Chapter HSS 103

ELIGIBILITY FOR MEDICAL ASSISTANCE

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.

(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

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.

(b) Federal income tax returns for the previous three years shall be used to determine whether or not the farm operation is profitable or becoming profitable. If the farm operation is not profitable or not becoming profitable, all assets related to the farm operation shall be treated as available assets when determining eligibility. The homestead, which consists of the house and buildings together with the total acreage property upon which they are located, shall be an exempt asset if the applicant or recipient resides there or if the conditions specified under section HSS 103.03 (2) are met.

(3) INCOME USED FOR SUPPORTING OTHERS. (a) If there is a court order requiring a person in the medical assistance group (or fiscal test group) to pay support to a person who is not in the medical assistance group (or fiscal test group), this income is deemed unavailable to the medical assistance group.

(b) If a person in the medical assistance group has legal responsibility for a person residing in an institution where the cost of care cannot be covered by medical assistance, any income actually made available by the medical assistance group toward the institutional cost of care is deducted from the medical assistance group's income.

(4) LOANS, GRANTS, SCHOLARSHIPS, STIPENDS FOR EDUCATION OR TRAINING, AND COUNTY TRAINING PROGRAM ALLOWANCES. (a) Loans, grants, scholarships, and stipends for education or training which are not specifically exempted by federal regulation or statute shall be treated as follows: tuition, fees, books, transportation necessary for education or training, and essential day care shall be subtracted from the amount of the loan, grant, scholarship or stipend, and the amount remaining shall be treated as unearned income available to the MA applicant or recipient. In situations where the loan, grant, scholarship or stipend is designated for a semester or longer the county agency shall compute a monthly amount.

(b) When the county agency itself pays a training or educational allowance, such allowance shall be disregarded in determining medical assistance eligibility.

(5) TAX DEDUCTIONS FROM INCOME. The amount deducted as tax deductions from earned income shall be based on the department's IM Income Table and on the size of the medical assistance group or fiscal test group.

Note: The Income Maintenance Income Table is the table used by county departments to calculate amounts to be deducted from earned income when determining eligibility for income maintenance and other programs (AFDC, Food Stamps, Medical Assistance).

(6) LUMP-SUM OR "WINDFALL" PAYMENTS. All lump-sum or "windfall" payments, unless specifically exempted by federal law or regulation, shall be treated as assets instead of income. Some examples of lump-sum or windfall payments are: retroactive social security payments, income tax refunds, and retroactive unemployment benefits.

(7) IN-KIND BENEFITS. Predictable in-kind benefits received regularly and in return for a service or product delivered shall be treated as income. The value of such in-kind income is determined by using the prevailing wage rate in the local community for the type of work performed for in-kind income.

(8) INCONSEQUENTIAL INCOME. In determining need, inconsequential income shall be disregarded. Examples of inconsequential income include but are not limited to: interest from liquid assets (investments, savings, bonds, and funeral trusts); income tax refunds; dividends from life insurance policy; earnings as census enumerator; occasional cash gifts; Menominee Indian bond interest; homestead relief payments; CAP emergency fuel granted under the auspices of the department of local affairs and development.

(9) ROOM AND BOARD INCOME. The department shall consider the profit from room and board as income.

(10) INCOME FROM RENTALS. If the owner does not report rental income to the internal revenue service as self-employment income, net rental income shall be determined as follows:

(a) When the owner is not an occupant, net rental income is the rental income minus the mortgage payment(s) and verifiable operational costs.

(b) 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:

1. Compute total mortgage payment and total operation costs common to the entire operation;

2. Compute total owner expenses as follows: multiply number of rental units by total of 1. above. Then divide that result by the total number of units to get the "proportionate share." Add the "proportionate share" to any operation costs paid by the owner that are unique to any rental unit. The result equals the total owner expense.

