

## Chapter HSS 103

## ELIGIBILITY FOR MEDICAL ASSISTANCE

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Note: Chapter HSS 103 as it existed on February 28, 1986, was repealed and a new chapter HSS 103 was created effective March 1, 1986.

**HSS 103.01 Introduction.** (1) **PERSONS ELIGIBLE.** Eligibility for medical assistance (MA) shall be determined pursuant to ss. 49.46 (1) and 49.47 (4), Stats., and this chapter, except that MA shall be provided without eligibility determination to persons receiving AFDC or SSI.

(2) **SINGULAR ENROLLMENT.** No person may be certified eligible in more than one MA case.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.02 Divestment.** (1) **PURPOSE.** This section implements s. 49.45 (17), Stats., which makes an applicant for or recipient of MA ineligible when the applicant or recipient disposes of a resource at less than fair market value within 2 years before or at any time after his or her most recent application for MA or any review of eligibility for MA. Section 49.45 (17) (d), Stats., is specifically concerned with an applicant for or recipient of MA who resides as an inpatient in a skilled nursing facility (SNF), intermediate care facility (ICF) or inpatient psychiatric facility and who has disposed of homestead property at any time during or after the 2-year period prior to the date of the most recent application or any review of eligibility.

(2) **DIVESTMENT OF NON-HOMESTEAD PROPERTY.** (a) *Amount of divestment.* For any person who disposed of a resource, except a homestead or other exempt resource, at less than fair market value within 2 years before or at any time after his or her most recent application for MA, or any review of eligibility, the agency shall determine the amount of the divestment in the following manner:

1. If the compensation received is less than net market value, the difference between the compensation received and the net market value is the divested amount and shall be considered an asset.

2. If the divested amount plus other nonexempt assets are equal to or less than the appropriate assets limit, the divestment shall not be considered a bar to eligibility.

3. If the divested amount plus the other nonexempt assets are greater than the appropriate assets limit, the excess over this limit shall be the amount of divestment to be expended for maintenance needs and medical care.

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(b) *Divestment as a barrier to eligibility.* 1. Divestment by any person within 2 years before or at any time after his or her most recent application for MA or any review of eligibility shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving MA. Divestment bars eligibility for MA except as provided in subds. 2 and 3 and par. (c).

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

3. Divestment shall only be considered a barrier to eligibility when the net market value of all the resources disposed of exceeds the medically needy asset levels in s. 49.47 (4) (b) 3, Stats.

4. Division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payments is not divestment.

(c) *Removing divestment as a barrier to eligibility.* 1. Divestment is no longer a barrier to MA eligibility for persons who are determined to have divested non-homestead property:

a. If the divested amount is \$12,000 or less, when the sum of the divestment has been expended for maintenance needs and medical care of the applicant or recipient or when 2 years have elapsed since the date of divestment, whichever occurs first; or,

b. If the divested amount exceeds \$12,000, when the entire sum of the divestment has been expended for maintenance needs and medical care of the applicant or recipient.

2. The amount expended for maintenance needs and medical care of the applicant or recipient shall be calculated monthly, as follows:

a. For a non-institutionalized person, the expended amount is the medical care expenses for the person plus the appropriate medically needy income limit for either AFDC or SSI, depending upon which program the person would be eligible for under MA, were it not for the divestment; and

b. For a person institutionalized in a SNF, ICF or inpatient psychiatric facility, the expended amount is the total cost of the institutional care.

(3) **DIVESTMENT OF HOMESTEAD PROPERTY.** (a) *Applicability.* Divestment by any person of his or her homestead property is a barrier to eligibility only if he or she is a resident of an SNF, ICF or inpatient psychiatric facility.

(b) *Amount of divestment.* A person who is a resident of an SNF, ICF or inpatient psychiatric facility who disposed of his or her homestead for less than fair market value on or after July 2, 1983, but within 2 years before or at any time after his or her most recent application for MA or

any review of his or her eligibility for MA, shall have the amount of divestment determined in the same manner as in sub. (2) (a).

(c) *Divestment as a barrier to eligibility.* 1. Divestment of a homestead by any person residing as an inpatient in an SNF, ICF or inpatient psychiatric facility within 2 years prior to the date of his or her most recent application for MA or any review of his or her eligibility for MA, shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving MA. Divestment bars eligibility for MA except as provided in subds. 2 and 3 and par. (d).

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

3. Divestment shall only be considered a barrier to eligibility when the net market value of all the resources disposed of exceeds the medically needy asset levels in s. 49.47 (4) (b)3, Stats.

4. Divestment does not occur in cases of division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payments.

(d) *Removing divestment as a barrier to eligibility.* 1. Divestment of a homestead is no longer a barrier to eligibility for institutionalized persons:

a. If the amount of divestment to be expended for maintenance needs and medical care is less than the average MA expenditures for 24 months of care in an SNF, when the entire amount of the divestment is expended for this care, or 2 years has elapsed since the date of the divestment, whichever occurs first; or

b. If the amount of divestment to be expended for maintenance needs and medical care is greater than the average MA expenditure for 24 months of care in an SNF, when the entire amount of the divestment has been expended.

2. Expended amounts shall be determined, as long as the person is institutionalized, by using the average monthly MA expenditure, statewide, for care provided in an SNF.

