (4), cr. (9m), r. (17), Register, February, 1995, No. 470, eff. 3-1-95.

## Subchapter II AFDC Administration

**HSS 201.04 Introduction.** Agencies shall administer the AFDC program in accordance with ss. 49.19 to 49.41, Stats., and this chapter, and follow the procedural guidelines provided by the department and use the forms prescribed by the department.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**HSS 201.05 Application.** (1) **RIGHT TO APPLY.** Any person may apply for AFDC. Application shall be made on a form prescribed by the department and available from an agency. Applicants and recipients may be assisted in all aspects of the eligibility determination process by any person they choose.

(2) **APPLICATIONS FROM OUTSIDE WISCONSIN.** (a) Except as provided under par. (b), application for Wisconsin AFDC shall not be accepted for a person residing outside Wisconsin.

(b) If a Wisconsin resident becomes ill or injured when absent from the state or is taken outside the state for medical treatment, application for Wisconsin AFDC for that person shall be made on a Wisconsin application form and witnessed by the public welfare agency in the other state.

(3) **WHERE APPLICATION IS MADE.** Application shall be made in the county in which the primary person resides.

(4) **SPECIAL APPLICATION SITUATIONS.** (a) A person 18 years of age or older who is not the primary person, the primary person's spouse, or a dependent 18-year old as defined in s. HSS 201.24 shall have his or her eligibility, and the eligibility of his or her spouse or child, if any, determined separately from the rest of the persons listed on the application.

(b) The eligibility of an unmarried man and woman who are residing together and have a minor child-in-common shall be determined together if the man has been determined in one of the following ways to be the father of the child:

1. A signed sworn admission of paternity has been accepted by a court and a judgment has been obtained;
2. A court proceeding has established paternity; or
3. An acknowledgement of paternity has been filed with the department's section of vital statistics and a birth certificate naming this man as father has been issued.

(c) A minor who is a parent or who is pregnant but not married and not under the care of a qualified relative as specified in s. HSS 201.17 shall be processed on a separate application.

(d) The first generation of a three-generation case as specified in s. HSS 201.31 (5) shall be placed on lines one and 2 of the application form and is considered to be caring for both the second and third generation children. The eligibility of all 3 generations shall be determined together unless the first generation requests that the third generation's eligibility be determined separately.

(5) **SIGNING THE APPLICATION.** Each application form shall be signed by the applicant or the applicant's responsible relative, legal guardian or authorized representative; or, where the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The application shall be re-signed in the presence of an agency representative in accordance with s. 49.13, Stats. Two witnesses' signatures shall be required when the application is signed with a mark.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**HSS 201.055 AFDC emergency assistance program.** (1) **PURPOSE.** This section implements s. 49.19 (11) (b), Stats., which directs the department to administer a program of emergency assistance under the AFDC program for persons who are in need due to fire, flood, natural disaster, homelessness or energy crisis and who meet the eligibility criteria under this section

and the eligibility criteria for federal financial participation under 45 CFR 233.120.

(2) **APPLICABILITY.** This section applies to all applicants for AFDC emergency assistance, all recipients of AFDC emergency assistance and all county and tribal economic support agencies administering the AFDC emergency assistance program under s. 49.19 (11) (b), Stats.

(3) **DEFINITIONS.** In this section:

(a) "AFDC emergency assistance" means the program of financial assistance under section 406 (e) of the Social Security Act of 1935, as amended, which is intended to avoid destitution of a child or provide living arrangements for the child in a home.

(b) "AFDC emergency assistance group" or "group" means a child or children under the age of 21 and a qualified caretaker relative or relatives specified in s. HSS 201.17 (1) with whom the child is living or was living at the time the emergency occurred.

(c) "Destitution" means extreme want of resources or of the means of subsistence.

(d) "Emergency shelter facility" means any facility, the primary purpose of which is to provide temporary or transitional shelter for the homeless in general or specific populations of the homeless under 24 CFR 576.3.

(e) "Other programs eligibility handbook" means the other programs handbook issued by the department's division of economic support for use by agencies in determining eligibility for public assistance programs including AFDC emergency assistance.

(4) **APPLICATION.** Application for AFDC emergency assistance shall be made on a form prescribed by the department. Upon receipt of a completed application, the agency shall verify that the emergency was due to fire, flood, natural disaster, homelessness or an energy crisis. Verification of eligibility shall not delay the provision of assistance.

Note: An application form for AFDC emergency assistance may be obtained from a county or tribal economic support agency.