3. Subtract total owner expense from rent payments to get rental income.

(11) TRAVEL EXPENSES. In addition to employment expenses allowed by state statute through adoption of federal regulations(s), work-related travel expenses shall be deducted in determining net income. Such expenses shall be based on the number of miles to and from employment. Additional miles necessary for work-related child care may also be deducted up to a maximum of 10 miles per day. The total mileage allowed shall not exceed 50 miles per day unless there are extenuating circumstances, as determined by the county agency.

(12) STRIKER BENEFITS AS INCOME. If a striker receives benefits from the striker's union while on strike, the benefits shall be considered earned income when determining medical assistance eligibility if the striker has to engage in some strike-related activity such as walking in a picket line. If the striker is not required to engage in some strike-related activity, then the benefits shall be considered as unearned income.

(13) INCARCERATED PERSONS: INCOME FROM WORK-RELEASE EMPLOYMENT. Prisoners employed under the s. 56.065 Stats. work release plan shall be considered gainfully employed, and wages earned and quarters worked under s. 56.065 shall be used when determining eligibility for MA due to the unemployment of a parent.

(14) SUBSIDIZED ADOPTION PAYMENTS. When determining eligibility for medical assistance, payments for subsidized adoptions shall be disregarded.

(15) ADJUSTMENT OF THE SSI-RELATED CATEGORICALLY NEEDY INCOME LIMIT DUE TO LIVING ARRANGEMENT. The SSI-related categorically needy monthly income limit for an applicant who is living with another person (or for an applicant couple) shall be adjusted according to the following procedure.

(a) Subtract the federal allowable shelter maximum (one-third of the federal standard payment amount) from the sum of the social security administration's federal standard payment amount and the state supplemental payment amount.

(b) To the result in par. (a) above, add the amount of actual shelter costs up to a maximum of one-third the federal standard payment amount.

(16) SPEND-DOWN REQUIREMENTS FOR ALL PERSONS WHO ARE NOT RESIDING IN INSTITUTIONS. (a) Medical expenses to be considered for spend-down purposes include all costs for medical services and goods that could be covered by medical assistance, plus health insurance premiums. Only those medical expenses which are incurred during the spend-down period can be used to meet the spend-down requirement.

(b) No medical costs that are incurred and are to be paid or have been paid by a person other than the applicant (s) or members of the fiscal test group shall be counted for the spend-down. No expenses for which a third party is liable (such as medicare, private health insurance, or court-ordered medical support obligation) shall be used to meet the spend-down requirement.

(c) 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 of the month 3 months before the month of application. However, at the recipient's option, it can begin on the first of any of the months 3 months prior to the month 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 county agency's case record. For persons who were receiving medical assistance and are now reapplying, the spend-down period cannot cover the time during which they were receiving medical assistance.

(d) The spend-down shall run for 6 months from the beginning of the spend-down period.

(e) If the amount of the monthly excess income changes before the spend-down is achieved, an adjustment shall be made. When the size of the medical assistance group changes, the monthly income limit shall be adjusted appropriately to the size of the new group, and the spend-down amount shall be adjusted accordingly. If any change is reported that may affect eligibility, the eligibility of the entire medical assistance group may be redetermined and, if it turns out to be a spend-down situation, a new spend-down period shall be established.

1. The medical assistance group is eligible as of the date on which the incurred medical expenses reach the spend-down amount. In some situ-

ations the applicant will still be responsible for some bill (s) or parts of bills incurred on that day.

2. Once the spend-down has been met, the MA group shall remain 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 non-financial reasons.

a. If the entire group is determined ineligible, then the MA certification shall be discontinued, with the proper notice.

b. If only part of the MA group is determined ineligible for non-financial reasons, only the ineligible person's MA certification shall be discontinued, with the proper notice. The other person or persons in the MA group continue eligible until the end of the 6-month period.

c. If the size of the MA group increases (for example, a child is born into the family or child under 18 comes from a specialized school) that child is eligible for benefits during the spend-down period.

History: Cr. Register, December, 1979, No. 288, eff. 2-1-80; reprinted to correct error, Register, December, 1981, No. 312, eff. 1-1-82.