3. An individual who is an inpatient in a SNF, ICF or inpatient psychiatric facility who has been determined to have divested a homestead, may be found eligible if:

a. It is shown to the satisfaction of the department that the individual can reasonably be expected to be discharged from the medical institution and return to that homestead;

b. The title to the homestead was transferred to the individual's spouse or child who is under age 21 or is blind or totally and permanently disabled according to a determination made by the department's bureau of social security disability insurance;

c. It is shown to the satisfaction of the department that the individual intended to dispose of the homestead either at fair market value or for other valuable consideration; or

d. It is determined by the department that the denial of eligibility would work undue hardship on the individual.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.03 Non-financial conditions for eligibility.** In order to be eligible for MA, a person shall meet both non-financial conditions for eligibility in this section and financial conditions for eligibility under s. HSS 103.04. The non-financial conditions for eligibility are:

(1) **AFDC-RELATEDNESS OR SSI-RELATEDNESS.** (a) *Requirement.* To be non-financially eligible for MA, applicants shall be AFDC-related or SSI-related.

(b) *AFDC-related persons.* In this subsection, "AFDC-related" means a person who meets one of the following conditions:

1. The person is pregnant and meets the conditions specified in ss. 49.46 (1) (a)1m and 49.47 (4) (a)2, Stats.;
2. The person is a dependent child as defined in s. 49.19 (1) (a), Stats.;
3. The person is a caretaker relative as defined in s. 49.19 (4) (d) and (dm) (intro.), Stats.; or
4. The person is a foster child under 19 years of age living in a foster home licensed under s. 48.62, Stats., or is a child in a subsidized adoption placement under s. 48.975, Stats.

(c) *SSI-related persons.* In this subsection, "SSI-related person" means a person who meets one of the following conditions:

1. The person is age 65 or over; or
2. The person is blind or disabled.

d. *Verification of blindness or disability.* Except as provided under par. (e), the blindness or disability claimed under par. (c)2 shall be verified in one of the following ways:

1. By presentation of a current old age and survivors disability insurance (OASDI) disability award notice;
2. By presentation of a current medicare card indicating blindness or disability; or
3. By receipt of a disability determination made by the department's bureau of social security disability insurance, along with current medical reports.

(e) *Presumption of disability in an emergency.* 1. Under emergency circumstances, a person may be presumed disabled for purposes of demonstrating SSI-relatedness and be eligible for MA without the verification required under par. (d).

2. When an emergency need for MA exists, the department shall make a preliminary disability determination within 7 days of the date a completed disability determination form is received.

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3. An emergency need for MA shall exist when the applicant is:

a. A patient in a hospital;

b. Seriously impaired and the attending physician states the applicant will be unable to work or return to normal functioning for at least 12 months;

c. In need of long-term care and the nursing home will not admit the applicant until MA benefits are in effect; or

d. Unable to return home from a nursing home unless in-home service or equipment is available and this cannot be obtained without MA benefits.

Note: Copies of the disability determination form may be obtained from the county or tribal income maintenance agency.

(2) **CITIZENSHIP.** U.S. citizenship shall be a requirement for eligibility for MA, except that an alien lawfully admitted for permanent residence may be eligible, including an alien lawfully present in the United States as a result of s. 203(a)7 (8 USC 1153), 207(c) (8 USC 1157), 208 (8 USC 1158) or 212(d)5 (8 USC 1182) of the immigration and nationality act or an alien otherwise permanently residing in the United States under color of law within the meaning of 42 CFR 435.402.

(3) **WISCONSIN RESIDENCE.** (a) *Definitions.* In this subsection:

1. "Incapable of indicating intent" means:

a. The individual's IQ is 49 or less, or the individual has a mental age of 7 or less, based on tests acceptable to the department;

b. The individual is found legally incompetent under guardianship statutes; or

c. Medical documentation or other documentation acceptable to the department supports a finding that the individual is incapable of indicating intent.

2. "Intent to reside" means that a person intends that Wisconsin is the person's place of residence and that the person intends to maintain the residence indefinitely.

3. "Physical presence" means living in Wisconsin.

(b) *Physical presence and intention.* An eligible person shall be a Wisconsin resident, as determined under 42 CFR 435.403. Residence shall be based on physical presence, except as provided in an interstate agreement, and on the person's stated intent to maintain Wisconsin residence indefinitely, except as otherwise provided in pars. (c) to (g).

(c) *Migrant farm workers.* A migrant farm worker who is living in Wisconsin and who entered with a job commitment or to seek employment shall be considered a resident so long as there is no medical assistance being received from another state. In this paragraph, "migrant farm worker" means any person whose primary employment in Wisconsin is in the agricultural field or cannery work, is authorized to work in the United States, who is not immediate family by blood or marriage of the employer, and routinely leaves an established place of residence to travel to another locality to accept seasonal or temporary employment. Mem-

bers of the migrant farm worker's family who live with the worker in Wisconsin shall also be considered Wisconsin residents.

(d) *Non-institutionalized persons.* The residence of a person under age 21 shall be determined in accordance with the rules governing residence under the AFDC program except that non-institutionalized persons under age 21 whose MA eligibility is based on blindness or disability are residents if they are physically present in Wisconsin.

(e) *Institutionalized persons.* 1. For any institutionalized person who is under age 21, or who is age 21 or older and became incapable of indicating intent before age 21, the state of residence is that of:

a. The parents or the legal guardian, if one has been appointed, and parental rights have terminated at the time of placement in an institution; or

b. The parent applying for MA on behalf of the applicant if the parent resides in another state and there is no appointed legal guardian.

2. Institutionalized persons over age 21 are Wisconsin residents when they are physically present with the intent to reside in Wisconsin except that persons who become incapable of indicating intent at or after age 21 are residents of the state in which they are physically present.

(f) *Out-of-state institutional placements.* When a state arranges for a person to be placed in an institution located in another state, the state making the placement is the state of residence irrespective of the person's indicated intent or ability to indicate intent.

(g) *Establishment of residence.* Once established, residence is retained until superseded by a new place of residence.

