

## Chapter HSS 103

## ELIGIBILITY FOR MEDICAL ASSISTANCE

HSS 103.001	Eligibility (p. 33)	HSS 103.07	Singular enrollment (p. 47)
HSS 103.01	Residence (p. 33)	HSS 103.08	Termination of medical assistance (p. 47)
HSS 103.02	Income (p. 34)	HSS 103.09	Expiration of eligibility (p. 47)
HSS 103.03	Assets (p. 38)	HSS 103.10	Providing correct and truthful information (p. 47)
HSS 103.04	Relative responsibility (p. 40)	HSS 103.11	Refusal to provide information (p. 47)
HSS 103.05	Institutional status—monthly need computation for institutionalized persons (p. 45)	HSS 103.12	Divestment (p. 48)
HSS 103.06	Other factors (p. 45)		

**HSS 103.001 Eligibility.** Eligibility for medical assistance shall be determined pursuant to s. 49.46 (1) (relating to eligibility standards for recipients of social security aids) and s. 49.47 (4) (relating to eligibility standards for medically indigent persons) Stats., ch. PW-PA 20 Wis. Adm. Code and these rules.

**History:** Cr. Register, December, 1979, No. 288, eff. 2-1-80.

**HSS 103.01 Residence.** Wisconsin residence is an eligibility requirement. No specific length of residence is required.

(1) **WHO IS A WISCONSIN RESIDENT.** Except as provided in an interstate agreement, a resident of Wisconsin is any individual who:

- (a) Is living in Wisconsin with the intention to remain here permanently or for an indefinite period;
- (b) Is living in Wisconsin for purposes of employment;
- (c) Meets the conditions in s. HSS 103.01 (2), (3), or (4).

(2) **RULES APPLICABLE TO INDIVIDUALS UNDER AGE 21.** (a) The state of residence of any individual under age 21, except those whose medicaid eligibility is based on blindness or disability, shall be determined in accordance with the rules governing residence under the aid to families with dependent children program.

(b) The state of residence for any individual under age 21 whose medicaid eligibility is based on blindness or disability shall be the parent's state of residence, except:

1. If the parents reside in separate states, the state of residence of the parent who is applying for medicaid eligibility on behalf of the individual shall be the individual's state of residence; or

2. If the parents reside outside the United States, or cannot be located or are deceased, or if a legal guardian is appointed for the individual, the state in which the individual is physically present, not for a temporary purpose, shall be the individual's state of residence.

## HSS 103

(3) **RULES APPLICABLE TO INDIVIDUALS OVER AGE 21 WHO ARE INCAPABLE OF INDICATING INTENT.** (a) An individual shall be considered incapable of indicating intent if:

1. The individual's I.Q. is 49 or less or the individual has a mental age of 7 or less;

2. The individual is judged legally incompetent; or

3. Medical documentation, or other documentation acceptable to the department, supports a finding that the individual is incapable of stating intent.

(b) For an individual who became incapable of indicating intent before age 21, the state of residence shall be determined in accordance with s. HSS 103.01 (2) (b).

(c) For an individual who became incapable of indicating intent at or after age 21, the state of residence shall be the state in which the individual most recently established residence before becoming incapable of indicating intent.

(4) **PLACEMENT BY STATES IN A WISCONSIN INSTITUTION.** If another state arranges for an individual to be placed in a Wisconsin institution, the state making the placement shall be the individual's state of residence, irrespective of the individual's indicated intent or ability to indicate intent.

*History:* Cr. Register, December, 1979, No. 288, eff. 2-1-80.

**HSS 103.02 Income.** The following standards shall be used to determine income levels for the purpose of eligibility determination:

(1) **DETERMINING INCOME FROM GROSS SELF-EMPLOYMENT INCOME.** Adjusted gross income as determined for income tax purposes shall be used for determining self-employment income. For this purpose, the applicant shall submit to the county agency the applicant's most recent federal income tax return.