(5) **NONFINANCIAL ELIGIBILITY.** (a) **Criteria.** The AFDC emergency assistance group shall meet the following nonfinancial eligibility criteria:

1. The group members meet the residence criteria in s. HSS 201.15;

2. The group members are citizens or qualifying aliens as defined in s. HSS 201.16;

3. The child for whom assistance is requested is or, within 6 months prior to the month of application for AFDC emergency assistance, was living with a qualified caretaker relative as specified in s. HSS 201.17 in a place of residence maintained as the caretaker relative's own home;

4. Assistance is needed to avoid destitution of the child or to provide a living arrangement for the child in a home;

5. The child's destitution or need for living arrangements did not result from the child or a qualified caretaker relative specified in s. HSS 201.17 refusing without good cause to accept employment or training for employment; and

6. As determined by the agency, the group's need has resulted from an emergency due to:

a. Fire;

b. Flood;

c. A natural disaster such as a tornado, earthquake, electrical storm or windstorm, hail, sleet, a mud or rock slide, or a natural explosion such as lightning striking an object that then explodes;

d. Homelessness as determined under par. (b). The cause of the homelessness need not be the result of a natural disaster; or

e. An energy crisis, including lack of essential home heating or imminent loss of essential home heating, with an immediate threat to the health or safety of the group either existing or likely to exist.

(b) *Eligibility due to homelessness.* An AFDC emergency assistance group shall be considered homeless for purposes of determining nonfinancial eligibility under par. (a) if the group needs AFDC emergency assistance to obtain a permanent living accommodation and if any of the following conditions apply:

1. The group lacks a fixed, regular and adequate nighttime residence;
2. The group has a current residence that is a shelter designed for temporary accommodation such as a motel, hotel or emergency shelter facility;
3. The group has to leave or has already left its current housing because it is uninhabitable as determined by the local building inspector, the local health department or other appropriate local authority;
4. The group is living in a place that is not designed for, or ordinarily used as, a regular sleeping accommodation; or

5. A member of the group was subject to domestic abuse as defined under s. 968.075 (1), Stats.

(6) *FINANCIAL ELIGIBILITY.* (a) *Total financial need.* The agency shall compute the AFDC emergency assistance group's total financial need by adding together the AFDC area 1 assistance standard under s. 49.19 (11) (a) 1., Stats., for the family size equal to the AFDC emergency assistance group size determined under sub. (5) and an amount to meet the AFDC emergency assistance group's physical needs under par. (b). The agency shall estimate the amount needed to meet the group's physical needs under par. (b).

(b) *Physical needs.* Physical needs may include:

1. Food;
2. Clothing;
3. Temporary housing when the group is in need of assistance because of fire, flood or natural disaster;
4. First month's rent plus the security deposit;
5. Home energy. This may include heating fuel, electricity, and repair or replacement services necessary to attain or maintain the basic heat and electricity requirements of an average household;
6. Household items;
7. Home repairs and appliances;
8. Transportation; and
9. Medical care.

(c) *Income.* The agency shall determine the amount of income available to the AFDC emergency assistance group in accordance with s. HSS 201.28 except that:

1. The earned income disregards under s. 49.19 (5) (a) 4. and 4m. and (am), Stats., are not allowed;
2. Supplemental security income received by an AFDC emergency assistance group member in the month of the emergency is not counted;
3. An AFDC grant received in the month of the emergency is not counted; and
4. Income received in the month of the emergency but before the date of the emergency and already used for the group's needs is not counted.

(d) *Assets.* The agency shall determine the amount of assets available to the AFDC emergency assistance group in accordance with s. HSS 201.27, except that an asset with a fair market value of less than \$3,000 that would require liquidation at a loss or an asset maintained in an education and employability account under s. HSS 201.27 (1m) is exempt from consideration. No asset may be considered available unless the AFDC emergency assistance group can make it available within 30 days. Assets shall be considered available as provided in 45 CFR 233.20 (a) (3) (ii) (D), that is, both when actually available and when the group has a legal interest in a liquidated sum and has the legal ability to make the sum available for support and maintenance. No available real property

may be included in determining the AFDC emergency assistance group's assets.

(7) *PAYMENT AMOUNT.* (a) In determining the AFDC emergency assistance payment amount, the agency shall subtract the AFDC emergency assistance group's total income, as determined under s. HSS 201.28 and sub. (6) (c), and assets, as determined under s. HSS 201.27 and sub. (6) (d), from the group's total financial need determined under sub. (6) (a).

(b) The AFDC emergency assistance payment amount shall be the amount requested by the AFDC emergency assistance group or the amount computed under par. (a), whichever is less, but may not exceed the maximum payment amount per family member as established by the department. The department shall establish the maximum payment amount and annual changes to it by publishing a public notice in the Wisconsin administrative register and by issuing a revised emergency assistance chapter for its other programs eligibility handbook.

(8) *ELIGIBILITY DETERMINATION AND PAYMENT PROCEDURES.* (a) The agency shall determine eligibility for AFDC emergency assistance within 5 working days after receiving a completed application and, if the group is found eligible, shall issue a payment to the AFDC emergency assistance group within the same 5 working days except that, if the group is eligible under sub. (5) (b), the agency shall issue a payment, following the eligibility determination, within 5 working days of the date that the group notifies the agency that a permanent living accommodation has been obtained. The payment may be made in the form of cash, a voucher or a vendor payment.