(4) **FURNISHING OF A SOCIAL SECURITY NUMBER.** All individuals for whom MA benefits are requested, including all children except preadoptive infants residing in foster homes awaiting adoption, shall have a social security number and shall furnish the number to the agency. If an applicant does not have a social security number, application for the number shall be made by or on behalf of the applicant to the federal social security administration. If there is a refusal to furnish a number or apply for a number, the person for whom there is a refusal is not eligible for MA. The department may not deny or delay services to an otherwise eligible applicant pending issuance or verification of the individual's social security number.

(5) **ASSIGNMENT OF MEDICAL SUPPORT.** The parent or caretaker relative of a dependent child enumerated in s. 49.19 (1) (a), Stats., shall be deemed to have assigned all rights to medical support to the state as provided in s. 49.45 (19) (a), Stats. If there is a refusal to make the assignment, the person who refuses is not eligible for MA.

(6) **NOT A PERSON DETAINED BY LEGAL PROCESS.** A person detained by legal process is not eligible for MA benefits. For purposes of this subsection, "detained by legal process" means incarcerated because of law violation or alleged law violation, which includes misdemeanors, felonies, and delinquent acts. A person who returns to the court after observation, is found not guilty of a law violation by reason of mental deficiency and is subsequently committed to a mental institution shall not be considered detained by legal process.

(7) **NOT A PERSON RESIDING IN A CERTIFIED PSYCHIATRIC FACILITY.** A person 22 to 64 years of age who resides in a certified psychiatric facility is not eligible for MA benefits.

(8) **NOT AN INELIGIBLE CARETAKER RELATIVE.** A caretaker relative enumerated in s. 49.19 (1) (a), Stats., with whom a dependent child as defined in s. 49.19 (1) (a), Stats., is living when the income and resources of the MA group or fiscal test group exceed the limitations of ss. 49.19 and 49.177, Stats., or title XVI of the social security act of 1935, as amended, is not eligible unless the caretaker relative is SSI-related in accordance with sub. (1) (c), or is a woman who is medically verified to be pregnant.

(9) **NOT A STRIKER.** A person on strike is not eligible. When the striker is a caretaker relative, all members of the MA group shall be ineligible. In this subsection, "striker" means anyone who on the last day of the month is involved in a strike or a concerted effort with other employes to stop work including a stoppage of work due to the expiration of a collective bargaining agreement, or any concerted slowdown or other concerted interruption of operations by employes.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.04 Asset and income limits.** The nonexempt assets and budgetable income of the MA group or, when applicable, the fiscal test group, shall be compared to the following asset and income limits established in this section to determine the eligibility of the MA group:

(1) **CATEGORICALLY NEEDY.** (a) The MA group or fiscal test group shall first be tested against the categorically needy standard. Persons who meet the non-financial eligibility conditions and who meet the income and asset standards specified in this subsection shall be determined eligible as categorically needy in accordance with s. 49.46 (1) (e), Stats., and shall receive MA benefits in accordance with s. 49.46 (2), Stats., and chs. HSS 101 to 108.

(b) The AFDC-related categorically needy income standard for MA applicants shall be the appropriate AFDC assistance standard as specified in s. 49.19 (11) (a) 1, Stats., except that persons who are ineligible to receive AFDC solely because of the application of s. 49.19 (11) (a) 6, Stats., which specifies that payments that are not whole dollar amounts shall be rounded down to the nearest whole dollar, shall receive MA as categorically needy. The AFDC-related categorically needy asset standard shall be the same as that set out in s. 49.19 (4), Stats.

(c) The SSI-related categorically needy income standard shall be the maximum SSI payment including state supplement that a single person or a couple, as appropriate, could receive in Wisconsin under s. 49.177, Stats., or federal title XVI of the social security act of 1935, as amended. The SSI-related categorically needy asset standard shall be the same as specified in s. 1613 of title XVI of the social security act of 1935, as amended.

(2) **MEDICALLY NEEDY.** If the MA group or fiscal test group is not eligible as categorically needy, the medically needy standard shall be applied. Persons who meet non-financial conditions for eligibility and meet the income and assets criteria set forth in s. 49.47 (4) (b) and (c), Stats., and this chapter, except for AFDC-related adult caretakers who are not blind, disabled or age 65 or older, shall be determined medically needy

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and shall receive MA benefits in accordance with s. 49.47 (6), Stats., and chs. HSS 101 through 108.

(3) **EXCESS INCOME CASES.** (a) In this subsection, "spend-down period" means the period during which excess income may be expended or obligations to expend excess income may be incurred for the purpose of obtaining MA eligibility, as described under s. HSS 103.08 (2) (a).

(b) When an SSI-related or AFDC-related fiscal test group is found ineligible as medically needy and excess income is the only reason, the group may expend or incur obligations to expend the excess income above the appropriate medically needy income limit pursuant to s. 49.47 (4) (c) 2 and 3, Stats., and this chapter. If after incurred medical expenses are deducted, the remaining income is equal to or less than the income limit, the MA group shall be determined medically needy and shall receive MA benefits in accordance with s. 49.47 (6), Stats., and chs. HSS 101 to 108 for the balance of the spend-down period.

(c) Health insurance premiums actually incurred or paid, plus any medical service recognized by state law received by a member of the MA or fiscal test group shall be counted toward fulfilling the excess income expenditure or incurrence requirement when the service is prescribed or provided by a medical practitioner who is licensed by Wisconsin or another state and if either or both of the following conditions are met:

1. The service is received during the spend-down period; or
2. The expense was incurred prior to the spend-down period and a fiscal test group member is still legally responsible for the debt and is consistently making payments, in which case the payments made during the spend-down period shall be counted.

(d) No medical costs that are incurred and are to be paid or have been paid by a person other than the applicant or members of the fiscal test group may be counted toward fulfilling the excess income expenditure or incurrence requirement. No expense for which a third party is liable, including but not limited to medicare, private health insurance, or a court-ordered medical support obligation, may be used to meet the expenditure of excess income requirement.