(a) To be considered a self-employed business, at least 50% of a family's income shall be derived from the self-employed business, and a form 1040 C shall be filed for income tax purposes. If no return has been filed, the applicant shall complete a form 1040 C to determine net earnings or loss, or to anticipate net earnings, (in the case of relatively new businesses) as required by the federal internal revenue service.

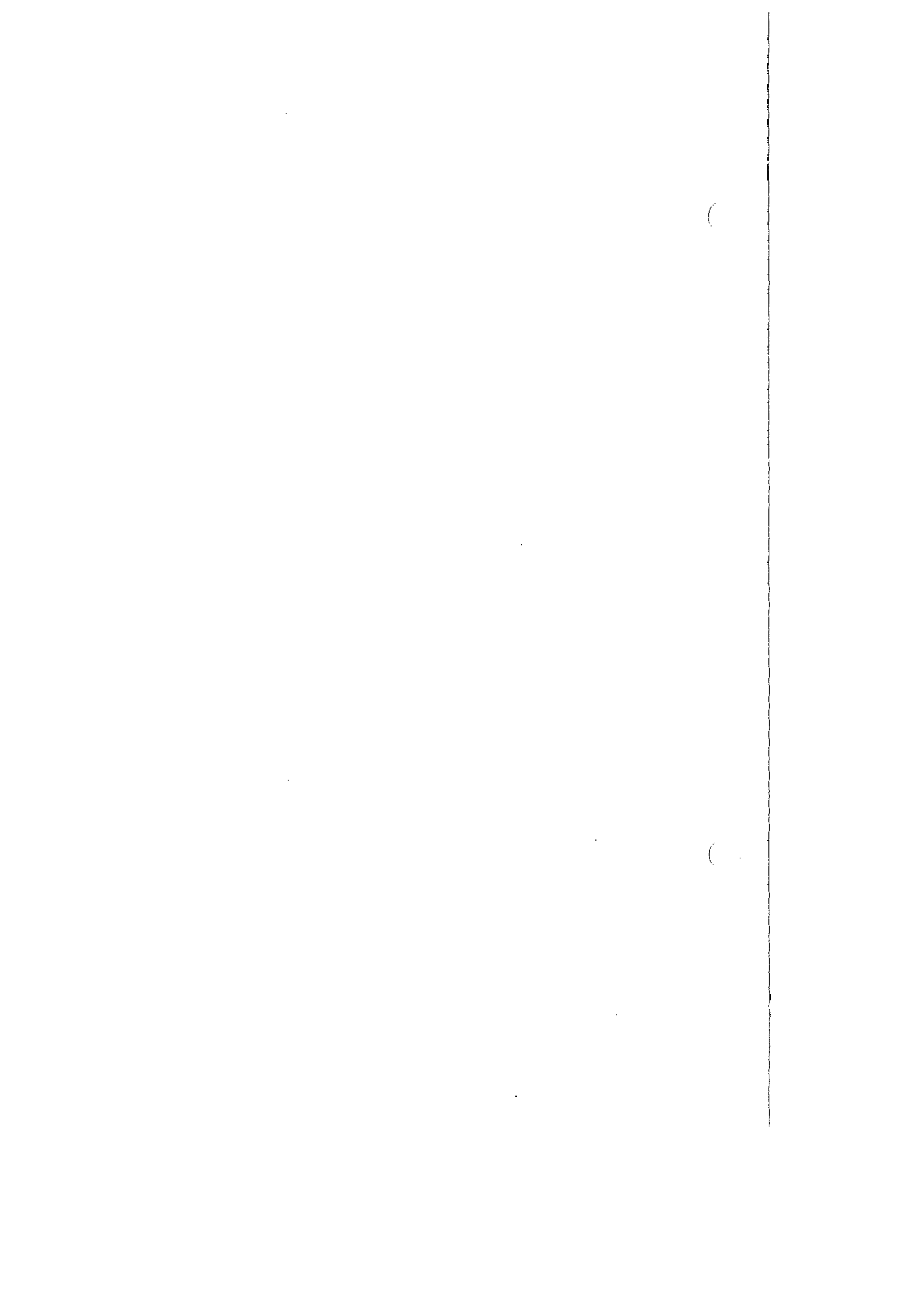
(b) Federal income tax returns for the previous 3 years shall be used to determine whether or not the self-employed business operation is profitable or becoming profitable. If it is not profitable or not becoming profitable, all assets related to it shall be treated as available assets when determining eligibility.