(b) The agency shall notify the applicant in writing of the eligibility determination. If the application is denied, the notice shall include reasons for the denial and information about the opportunity to appeal that decision under sub. (10).

(c) 1. AFDC emergency assistance may be issued to an AFDC emergency assistance group for one period of 30 days within any 12 consecutive months.

2. The date of the first authorized payment begins the 30 day period, and the period ends 30 days after the initial payment, whether or not additional requests or payments for the same emergency are made.

(d) AFDC emergency assistance payments shall not be used for activities related to or the costs of providing temporary or transitional shelter or housing except if a group is in need of assistance due to a fire, flood or natural disaster.

(9) *SOCIAL SERVICE NEEDS.* (a) In determining the AFDC emergency assistance group's total need, the agency shall consider the social service needs of the group and shall make appropriate referrals to assist the group in meeting those needs.

(b) Social service needs include but are not limited to the need for:

1. Information and referral to the appropriate service agency;
2. Counseling;
3. Family shelter; and
4. Child care funding through the county or tribal human services or social services agency.

(10) *FAIR HEARING.* Any person whose application for AFDC emergency assistance is not acted upon promptly after filing of the application, or is denied in whole or in part, whose award is modified or canceled, or who believes the award to be insufficient, may request a fair hearing in accordance with s. 49.50 (8), Stats. A request shall be in writing and shall be submitted to the department's office of administrative hearings so that it is received there within 45 days after the decision or failure to act which is being appealed.

Note: The mailing address of the Department's Office of Administrative Hearings is P.O. Box 7875, Madison, WI 53707-7875.

History: Emerg. cr. eff. 4-4-95; emerg. r. and recr. (7) eff. 9-1-95; cr. Register, November, 1995, No. 479, eff. 12-1-95.

**HSS 201.06 Access to information.** (1) Persons inquiring about or applying for AFDC shall be given the following information by the agency in written form, and orally as appropriate: coverage, conditions of eligibility, scope of the program and related services available, and applicant and recipient rights and responsibilities. Bulletins or pamphlets developed for this purpose shall be available at the agency. In areas where there is a substantial non-English-speaking or limited-English-speaking population, the agency shall take whatever steps are necessary to communicate with that population in its primary language.

(2) Persons may examine program manuals and policy issuances which affect the public, including rules and regulations governing eligibility, need and amount of assistance, recipients' rights and responsibilities and services offered. These documents may be examined at agency offices or the department's state or regional offices on regular work days during regular office hours.

(3) A person or his or her authorized representative may review the entire case record to verify that the content accurately reflects statements and documentation of facts. No part of the record may be withheld during preparation for a fair hearing. When the request is not related to preparation for a fair hearing, it is not required that the entire record be shown unless the reason for seeing the record requires the full record.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**HSS 201.07 Providing correct and truthful information.** Applicants, recipients, or persons described in s. HSS 201.05 (5) acting in their behalf, shall provide to the agency, the department or its delegated agent, full, correct and truthful information necessary for eligibility determination or redetermination. Changes in income, resources or other circumstances which may affect eligibility shall be reported to the agency within 10 days of the change.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**HSS 201.08 Verification of information.** If the person does not have the power to produce verification, or requires assistance to do so, the agency may not deny assistance and shall pro-

ceed immediately to seek the verification. Assistance shall be denied when a person has the power to produce required verification but refuses or fails to do so.

(1) The following items shall be verified, when applicable, prior to determining eligibility:

- (a) Income.
- (b) A pregnancy which is the basis of nonfinancial eligibility.
- (c) Incapacitation which is the basis of nonfinancial eligibility, unless incapacitation is presumed to exist according to s. HSS 201.35 (2).

(d) Information required of an applicant who has a history of fraud or who is known to have provided erroneous information on a previous application which resulted in an incorrect issuance of assistance. The agency shall verify those data elements considered appropriate under the circumstances of the case history.

(2) The following items shall be verified, when applicable, within 60 days after the eligibility decision date:

- (a) Social security numbers.
- (b) Age, when it is a requirement for nonfinancial eligibility.
- (c) Citizenship or alien status.
- (d) Pregnancy.
- (e) Assets.

(3) Additional verifications may be obtained on a case-specific basis when statements of the applicant are unclear, incomplete or conflicting, or when circumstances make credibility doubtful.

(4) Social security number and birth date shall be verified only once. Other information contained in the application subject to change shall be re-verified.

(5) An agency may verify the original or a copy of the checking or savings account statement of a recipient who is receiving benefits by means of electronic funds transfer under s. HSS 201.10 (4). The verification shall be done at the time of eligibility review, or more often if the agency director or the director's designee decides more frequent verification is justified.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; emerg. cr. (5), eff. 5-30-87; cr. (5), Register, December, 1987, No. 384, eff. 1-1-88.