(4) **SPECIAL FINANCIAL STANDARDS FOR INSTITUTIONALIZED PERSONS.** The categorically needy and medically needy asset standards shall be the same for institutionalized persons as for non-institutionalized persons. The eligibility standards against which an institutionalized person's income is tested shall be the following:

(a) *Categorically needy standard.* The categorically needy standard for an institutionalized person shall be an amount equal to 3 times the federal share of the SSI payment for one person living in that person's own home.

(b) *Medically needy standard.* An institutionalized person shall be determined medically needy in accordance with requirements under 42 CFR 435.1007.

(5) **IRREGULAR CASES.** (a) *Mixture of AFDC and SSI-relatedness.* When there is a mixture in an MA group of AFDC-relatedness and SSI-relatedness, AFDC-related financial eligibility procedures shall be used  
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except when no minor child is in the home, in which case SSI-related procedures shall be used.

(b) *Fiscal test groups in which some are receiving AFDC and some are applying for MA only.* 1. If some members of the fiscal test group are receiving AFDC and some are not, the eligibility of the non-AFDC recipients shall be determined by comparing the assets of the entire fiscal test group to the appropriate asset standard and by comparing the income of the non-AFDC members or, if appropriate, the fiscal test group, to the appropriate share of the total family income standard.

2. For purposes of this paragraph, the family consists of parents and all children, including AFDC recipients, in the household for whom either spouse is legally responsible, except that the family does not include SSI recipients and children who do not have a legally responsible parent in the home.

(c) *SSI-related child when family is ineligible.* A blind or disabled child in a family found financially ineligible for AFDC-related MA may have his or her eligibility determined individually according to SSI-related financial procedures for child-only cases specified in s. HSS 103.05.

(d) *Non-legally responsible relative (NLRR) case.* 1. If SSI-related adults are caring for a minor child for whom they are not legally responsible, the adults shall have their financial eligibility determined according to AFDC-related procedures, except that their eligibility may be determined according to SSI-related financial procedures if they are found ineligible for AFDC-related MA because of earned income or if they elect to be processed as SSI-related.

2. The income and assets of a child residing with an NLRR shall be measured against the AFDC-related standard for one person, except that when the NLRR child is blind or disabled eligibility shall be determined according to SSI-related financial procedures.

3. If the child is found financially ineligible, the eligibility of the NLRR caretaker relative shall be determined by measuring that relative's income and assets against AFDC-related eligibility standards.

(e) *Child residing in a licensed foster or group home.* For a child who lives in a foster or group home licensed under ch. HSS 56 or 57, only the child's own income and assets shall be used when determining the child's financial eligibility. The child's income and assets shall be measured against the AFDC-related income and asset standards for one person.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.05 Determining assets and income in child-only cases. (1) MEANING OF CHILD-ONLY CASE.** A child-only case exists when:

(a) A family has been determined financially ineligible for AFDC-related MA only and there is a child in the family who is SSI-related but not receiving SSI payments;

(b) A step-parent family requests MA exclusively for a stepchild;

(c) A step-parent family refuses or is determined ineligible for AFDC;

(d) A step-parent family is determined financially ineligible for MA only; or

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(e) A step-parent family is determined ineligible for MA because a caretaker relative is a striker.

(2) **ESTABLISHING CHILD-ONLY MA GROUPS.** In child-only cases, the child or children of each legal parent shall form their own MA group and shall be tested for financial eligibility with the children's own income and assets, if any, plus the income and assets deemed to the children of this group according to subs. (3) and (4).

(3) **DEEMING OF PARENTAL ASSETS.** (a) All of the legal parent's nonexempt assets shall be deemed to the child in 3-generation and stepparent cases.

(b) In cases of an SSI-related child where 2 parents are in the home, parental assets in excess of the SSI asset limit for 2 persons shall be deemed to the blind or disabled child. Where there is one parent, parental assets in excess of the SSI asset limit for one person shall be deemed to the blind or disabled child in accordance with 42 CFR 435.845.

(4) **DEEMING OF PARENTAL INCOME.** (a) *To the third-generation child.* All of the net income of the second-generation minor parent shall be deemed to the third-generation child.

(b) *To the stepchild.* The income deemed to the stepchild shall be the remainder of the total of the net income of the legal parent minus the categorically needy income standard based on the number of ineligible family members.

(c) *To the SSI-related child.* The amount of parental monthly income deemed to the SSI-related child shall be determined according to the procedure set out in this paragraph. The department shall adjust the monthly amounts in accordance with changes in the SSI program. Beginning with unearned income, parental monthly gross income shall be deemed to each ineligible child to bring the child's income up to an amount equal to one-half the maximum federal share of the SSI benefit paid to a single individual living in his or her own household. The remaining parental income shall be deemed to the SSI-related child as follows:

1. When the only type of parental income remaining is unearned, \$20 shall be subtracted. Then, where there are 2 parents, an amount equal to the maximum federal share of the SSI benefit paid to a couple living in their own household shall be subtracted, and where there is one parent, an amount equal to the maximum federal share of the SSI benefit paid to an individual living in his or her own household shall be subtracted. The remaining income shall be considered available to the SSI-related child as unearned income.

2. When the only type of parental income remaining is earned, \$85 shall be subtracted. Then, where there are 2 parents, an amount equal to 3 times the maximum federal share of the SSI benefit paid to an individual living in his or her own household shall be subtracted, and where there is one parent, an amount equal to 2 times the maximum federal share of the SSI benefit paid to an individual living in his or her own household shall be subtracted. The remaining income shall be considered available to the SSI-related child as unearned income.