(2) **DETERMINING INCOME FROM GROSS FARM INCOME.** Adjusted gross income as determined for income tax purposes shall be used for determining farm income. The applicant shall submit to the county agency for his purpose the applicant's most recent federal income tax return.

(a) To be considered a "farm" operation, at least 50% of a family's income shall be derived from the farm operation, and a form 1040 F shall

Register, June, 1981, No. 306  
Medical Assistance

be filed for income tax purposes. If no return has been filed, the applicant shall complete a form 1040 F to determine net earnings or loss, or to anticipate net earnings, (in case of relatively new businesses) as required by the federal internal revenue service.



(g) MA cards issued to migrants shall be marked "Not valid outside state of Wisconsin".

**History:** Cr. Register, December, 1979, No. 288, eff. 2-1-80.

**HSS 103.07 Singular enrollment.** A person may not be certified eligible in more than one medical assistance case.

**History:** Cr. Register, December, 1979, No. 288, eff. 2-1-80.

**HSS 103.08 Termination of medical assistance.** (1) Except in the case of death of the recipient, when eligibility is terminated before the end of a month, the medical assistance certification and medical assistance card shall be valid for that entire month.

(2) The county agency shall give the applicant or recipient timely advance notice of its intention to terminate medical assistance. This notice shall be in writing and mailed to the recipient at least 10 calendar days before the effective date of such proposed action and shall clearly state what action the county agency intends to take, the specific regulation supporting such an action, an explanation of the right to appeal such proposed action and the circumstances under which medical assistance is continued if a hearing is requested.

**History:** Cr. Register, December, 1979, No. 288, eff. 2-1-80.

**HSS 103.09 Expiration of eligibility.** (1) The county agency shall give the recipient timely advance notice of the eligibility redetermination date. This notice shall be in writing and mailed to the recipient at least 15 calendar days (and no more than 30 calendar days) before the redetermination date. *Exception:* The requirement for timely advance notice of eligibility redetermination does not apply to spend-down cases in which the period of certification is less than 60 days.

(2) If the recipient does not contact the county agency, the county agency shall make a follow-up contact. A home visit shall be made whenever the situation warrants it.

**History:** Cr. Register, December, 1979, No. 288, eff. 2-1-80.

**HSS 103.10 Providing correct and truthful information.** Applicants and recipients are responsible for providing to the county agency, the department or its delegated agent, full, correct and truthful information necessary for eligibility determination or redetermination. Necessary information includes but is not limited to:

(1) Information concerning eligibility for or coverage under medicare, health or accident insurance plans, governmental or private benefit plans including workmen's compensation, or any other real or potential third party coverage.

(2) Changes in income, resources or other circumstances which may affect eligibility status. Such changes must be reported to the county agency within 10 days of the change.

**History:** Cr. Register, December, 1979, No. 288, eff. 2-1-80.

**HSS 103.11 Refusal to provide information.** An application shall be denied if the applicant refuses to provide information necessary to determine eligibility. In stepparent families where the stepparent refuses to give information necessary to determine the stepparent's eligibility,

the stepparent's spouse and any child for whom the stepparent has legal responsibility are not eligible for medical assistance. Likewise, in a 3-generation family, if a member of the first generation refuses to divulge eligibility information, the member's spouse and any child for whom the member has legal responsibility are not eligible.

**History:** Cr. Register, December, 1979, No. 288, eff. 2-1-80.

**HSS 103.12 Divestment.** (1) **PURPOSE.** This section is adopted to provide for the administration of ss. 49.46 (1) (f) and 49.47 (4) (d), Stats., regarding eligibility of applicants for medical assistance when divestment of property has occurred within 2 years prior to the date of application.