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3. If the compensation received is equal to or greater than adequate and full consideration, there is no divestment;

4. If the compensation received is less than adequate and full consideration, the difference is the divested amount and shall be considered an asset;

5. If the divested amount plus the AFDC group's other assets are equal to or less than \$1,000, the divestment may not be considered a bar to eligibility; and

6. If the divested amount plus the AFDC group's other assets are greater than \$1,000, the excess over \$1,000 is the amount of the divestment to be expended for maintenance needs and medical care under par. (c).

(b) *Divestment as a barrier to eligibility.* 1. Divestment by any person within 2 years prior to the date of application for AFDC shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving AFDC.

2. When property is owned by 2 or more persons, the expected share of the compensation received shall be the same as the share of ownership. All owners shall be assumed to share equally in the absence of evidence to the contrary.

3. Divestment does not occur when property is divided as part of a divorce or separation action or when property is lost due to foreclosure or repossessed due to failure to meet payments.

4. To rebut the presumption that divestment was made in contemplation of receiving aid, the applicant or recipient shall establish by a preponderance of the evidence that the transaction was exclusively for some other purpose. In this subdivision, "preponderance of the evidence" means evidence which leads the hearing examiner to believe that the existence of a fact is more probable than its nonexistence.

Note: For example, an applicant or recipient may rebut the presumption that the divestment was made in contemplation of receiving aid by showing by a preponderance of the evidence that, at the time of divesting, the applicant or recipient had provided for future maintenance needs and medical care.

(c) *Removing divestment as a barrier to eligibility.* 1. To remove the divestment as a barrier to eligibility for AFDC, the amount of the divestment under par. (a) 6. to be satisfied shall be expended for maintenance needs and medical care, or 2 years shall have elapsed since the act of divestment, whichever occurs first.

2. Amounts to be expended for maintenance needs and medical care shall be calculated monthly. The monthly calculation from the date of divestment shall be the AFDC standard for the appropriate family size as provided in s. 49.19 (11) (a) 1., Stats., plus actual medical care expenses incurred for that month.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HSS 201.28 Income.** All income shall be considered in determining financial eligibility of the AFDC group. Special procedures and considerations shall be applied to the following types of income when determining eligibility and the amount of the grant:

(1) **PAYMENTS FOR EDUCATION OR TRAINING.** (a) Loans and grants for undergraduate educational purposes, including work study, shall be exempt.

(b) Payments received by a participant in the JOBS program to reimburse him or her for the costs of participation or to serve as an incentive for participation shall be exempt.

(c) Incentive allowances received by participants in a Comprehensive Employment and Training Act of 1973 (P.L. 93-203) program shall be exempt. In addition, all money received by participants in Job Corps - Title IV, Youth Employment and Demonstration Projects, Jobs for Progress, Mainstream, and Summer Youth Employment Program shall be exempt.

(d) All training allowances granted by the agency shall be exempt.

(e) All division of vocational rehabilitation payments shall be exempt except that income earned at a sheltered workshop or any other work-adjustment setting shall not be exempt.

(f) Income from the following programs shall be exempt: Volunteers in Service to America; Foster Grandparents Program; Service Corps of Retired Executives; Active Corps of Executives; Retired Senior Volunteers Program; Older American Community Service Program; and University Year for Action Program.

(2) **PAYMENTS FOR RELOCATION OR SPECIAL HOUSING.** (a) Relocation payments made to displaced persons under s. 32.19, Stats., are exempt.

(b) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) shall be exempt.

(c) Any payment to persons from an experimental housing allowance program contracted prior to January 1, 1975 shall be exempt.

(3) **CERTAIN FUNDS RECEIVED BY NATIVE AMERICAN GROUPS.** The following funds received by the specified Native American groups shall be exempt: Menominee Indian Bond interest; homestead relief payments; judgment payments to the Grand River Band of Ottawa Indians, Lac du Flambeau Band and the Minnesota Bois Forte Band of Chippewa Indians, or any other judgment payment to an Indian tribe through the Indian Claims Commission; payments under the Alaskan Native Claims Settlement Act; payments to the Bad River Band and Lac Courte Oreilles Band of Chippewa Indians as well as the Stockbridge Munsee Indian Community of Mohicans; and payments made under any other Federal legislation that specifically exempts funds paid to an Indian tribe from being counted as income for public assistance purposes.

(4) **ENERGY ASSISTANCE BENEFITS.** Payments made under the low-income energy assistance program and emergency fuel grants shall be exempt.

(4m) **EMERGENCY ASSISTANCE.** Payments made under the emergency assistance program, s. HSS 201.055, shall be exempt.

(5) **NUTRITION-RELATED BENEFITS.** The following nutrition-related benefits shall be exempt:

(a) The value of the coupon allotment received under the Food Stamp Act of 1964, as amended;

(b) The cash value of any donated food and other emergency food;

(c) The cash value of home produce of applicants or recipients used for their own consumption, as distinguished from such produce sold or exchanged;

(d) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, including women, infants and children's (WIC) benefits, and the special food service program for children under the National School Lunch Act, as amended (P.L. 92-433 and P.L. 93-150); and

(e) Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended.