3. When parental income remaining is a mix of unearned and earned, \$20 shall be subtracted using unearned income first. From any remaining

earned income, \$65 shall be subtracted and then one-half of the remainder. When there are 2 parents, an additional amount equal to the maximum federal share of the SSI benefit paid to a couple living in their own household shall be subtracted, and when there is one parent, an additional amount equal to the maximum federal share of the SSI benefit paid to an individual living in his or her own household shall be subtracted. The remaining income shall be considered available to the SSI-related child as unearned income.

(5) **INCOME LIMITS FOR CHILD-ONLY MA GROUPS.** (a) In third-generation and stepchild cases, each MA group shall be tested against an income standard consisting of a proportionate share of the AFDC-related standard for the appropriate family size. For purposes of this paragraph, "family" means parents and all children in the household for whom either spouse is legally responsible, including the third-generation, but not SSI recipients or NLRR children. If the stepchild or third-generation child is ineligible for MA because of excess income, the applicant may elect either a family spend-down period or a child-only spend-down period to gain MA eligibility.

(b) The eligibility of an SSI-related child shall be determined by testing against the SSI-related income standard for one person.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.06 Assets. (1) SPECIAL SITUATIONS OF INSTITUTIONALIZED PERSONS.** (a) In determining the eligibility of an institutionalized person, only the assets actually available to that person shall be considered.

(b) The homestead property of an institutionalized person is not counted as an asset if:

1. The institutionalized person's home is currently occupied by the institutionalized person's spouse, child who is under age 18, or child who is 18 years or older and who is developmentally disabled;

2. The institutionalized person intends to return to the home and the anticipated absence from the home, as verified by a physician, is less than 12 months; or

3. The anticipated absence of the institutionalized person from the home is for more than 12 months but there is a realistic expectation, as verified by a physician, that the person will return to the home. That expectation shall include a determination of the availability of home health care services which would enable the recipient to live at home.

(c) If none of the conditions under par. (b) is met, the property is no longer the principal residence and becomes non-homestead property.

(d) When income that has been protected for the personal needs of institutionalized recipients accumulates to the point that the asset limit is exceeded, the recipient may voluntarily apply the excess assets accumulation as a refund to the department. If the recipient does not elect one of the refund options under par. (e), MA eligibility shall terminate at the time the asset limit is exceeded. Eligibility may not be reinstated until the assets are below the limit at which time a new application shall be required.

(e) The recipient may apply the excess assets as a refund to the department in one of the following ways:

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1. The agency may project the amount of excess assets expected over a year to arrive at an amount for the client to refund the department. When refunds equal MA benefits already received, no more refunds may be made until more MA benefits have been received. In no instance may refunds exceed benefits; or

2. If, at the time of review, excess assets do not exceed an amount 3 times the federal share of the SSI payment for one person living at his or her home, eligibility may be continued on condition that the recipient agrees in writing to refund the excess assets to the MA program.

(2) MOTOR VEHICLES. (a) In this section:

1. "Motor vehicle" means a passenger car or other motor vehicle used to provide transportation of persons or goods and which is owned by a person in the MA or fiscal test group.

2. "Equity value" means the fair market value minus any encumbrances which are legal debts.

3. "Fair market value" means the wholesale value shown in a standard guide on motor vehicle values or the value as estimated by a reliable expert.

(b) For persons whose eligibility is being determined according to AFDC categorically needy or AFDC medically needy financial standards, the following conditions shall apply:

1. If one vehicle is owned, up to \$1,500 of equity value shall be exempted; and

2. If more than one vehicle is owned, up to \$1,500 of equity value from the vehicle with the greatest equity value shall be exempted. The equity value of any other vehicle is counted as an asset.

(c) For SSI-related persons whose eligibility is determined based on medically needy financial standards, the following conditions shall apply:

1. If only one vehicle is owned, it shall be exempted;

2. If 2 or more vehicles are owned and fewer than 2 vehicles are needed for employment or medical care, the vehicle with the highest equity value shall be exempted. The equity value of the other vehicles shall be counted as an asset; and

3. If 2 or more vehicles are needed for employment or medical care, the 2 vehicles with the highest equity value shall be exempted. The equity value of any other vehicle shall be counted as an asset.

(3) JOINT ACCOUNTS AND JOINTLY HELD PROPERTY. (a) *Joint accounts.* A joint account shall be deemed available to each person whose name is on the account or listed as an owner. The value of a joint savings or checking account shall be determined as follows in determining eligibility for MA:

1. For persons who receive MA who are not age 65 or over, or not blind or disabled, the division of a joint account shall be determined according to applicable federal law; and

2. For persons who receive MA who are age 65 or over or who are blind or disabled, joint accounts shall be divided as follows:

a. If both owners of the joint account receive MA, equal shares of the joint account shall be included for the purpose of determining MA eligibility; and

b. If only one owner of the joint account receives MA, the full amount of the joint account shall be included for the purpose of determining MA eligibility.

(b) *Jointly held property.* If the applicant or recipient is a joint owner of property with a person who refuses to sell the property and who is not a legally responsible relative of the applicant or recipient, the property shall not be considered available to the applicant or recipient and may not be counted as an asset. If the property is available to the applicant or recipient, it shall be divided equally between the joint owners.

(4) **HOMESTEAD PROPERTY.** (a) A home owned and lived in by an applicant or recipient is an exempt asset.

(b) Net proceeds from the sale of homestead property shall be treated as assets except when the proceeds are placed in escrow in contemplation of purchase of another home. Proceeds in escrow are exempt assets for a maximum of one year.

(5) **NON-HOMESTEAD REAL PROPERTY.** (a) If the equity value of the non-homestead property together with all other assets does not exceed the asset limit, the person may retain the property and be eligible for MA.

(b) If the value of non-homestead property together with the value of the other assets exceeds the asset limit, the non-homestead property need not be counted as an asset if it produces a reasonable amount of income. In this paragraph, "reasonable amount of income" means a fair return considering the value and marketability of the property.