(2) **PERSONS AFFECTED.** These rules apply to all applicants for medical assistance who apply after the effective date of this rule and to all persons for whom applicants are legally responsible and for whom benefits are sought.

(3) **DEFINITIONS.** (a) "Conveyance, transfer or disposition" means the act of changing legal title or other right of ownership to another person or other persons.

(b) "Divestment" means the conveyance, transfer or disposition of any property for a value received which is less than the net market value.

(c) "Net market value" means the market value of the property on the date of the transaction minus the costs of the transaction on the open market.

(d) "Property" means anything to which a person has legal title or other right of ownership.

(e) "Value received," means the dollar value which can be attached to what is received in return for the property and, without limitation by enumeration, may be in one of the following forms:

1. Cash.

2. Other assets such as accounts receivable and promissory notes (both of which must be valid and collectible to be of value), stocks, bonds, and both land contracts and life estates which are evaluated over an extended time period.

3. Discharge of a debt.

4. Prepayment of a bona fide and irrevocable contract such as a mortgage, shelter lease, or loan, or prepayment of taxes.

5. Services which shall be assigned a valuation equal to the cost of purchase on the open market. The presumption that services and accommodations rendered to each other by the members of a family or other relatives were gratuitous can be rebutted only by direct and positive evidence of a prior express contract for payment.

(4) **DETERMINING DIVESTMENT.** (a) If the value received is equal to or greater than net market value, there is no divestment.

(b) If the value received is less than net market value, the difference is the divested amount and shall be considered an asset.

Register, June, 1981, No. 306  
Medical Assistance

(c) If the divested amount plus other countable assets are equal to or less than the appropriate asset limit, the divestment shall not be considered a bar to eligibility.

(d) If the divested amount plus the other countable assets is greater than the appropriate asset limit, the excess over this limit is the amount of the divestment to be satisfied.

(5) **DIVESTMENT AS A BARRIER TO ELIGIBILITY.** (a) Divestment by any person within 2 years prior to the date of making application for aid shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving aid and shall create ineligibility for this aid until the value of the divested amount is expended by or on behalf of the person's maintenance need and medical care.

(b) To rebut the presumption that divestment was made in contemplation of seeking aid, the applicant shall furnish clear and convincing evidence to establish that the transaction was exclusively for some other purpose. For example, applicants may rebut the presumption that the divestment was done in contemplation of receiving aid by showing by clear and convincing evidence that, at the time of divesting, the applicants had provided for their future maintenance needs and medical care.

(c) Divestment shall only be considered when the net value of all of the properties disposed of exceeds \$1600.

(d) When property is owned by two or more persons, the expected share of the value 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.

(e) Divestment does not occur in cases of division of property as part of a divorce or separation action, loss of property due to foreclosure or repossession of property due to failure to meet payments.

(6) **REMOVING DIVESTMENT AS A BARRIER TO ELIGIBILITY.** (a) Divestment shall no longer be a barrier to eligibility:

1. If the amount of divestment to be satisfied is \$12,000 or less, when the sum of the divestment has been expended for maintenance needs and medical care or two years have elapsed since the date of making application, whichever occurs first; or,

2. If the amount of divestment to be satisfied exceeds \$12,000, when the entire sum of the divestment has been expended for maintenance needs and medical care.

(b) The expended amounts shall be calculated monthly as follows:

1. For persons in intermediate care facilities, skilled nursing facilities or inpatient psychiatric facilities, the amount is the total cost of the institutional care.

2. For any persons not under subd. 1, the amount is the medical care expenses for these persons plus the appropriate medically needy income limit for either aid to families with dependent children or supplemental security income, depending upon which of those 2 programs they would be eligible for medical assistance under were it not for divestment.

**History:** Emerg. cr. eff. 3-7-81; cr. Register, June, 1981, No. 306, eff. 7-1-81.

Register, June, 1981, No. 306  
Medical Assistance