(6) **REIMBURSEMENT OR PAYMENT FOR SOCIAL SERVICES.** Funds from Title XX of the Social Security Act of 1935, as amended, paid directly by the agency to the applicant or recipient for reimbursement or purchase of services shall be exempt.

(6m) **EARNED INCOME TAX DISREGARD.** Any refund of federal income taxes made by reason of s. 32 of the internal revenue code of 1986 and any advance payment made by an employer under s. 3507 of the internal revenue code of 1986 shall be exempt.

(7) **RENTAL INCOME.** Rental income shall be treated as follows:

(a) When a person reports rent money to the internal revenue service as self-employment income, the procedures specified in sub. (12) shall be followed.

(b) If the person does not report rental income to the internal revenue service as self-employment income, the net rent shall be determined as described in this subsection and counted as unearned income.

(c) When the owner is not an occupant, net rent shall be the rent payment actually received minus the mortgage payment and verifiable operational costs.

(d) In situations where the person receives money from a duplex or triplex operation and lives in one of the units, net rent shall be determined as follows:

1. Total mortgage payment and total operational costs common to the entire operation shall be added;

2. Total expense shall be computed using this formula:

a. Multiply number of rental units by total of subd. 1. Then divide that result by total number of units to get the proportionate share.

b. Add the proportionate share to any operational costs paid by the owner that are unique to the rental unit. The result equals the total expense.

3. In this subsection, "net rent" means total expense subtracted from total rent payments.

(8) **LUMP SUM PAYMENTS.** In this subsection, "lump sum payment" means a nonrecurring payment or accumulation of individual payments of earned or unearned income paid in one sum to an AFDC group member such as social security benefits, unemployment compensation, personal injury and workers' compensation awards, and lottery and bingo winnings. A lump sum payment shall be treated as follows:

(a) Any amount earmarked and used for the purpose for which it was paid, such as to pay for back medical bills resulting from an accident or injury, funeral and burial costs or the cost of replacing or repairing a resource, shall be disregarded;

(b) When the AFDC group's income, after applying applicable disregards, exceeds the assistance standard under s. 49.19 (11) (a), Stats., for the appropriate family size because of the receipt of a lump sum payment, the AFDC group shall be ineligible for AFDC for the full number of months derived by dividing the sum of the lump sum income and other available income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility or grant reduction begins in the next possible payment month immediately after the month in which the lump sum was received;

(c) The agency shall recompute the AFDC group's period of ineligibility due to receipt of a lump sum payment as of the date of the change using the method outlined in par. (b) when:

1. The former AFDC group's grant would have increased due to a statutory increase in the assistance standard and the family allowance under s. 49.19 (11) (a), Stats.;

2. The lump sum income or a portion of it becomes unavailable to the former AFDC group for a reason beyond the group's control, for example:

a. The lump sum amount was used because an immediate threat to the health, safety or welfare of the former AFDC group existed;

b. There has been a loss or theft of income; or

c. The group member who received the lump sum leaves the group; or

3. Medical expenses were incurred and paid during the period of ineligibility. Only medical expenses which equal or exceed any balance remaining after calculating the period of ineligibility may be counted; and

(d) If the size of the AFDC group increases during the period of ineligibility, the eligibility of the person added to the AFDC group shall be determined separately.

(9) **CONTRACTUAL INCOME.** Income received on other than an hourly or piecework basis from employment under a contract which is renewable on an annual basis shall be averaged over a 12-month period. The person shall be considered compensated for an entire year even though predetermined non-work or vacation periods are involved or actual compensation is scheduled for payment during work periods only.

(10) **IN-KIND BENEFITS.** When in-kind benefits are regular, predictable, and received in return for a service or product delivered, these benefits shall be treated as earned income. When in-kind benefits do not meet all three of these criteria, they shall not be counted when determining eligibility and grants. The value of in-kind income shall be determined by the prevailing wage-rate in the community for the type of work the person is doing, but shall not be less than the minimum wage for that type of work.

(11) **ROOM AND BOARD PROFIT.** Room and board profit shall be treated as earned income. To determine room and board profit, the expenses of providing room and board shall be deducted from the gross room and board income received as follows: roomer only — \$15.00; boarder only — current food stamp allotment for one; or roomer and boarder — current food stamp allotment for one plus \$15.00.

(12) **FARM AND SELF-EMPLOYMENT.** Farm and self-employment income to be counted in AFDC calculations shall be determined by adding the following items back into the net earnings: depreciation, personal business and entertainment expenses, personal transportation, purchases of capital equipment, and payments on the principal of loans. The total shall be divided by 12 to get monthly earnings. If no return has been filed, the person shall complete a 1040 form of the internal revenue service to determine net earnings or loss, or to anticipate, in the case of relatively new businesses, net earnings as required by the internal revenue service. If the latest income tax return does not accurately reflect actual circumstances because a substantial increase or decrease in business has occurred, the agency shall calculate the self-employment income based on anticipated earnings. Agencies shall determine if it is necessary to use anticipated earnings on a case-by-case basis and shall document the reasons for the determination in the case record.