(c) If the total value of non-homestead property and non-exempt assets exceeds the asset limit, the person who owns the non-homestead property shall list the property for sale with a licensed realtor at a price which the realtor certifies as appropriate. If the property is listed for sale, it may not be counted as an asset. When the property is sold, the net proceeds shall be counted as an asset.

(6) **LIFE ESTATE.** The applicant or recipient or that person's spouse may hold a life estate in a homestead without affecting eligibility for MA. If the person leaves the property and it is sold, any proceeds received shall be considered assets.

(7) **TRUSTS.** (a) Trust funds shall be considered available assets, except that:

1. Trust funds payable to a beneficiary only upon order of a court shall not be considered available assets if the trustee or other person interested in the trust first applied to the court for an order allowing use of part or all of the trust fund to meet the needs of the beneficiary and the court denied such application;

2. Trust funds held in a trust which meets the requirements of s. 701.06, Stats., shall not be considered available assets unless the settlor is legally obligated to support the beneficiary;

3. For SSI-related MA applicants and recipients, the pertinent SSI standards on the treatment of trusts as resources shall apply; and

4. For AFDC-related applicants and recipients, the pertinent AFDC standards on the treatment of trusts as resources shall apply.

(8) **PERSONAL PROPERTY.** Household and personal effects of reasonable value, considering the number of members in the fiscal test group, shall be exempt.

(9) **LOANS.** Money received on loan shall be exempt unless it is available for current living expenses, in which case the money shall be treated as an asset even if a repayment schedule exists.

(10) **LIFE INSURANCE POLICIES.** The cash value of a life insurance policy shall be considered an asset, except that for SSI-related persons it is an asset only when the total face value of all policies owned by the person exceeds \$1,500. In this subsection, "cash value" means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it, and "face value" means the dollar amount of the policy which is payable on death.

(11) **LUMP SUM PAYMENTS.** All lump sum payments, unless specifically exempted by federal statute or regulation, shall be treated as assets instead of income. In this subsection, "lump sum payment" means a non-recurring payment such as retroactive social security benefits, income tax refunds, and retroactive unemployment benefits.

(12) **WORK-RELATED ITEMS.** Work-related items essential to the employment or self-employment of a household member, except motor vehicles, are exempt from being counted as assets. For business or farm operations, internal revenue service (IRS) returns shall be used to determine whether or not the operation is profitable or moving toward becoming profitable. If the operation is not profitable or becoming profitable, all assets related to the operation shall be counted in the determination of eligibility.

(13) **SPECIAL EXEMPT ASSETS FOR BLIND OR DISABLED PERSONS.** The following assets shall be exempted in determining the eligibility of blind or disabled persons:

(a) Assets essential to the continuing operation of the person's trade or business;

(b) Income-producing property; and

(c) Funds conserved for a departmentally approved plan for self-support of a blind or disabled person. The conserved funds shall be segregated from other funds. Interest earned on conserved funds is exempt so long as the conserved funds do not exceed the provision of the approved plan.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.07 Income. (1) SPECIAL SITUATIONS OF INSTITUTIONALIZED PERSONS. (a) Support received by institutionalized persons. 1. Any financial** Register, February, 1986, No. 362

support or contribution received by an institutionalized person shall be considered available when determining the eligibility of that person for MA.

2. The income and assets of the parents of children under age 18 who reside in institutions shall be evaluated by the department to determine whether, pursuant to s. 46.10 (14), Stats., collections may be made from one or both parents. If the child is residing in an institution not specified in s. 46.10 (14), Stats., but the institution is approved to receive MA payments, the parental liability shall be the same as that provided in s. 46.10 (14), Stats., and collected in the same manner.

3. The agency shall decide if the spouse of an institutionalized applicant or recipient should be referred for support action under s. 52.01, Stats. When deciding whether to refer for support action, the agency shall consider the spouse's basic essential needs and present and future expenses. In no case may support from the spouse of an institutionalized applicant or recipient be pursued when the spouse's assets, not counting homestead property and a motor vehicle, are less than \$1,500 and when the spouse's income is less than monthly need as specified in par. (b) 1. and 2.

(b) *Allocation of institutionalized person's income to dependents outside the institution.* No allocation may be made from an institutionalized applicant's or recipient's income to a spouse who is eligible for SSI but who refuses to obtain SSI. No allocation may be made to a spouse or to minor children under the spouse's care if the spouse or any of the children are receiving AFDC or SSI. Otherwise, allocations shall be made as follows:

1. If the spouse is caring for a minor child for whom either the institutionalized person or the spouse is legally responsible, the AFDC assistance standard plus expenses that would be allowed under s. HSS 103.04 (3) shall be used to determine the need of the spouse and children. If their total net income is less than their need, income of the institutionalized person shall be allocated in an amount sufficient to bring the spouse's and children's income up to their monthly need. In this subdivision, "total net income" means income equal to unearned income plus net earned income, and "net earned income" means income equal to gross earned income minus work-related expenses according to requirements of AFDC. Income disregards of the AFDC program under 45 CFR 233.20 (a) shall be used as appropriate in computing income.

2. If the spouse is not caring for a minor child, the SSI payment level for one person living in that person's own household shall be used to determine the spouse's monthly need. The spouse's earned income shall be netted by subtracting the work-related expenses according to sub. (3) and \$20 from earned or unearned income or both. If the spouse's net income is less than the spouse's monthly need, income of the institutionalized person may be allocated in an amount sufficient to bring the spouse's income up to monthly need. Income disregards of the SSI program under 20 CFR 416.1112 and 416.1124 shall be used as appropriate in computing income.

3. The following amounts shall be excluded when computing the income of the spouse and children under subd. 1 or the spouse alone under subd. 2:

- a. All earnings of a child less than 14 years old, or less than 18 years old when the child is a full-time student;
- b. All earnings of a child less than 18 years old who attends school part-time and is employed fewer than 30 hours a week;
- c. Any portion of any grant, scholarship or fellowship used to pay the costs of tuition, fees, books and transportation to and from classes;
- d. Amounts received for foster care or subsidized adoption;
- e. The bonus value of food stamps and the value of foods donated by the federal department of agriculture;
- f. Home produce grown for personal consumption; and
- g. Income actually set aside for the post-high school education of a child who is a junior or senior in high school.

(c) *When both spouses are institutionalized and there is an application for MA.* When both spouses are institutionalized, the following shall apply:

1. If one spouse applies for MA, the total income of both spouses may be combined to ascertain if their combined income is less than total need, provided that the spouse not applying has income exceeding that spouse's needs and is willing to make that income available;
2. If the combined income of both spouses is less than total need, separate determinations shall be made to see if either spouse has excess income. Any excess may be allocated to the other spouse. Either one or both of the spouses may be eligible depending on income allocation; and
3. If the combined income of both spouses exceeds total need, separate determinations shall be made. Only the actual amount of income made available from one spouse to the other may be used in determining the eligibility of the other spouse. If the spouse refuses to make a reasonable amount available, the agency shall review the case under par. (a) 3. to determine if legal action for support should be taken pursuant to s. 52.01, Stats.

(d) *Computing income available towards cost of care.* Institutionalized recipients of MA shall apply their available income toward the cost of their care. In this paragraph, "available income" means any remaining income after the following reductions are made:

1. Unearned income, including support actually received, up to the personal needs allowance allowed;
2. If employed, the first \$65 and one-half of the remainder of gross earnings;
3. The cost of health insurance;
4. Necessary medical or remedial care recognized under state law but not covered by MA;
5. The actual amount paid by the institutionalized person for support of a person for whom the institutionalized person is legally responsible but not to exceed the appropriate AFDC assistance standard unless the institutionalized person is paying court-ordered support in an amount



greater than the AFDC assistance standard in s. 49.19 (11) (a) 1, Stats.; and

6. The monthly cost of maintaining a home when the conditions of s. HSS 103.06 (1) (b) 3. are met, but not to exceed the SSI payment level for one person living in that person's own household.

(2) SPECIAL TYPES OF INCOME. (a) *Farm and self-employment income.* Farm and self-employment income used in MA calculations shall be determined by adding back into the net earnings the following: 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 tax return has been filed, the individual shall complete a 1040 form of the internal revenue service (IRS) to determine net earnings or loss, or to anticipate, in case of relatively new businesses, net earnings as required by the IRS. If the latest income tax return does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the agency shall calculate the self-employment income based on anticipated earnings. Agencies shall determine whether 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.

(b) *Contractual employment income.* Income received on other than an hourly or piecework basis from employment performed under a contract which is renewable on an annual basis shall be averaged over a 12-month period. Persons receiving this income shall be considered to receive compensation for the entire 12-month period even though actual compensation may only be received for part of the year.

Note: For example, if school teachers are paid 9 months a year, the wages they receive are to be averaged over a 12-month period.

(c) *In-kind benefits.* Predictable in-kind benefits received regularly and in return for a service or product delivered shall be treated as earned income in MA calculations. The value of the in-kind income is determined by using the prevailing wage rate in the local community for the type of work performed, but not less than the minimum wage for that type of work.

(d) *Income from providing room and board.* Net profit from room and board shall be treated as earned income in MA calculations. Net profit is determined by deducting the following expenses of providing room and board from the gross room and board income received:

1. Roomer only - \$15.00;
2. Boarder only - current food stamp allotment for one; and
3. Roomer and boarder - current food stamp allotment for one plus \$15.00.

(e) *Income from rentals.* When the owner reports rental income to the IRS as self-employment income, the procedures set forth in par. (a) shall be followed in MA calculations. If the owner does not report rental income to the IRS as self-employment income, net rental income shall be determined as follows:

1. When the owner is not an occupant, net rental income is the rental income minus the mortgage payment and verifiable operational costs;

2. When the owner receives rental income from a duplex or multiple rental unit building and the owner resides in one of the units, net rental income shall be computed according to the following method:

a. Add the interest portion of the mortgage and other verifiable operational costs common to the entire operation;

b. Multiply the number of rental units by the total in subpar. a.;

c. Divide the result in subpar. b. by the total number of units;

d. Add the result in subpar. c. to any operational costs paid by the owner that are unique to any rental unit; and

e. Subtract the result in subpar. d. from the total rent payments. The result is net rental income.

(f) *Income of SSI child's parents.* Income of a disabled child's parents shall not be considered when determining the child's eligibility for MA if the child meets the conditions stated in 42 USC 1396a (e) (3).

(g) *Income disregards.* Income disregards of the AFDC program under 45 CFR 233.20 (a) and of the SSI program under 20 CFR 416.1112 and 416.1124 shall be used as appropriate.

(3) **DEDUCTIONS FROM EARNED INCOME.** (a) *Work-related deductions.* If an individual is employed 30 hours or more a week, \$75 shall be deducted from the earned income in the determination of MA eligibility. If an individual is employed fewer than 30 hours a week, the lesser of 18 percent of the individual's gross income or \$74 shall be deducted from earned income.

(b) *Dependent care.* When employment cannot be maintained without dependent care for a child or incapacitated adult in the MA or fiscal test group, the following deduction shall be applied:

1. If employed 30 hours or more a week, the dependent care costs actually paid, but no more than \$160 for each dependent each month, shall be deducted from the individual's earned income; and

2. If employed less than 30 hours a week, the dependent care costs actually paid, but no more than \$120 for each dependent each month, shall be deducted from the individual's earned income.