(13) **CHILD SUPPORT PAYMENTS.** The first \$50 of any current child support, as defined in s. HSS 80.02 (6), or family support, as defined in s. HSS 80.02 (11), paid by an absent parent is disregarded when it is:

(a) Court-ordered, whether assigned to the state under s. 49.19 (4) (h) 1. b., Stats., or unassigned, and paid to:

1. The clerk of courts; or
2. Directly to or for an AFDC group member; or

(b) Voluntary and paid directly to or on behalf of an AFDC group member.

(14) **INCOME OF YOUTH.** The earned income of a person who is less than 18 years old or who is a dependent 18-year old as defined in s. HSS 201.24 shall be treated as follows: If the person is a part-time student and employed less than 30 hours a week or is a full-time student, the person's earned income shall be exempt when the amount of the grant is determined. However, the person's earned income shall be counted when determining eligibility, unless the person was an AFDC recipient in any one of the 4 preceding months in which case the earned income shall also be exempt for this determination.

(15) **DEDUCTIONS.** The following deductions from income shall be made in the order shown:

(a) *Allocation.* 1. Where the parents are included in the AFDC group and the child in-common is determined ineligible, an amount up to the average of the differences between the area I standards set by s. 49.19 (11) (a), Stats., for family sizes 3 and 2, 4 and 3, 5 and 4, and 6 and 5, shall be allocated to the child to bring the child's income up to this amount. This income shall be de-

ducted from the group's income before determining eligibility and amount of grant.

2. If there is a court order requiring a person in the AFDC group to pay support to a person who is not in the AFDC group, this income shall be deemed unavailable to the AFDC group and shall be deducted from the group's income before determining eligibility and amount of grant.

(b) *Deductions from earned income.* The following shall be deducted from earned income in the order shown except from the earned income of a person who violates 45 CFR 233.20 (a) (11) (iii):

1. The first \$90 of earned income of:

a. Any dependent child or relative applying for or receiving aid; and

b. Any other person living in the same home as the dependent child whose needs are considered in determining the budget;

2. Earned income not already disregarded in subd. 1. equal to one of the following:

a. \$30 plus an amount equal to 1/3 of the remaining earned income not disregarded as provided under s. 49.19 (5) (a) 4., Stats., unless the person has received the \$30 plus 1/3 deduction for 4 consecutive months and, since then, has not been off AFDC for 12 consecutive months;

b. \$30 as provided under s. 49.19 (5) (a) 4m., Stats., unless 8 months have passed since the person received the fourth consecutive month of the \$30 and 1/3 deduction under subd. 2. a., and, since then, has not been off AFDC for 12 consecutive months; or

c. \$30 plus an amount equal to 1/6 of the remaining earned income not disregarded as provided under s. 49.19 (5) (am), Stats., unless the person has received the \$30 plus deduction for 12 consecutive months and, since then, has not been off AFDC for 12 consecutive months;

3. When employment cannot be maintained without dependent care for a dependent child or incapacitated adult in the AFDC group, the dependent care costs actually paid shall be deducted, but not more than \$175 each month for each dependent child age 2 or over or incapacitated adult or \$200 each month for each dependent child under age 2 as provided under s. 49.19 (5) (a) 4s., Stats., if:

a. The amount is used to provide care for a dependent child or for an incapacitated person who is living in the same home as the dependent child;

b. The person receiving care is also receiving AFDC; and

c. The person requires care during the month the AFDC is received.

(16) *INCOME TESTS.* The following income tests shall be made:

(a) *Test for 185% of assistance standard.* The AFDC group shall be ineligible in any month in which the group's income, not counting AFDC payments, exceeds 185% of the assistance standard for that size group. A monthly allowance in the amount specified under s. 49.19 (11) (a) 4., Stats., shall be added to the assistance standard for each applicant or recipient who meets the criterion under s. HSS 201.30 (3). The exemptions specified in sub. (14) do not apply to this determination. If the AFDC group's income exceeds 185% of the assistance standard, the primary person, the primary person's spouse, and any children for whom they are both legally responsible shall not be eligible. The financial eligibility of other children in the AFDC group shall be determined under s. HSS 201.31.

(b) *Determination of eligibility.* Eligibility shall be determined by measuring the income, after applicable disregards, against the appropriate assistance standard for the AFDC group size. If a person has not received AFDC in one of the 4 prior months, the \$30 plus 1/3 deduction to earned income specified in sub. (15) (b) 3. and the exemption of student earnings in the determination of eligibility as specified in sub. (14) are not applied. If the income ex-

ceeds the assistance standard, the primary person, the primary person's spouse, and any children for whom they are both legally responsible shall not be eligible. The financial eligibility of other children in the AFDC group shall be determined under s. HSS 201.31.

*History:* Cr. Register, April, 1983, No. 328, eff. 5-1-83; emerg. r. (13), eff. 12-1-84; r. (13), Register, May, 1985, No. 353, eff. 6-1-85; emerg. r. and recr. (1) (b), am. (15) (b) 3. c., eff. 6-1-86; r. and recr. (1) (b), am. (15) (b) 3. c., Register, November, 1986, No. 371, eff. 12-1-86; emerg. cr. (6m), r. and recr. (15) (b), eff. 1-2-89; cr. (6m), am. (15) (intro.), r. and recr. (15) (b), Register, March, 1990, No. 411, eff. 4-1-90; r. and recr. (8), Register, March, 1992, No. 435, eff. 4-1-92; am. (1) (a) and (b), Register, February, 1993, No. 446, eff. 3-1-93; cr. (13), r. and recr. (15) (b), am. (16) (a), Register, February, 1995, No. 470, eff. 3-1-95; emerg. cr. (4m), eff. 4-4-95; cr. (4m), Register, November, 1995, No. 479, eff. 12-1-95.

**HSS 201.29 Eligibility date.** (1) Except for maternity care cases the beginning eligibility date shall be the date or receipt of a signed and completed application or the date all eligibility requirements are met, whichever is later. The beginning eligibility date for maternity care cases shall be the first day of the month in which the medically verified seventh month of pregnancy begins, or the first day of the month of application, whichever is later.

(2) If required by the agency, a home visit shall be conducted prior to release of the check. This requirement does not affect the amount of the check.

*History:* Cr. Register, April, 1983, No. 328, eff. 5-1-83; emerg. r. (2) (b), eff. 6-1-86; r. and recr. (2), Register, November, 1986, No. 371, eff. 12-1-86.

**HSS 201.30 Determination of grant amount.** (1) *ON-GOING PAYMENTS.* The AFDC grant shall be determined by subtracting the AFDC group's income from the family allowance appropriate for the size of the AFDC group. As provided under s. 49.19 (11) (a) 7., Stats., no payment shall be made for a month if the amount of the payment would be less than \$10 except when the benefit amount is reduced below \$10 because of recoupment under s. HSS 201.30 (5). Members of an AFDC group which receives no money payment because of the application of s. 49.19 (11) (a) 7., Stats., shall be deemed recipients for all other AFDC purposes except for participation in community work experience under s. 49.193 (4) (h), Stats.

(2) *FIRST PAYMENT.* If the beginning eligibility date is the first of the month, the first payment is a full month's grant. Otherwise the first payment shall be prorated as follows:

(a) The number of days from the beginning eligibility date to the end of the month shall be counted.

(b) The number of eligible days shall be divided by the number of days in the month.

(c) The full-month's grant amount shall be multiplied by the result of par. (b) to get the first grant.

(3) *ADDITION OF A PREGNANCY ALLOWANCE.* A pregnancy allowance as provided in s. 49.19 (11) (a) 4., Stats., shall be added to the assistance standard when, in the AFDC group, there is a woman who is medically verified to be in the final trimester of pregnancy. To establish the month in which the pregnancy allowance shall begin, the agency shall count back 3 calendar months from the expected date of delivery.

(4) *CORRECTION OF UNDERPAYMENTS.* Agencies shall promptly correct any underpayments to current recipients and those who would be current recipients if the error causing the underpayment had not occurred. A retroactive corrective payment shall not be considered as income or an asset in the month paid or the following month.

(5) *CORRECTION OF OVERPAYMENTS.* (a) *Agency responsibility.* Agencies shall promptly recover all overpayments. An agency shall recover an overpayment from the AFDC group which was overpaid, or from any AFDC group of which a member of the overpaid group has subsequently become a member.

(b) *Procedures for recoupment from current recipients.* 1. 'Involuntary repayment'. Except as provided under subd. 2, recoupment shall be obtained by reduction of the grant. The recoupment withheld from the grant shall continue every month until the

overpayment is paid back in full. The amount recouped from the grant shall be:

a. Seven percent of the family allowance, unless a court orders a different amount, when the overpayment is the result of applicant or recipient error that is other than that described under subd. 1. b, department or agency error, continued payments pending a fair hearing decision when it is against the applicant or recipient, continuation of the grant because of the necessary 10 day notice or an AFDC group member participating in a strike on the last day of the month in which AFDC is received; or

b. Ten percent of the family allowance as provided under s. 49.19 (17), Stats., when the overpayment is the result of an intentional program violation determined under s. 49.123 (2), Stats.

2. 'Voluntary repayment'. A recipient may make a voluntary repayment in addition to the amount withheld from the grant under subd. 1.

(c) *Procedures for recoupment from former recipients.* The agency shall ask former recipients to voluntarily repay the overpayments. If a former recipient refuses to repay voluntarily and the overpayment is \$35 or more, the agency shall refer the former recipient for collection or court action. The agency may suspend collection efforts if the overpayment balance is less than \$35.