(c) *Special deductions for employed blind persons.* Transportation expenses incurred in getting to and from work, expenses related to job performance and expenses related to improving job ability such as training meant to improve employability and increase earning power shall be deducted from the earned income of blind persons.

Note: Examples of expenses related to job performance are a reader, translation of material into braille, the cost and upkeep of a seeing eye dog for a blind person, and the cost of a prosthesis.

(4) **DEDUCTION FROM ANY INCOME FOR SUPPORT TO AN INSTITUTIONALIZED PERSON.** If a person in the MA group has legal responsibility for a person residing in an institution where the cost of care cannot be covered by MA, any income actually made available by the MA group toward

the institutional cost of care shall be deducted from the MA group's income.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.08 Beginning of eligibility.** (1) **DATE.** Except as provided in subs. (2) to (4), eligibility shall begin on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application. Retroactive eligibility of up to 3 months may occur even though the applicant is found ineligible in the month of application.

(2) **SPEND-DOWN PERIOD.** (a) 1. The spend-down period shall begin on the first day of the month in which all eligibility factors except income were met, but no earlier than the first day of the month 3 months prior to the month of application. However, at the recipient's option, it may begin on the first day of any of the 3 months prior to the date of application if all eligibility factors, except income, were met in that month. A recipient's decision to choose an optional beginning date shall be recorded in the agency's case record. For persons who previously received MA and then reapply, the spend-down period cannot cover the time during which they were receiving MA.

2. The MA group shall be eligible as of the date within the spend-down period on which the expenditure of excess income or the obligation to expend excess income is achieved.

3. The applicant shall be responsible for some bills or parts of bills for services received on the first day of eligibility if there is remaining unspent and unobligated excess income on that day.

(b) If the amount of the monthly excess income changes before the expenditure or obligation of excess income is achieved, the expenditure or obligation of excess income for the remainder of the 6-month period shall be recalculated. When the size of the MA group changes, the monthly income limit shall be adjusted appropriately to the size of the new group, and the amount of excess income to be expended or obligated shall be adjusted accordingly. If any change is reported that may affect eligibility, the eligibility of the entire MA group may be redetermined and, if there is determined to be excess income, a new spend-down period shall be established.

(c) 1. Once the expenditure or obligation of excess income has been achieved, the MA group shall be eligible for the balance of the 6-month spend-down period, unless it is determined that assets have increased enough to make the MA group ineligible, or that a change in circumstances has caused someone in the MA group to become ineligible for nonfinancial reasons.

2. If the entire group is determined ineligible, the MA benefits shall be discontinued with proper notice. If only one person in the MA group is determined ineligible for nonfinancial reasons, only that person's MA benefits shall, with proper notice, be discontinued. The other person or persons in the MA group continue their eligibility until the end of the 6-month period.

3. If the size of the MA group increases due to the addition of a child, that child is eligible for benefits during the rest of the spend-down period.

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An adult caretaker who enters the group, except a woman who is medically verified as pregnant or a person who is SSI-related, is not eligible for benefits during the remainder of the spend-down period.

(3) **PRESUMPTIVE DISABILITY CASES.** If, in a presumptive disability case, the applicant meets all other conditions for eligibility, MA benefits shall begin on the date the presumptive disability finding is made and shall continue at least until the official disability determination is completed. Presumptive disability eligibility shall not be granted retroactively. MA benefits based on presumptive disability shall not be continued pending an appeal of a negative official disability determination.

(4) **MATERNITY CASES.** For maternity cases, eligibility shall begin on the date pregnancy is verified or the date of application, whichever is later, pursuant to ss. 49.46 (1) (a)1m and 49.47 (4) (a)2, Stats.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.09 Termination of medical assistance. (1) FINAL MONTH COVERAGE.** When eligibility ends, except in the case of death of the recipient, the MA benefits shall continue until the end of the calendar month.

(2) **FOUR-MONTH CONTINUATION OF ELIGIBILITY.** (a) When an MA group has become ineligible for AFDC because of increased earnings or hours of employment, has received an AFDC payment in at least 3 months of the 6 months preceding the month in which ineligibility for AFDC occurred and at least one person included in that MA group is employed, eligibility for MA shall continue for 4 months from the date that AFDC eligibility was terminated.

(b) When an MA group has become ineligible for AFDC due to excess income, is receiving child support payments, and has received an AFDC payment in at least 3 of the 6 months immediately preceding the month in which ineligibility begins, eligibility for MA shall continue for 4 months from the date that AFDC eligibility was terminated. The 6 months preceding the month in which ineligibility begins includes the month in which the MA group became ineligible for AFDC if the MA group was eligible for and received AFDC for that month.

(3) **TWELVE-MONTH CONTINUATION OF ELIGIBILITY.** (a) When an MA group has become ineligible for AFDC because of the loss of the earned income disregards under s. 49.19 (5) (a)4 and 4m, Stats., eligibility for MA shall continue for 12 months from the date that AFDC eligibility was terminated.

(b) The MA group's eligibility shall be redetermined after 9 months of continued coverage by application of the earned income disregard that originally closed the AFDC case. Eligibility shall be redetermined monthly until the end of the 12 months.

(4) **TIMELY NOTICE.** The agency shall give the recipient timely advance notice and explanation of the agency's intention to terminate MA. This notice shall be in writing and shall be mailed to the recipient at least 10 calendar days before the effective date of the proposed action. The notice shall clearly state what action the agency intends to take and the specific regulation supporting that action, and shall explain the right to appeal

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the proposed action and the circumstances under which MA is continued if a fair hearing is requested.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.10 Redetermination of eligibility.** The agency shall give the recipient timely advance notice of the date on which the recipient's eligibility will be redetermined. This notice shall be in writing and mailed to the recipient at least 15 calendar days but no more than 30 calendar days before the redetermination date. 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.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.