(6) **CASES WITH BOTH UNDERPAYMENTS AND OVERPAYMENTS.** When both an underpayment of assistance has been made to an AFDC group and an overpayment of assistance has been made to the same AFDC group, the agency shall offset one payment against the other in correcting the payments. An overpayment shall be offset only in a month in which a supplemental benefit payment is issued to correct an underpayment for a prior month.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; cr. (3) (d), Register, January, 1988, No. 385, eff. 2-1-88; am. (1), r. and recr. (3), cr. (4) to (6), Register, February, 1995, No. 470, eff. 3-1-95.

**HSS 201.305 Two-tier AFDC benefit demonstration project.** (1) **AUTHORITY AND PURPOSE.** This section is adopted under the authority of ss. 49.19 (11m) (a) and 49.50 (2), Stats., to provide rules for the administration of a two-tier AFDC benefit demonstration project, on a pilot basis, under which the department provides a person who is eligible for AFDC and who is required to participate in the demonstration project with monthly payments, for the first 6 months that he or she lives in Wisconsin, calculated on the basis of the AFDC benefit level in the state in which the primary person most recently resided for at least 30 days.

(2) **APPLICABILITY.** This section applies to all county economic support agencies participating in the pilot and to all applicants and recipients living in a pilot county who are required to participate in the two-tier AFDC benefit demonstration project.

(3) **DEFINITIONS.** In this section:

(a) "Flat grant" means an AFDC benefit amount which a state determines covers basic needs such as food, clothing, household items, shelter and utilities.

(b) "Former state of residence" means the state, other than Wisconsin, in which the family most recently resided for at least 30 days.

(c) "Special needs payment" means a payment made to meet needs that are essential for some persons but not all.

(d) "Standard of need" means the income a state determines is essential as provided under 45 CFR 233.20 (a) (3) (ii).

(e) "State" means one of the 49 other states or the District of Columbia.

(f) "Typical family" means a family with one adult caretaker and a dependent child or children.

(4) **DEPARTMENT RESPONSIBILITIES.** (a) *Selection of pilot counties.* The department shall select the counties to participate in the demonstration project in accordance with s. 49.19 (11m) (c), Stats.

(b) *Determination of benefit levels.* 1. 'Maximum AFDC benefit levels'. The department shall establish maximum AFDC

benefit levels for families participating in the demonstration project based on the former state of residence and family size. In determining the maximum AFDC benefit levels for families participating in the demonstration project, the department shall take into account the following factors:

a. The AFDC benefit level available to a typical family of the same size in each state;

b. That portion of each state's AFDC benefit amount which is comparable to a flat grant;

c. A state's special needs payments that are regular, predictable and available to a typical family of that size except that a special needs allowance related to pregnancy shall be determined as provided under subd. 2. c. Special needs payments covered by another funding source in Wisconsin such as low income energy assistance under s. 49.80, Stats., AFDC emergency assistance under s. 49.19 (11) (b), Stats., or JOBS program reimbursements under s. 49.193, Stats., are not considered;

d. Whether a state varies benefit amounts by geographical area. For states that do so, the department shall use the benefit amount provided to recipients in a major urban area. If a state has more than one major urban area, the department shall use the benefit amount provided to recipients in the major urban area in which a majority of the AFDC population resides; and

e. If the benefit amount in a state is arrived at by subtracting countable income from a standard of need rather than from the maximum AFDC payment amount, the department shall use the same method.

2. 'Payment amount for an individual family'. In determining the payment amount for a family subject to the demonstration project, the department shall:

a. Determine the family's countable income based on s. HSS 201.28;

b. Choose the appropriate benefit level according to family size and former state of residence of the primary person; and

c. Add a pregnancy allowance as provided under s. HSS 201.30 (3) as appropriate.

(c) *Establishment of initial benefit levels and annual updates.*

Maximum AFDC benefit levels, for the period July 1, 1994 through June 30, 1995, available to families participating in the demonstration project according to family size and former state of residence are set out in Table 201.305. The department shall update the benefit levels annually beginning July 1, 1995, for each year of the demonstration project by publishing updated benefit levels as a public notice in the Wisconsin administrative register. All benefit levels shall be established by the department only after consultation with the federal department of health and human services.

(d) *No issuance or supplementation of AFDC benefits.* 1. Except as provided in subd. 2., the department may not issue or supplement an AFDC benefit amount in a month when a family:

a. Moves to Wisconsin and applies for AFDC benefits, has already received an AFDC grant from their former state of residence and that AFDC benefit amount covers the period for which they are applying; or

b. Moves from a pilot to a non-pilot county and has already received an AFDC grant based on residence in the pilot county.

2. The department may issue a supplemental AFDC benefit for an individual who was not included in the AFDC grant issued in the former state of residence or pilot county for a reason that no longer applies or for an individual added to the AFDC group such as a newborn.

(e) *Issuance of AFDC benefits after 6 months based on Wisconsin standards.* The department shall ensure that after the sixth consecutive month of residency, the family receives AFDC benefits based on Wisconsin AFDC payment standards as long as all other eligibility factors are met. In determining when the family meets the sixth consecutive month of residency, the agency shall