HSS 103.03 Assets. (1) MONEY FROM THE SALE OF PROPERTY. Money from the sale of property shall be treated as an asset. An exception to this principle exists when property used as a home is sold and the proceeds are placed in escrow in contemplation of purchase of another home. Proceeds in escrow shall be disregarded as assets for a maximum of one year.

(2) THE HOMESTEAD PROPERTY OF AN INSTITUTIONALIZED MEDICAL ASSISTANCE APPLICANT OR RECIPIENT. The homestead property of an institutionalized person is not counted as an asset when any one of the following conditions is satisfied:

(a) The institutionalized person's homestead property is currently occupied by the institutionalized person's child who is under age 18, or who is 18 years or older and who is developmentally disabled, or who is a spouse.

(b) 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.

(c) The anticipated absence is for more than 12 months but there is a realistic expectation, as verified by a physician, that the person will be likely to return to the homestead. That expectation must include a determination of the availability of home health care services which would enable the recipient to return home.

(d) If neither (a), (b), nor (c) above is met, the property is no longer the principal residence and becomes non-home property.

(3) NON-HOME PROPERTY OF APPLICANT OR RECIPIENT. (a) If the value of the non-home property, together with all assets, does not exceed the asset limit, an otherwise eligible person may receive MA and retain the property.

(b) If the value of non-home property together with the value of the other assets exceeds the asset limit, it need not be counted as an asset if the non-home property produces a reasonable amount of net income. What is "reasonable" shall depend on the county agency's interpretation of whether the net income is a fair return considering the value and marketability of the non-home property.

(c) If the total value of non-home real property and non-exempt assets exceeds the asset limit, the person who owns the non-home real property shall list the property for sale with a realtor at a price at which realtors estimate it can be sold. Failure to so list the property shall cause the property to be considered a non-exempt asset. The property, while listed, is deemed inaccessible to the recipient and is not counted as an asset. When the property is sold, the proceeds shall be counted as an asset.

(4) JOINT ACCOUNTS. When determining medical assistance eligibility, a proportionate monetary share shall be deemed available to each person whose name is on a banking, savings or checking account.

(5) TYPES OF PROPERTY OWNERSHIP. (a) Where there is joint ownership of property, an equal share of the value of the property is considered available to each owner for the purpose of determining the assets of the applicant or recipient.

(b) If the applicant or recipient is a joint owner with a person who refuses to sell the property and who is not a legally responsible relative of the applicant or recipient, the property is not considered available to the applicant or recipient and cannot be counted as an asset.

(6) LIFE ESTATE. A recipient or the spouse of a recipient may own a life estate in a home without affecting eligibility for medical assistance. If the recipient leaves the property and it is sold, any proceeds received shall be considered liquid assets and the limitations of this rule shall apply.

(7) LIMITATION ON OWNERSHIP OF MOTOR VEHICLES. For purposes of eligibility, motor vehicles are vehicles, including snowmobiles, which meet all of the following conditions: they are driven or drawn on the road; state registered; and owned by a member of the MA group. The following limitations apply to vehicles:

(a) One vehicle does not affect the eligibility of the MA group.

(b) If the MA group has 2 vehicles and both vehicles are needed to maintain employment or to obtain medical care, or both, the vehicles do not affect the eligibility of the MA group.

(c) If the MA group has 2 vehicles, and if both are not needed to maintain employment or to obtain medical care, or both, the MA group is not eligible.

(d) Any MA group with 3 or more vehicles is not eligible.

(e) For a vehicle which does not meet the definition above, the equity value of that vehicle is counted as an asset.

(8) ASSETS AND THE INSTITUTIONALIZED APPLICANT OR RECIPIENT OF MEDICAL ASSISTANCE. In some cases income which has been protected for

personal needs of institutionalized persons may accumulate to the point where these persons may lose eligibility.

(a) In order to maintain uninterrupted eligibility, a recipient who is close to exceeding the asset limitation may voluntarily apply accumulated assets as a refund. If the recipient elects this option, the county agency shall project the amount of asset accumulation expected over an annual time period to arrive at an amount for the recipient to refund. When funds equal MA benefits already received, no additional refunds shall be made until additional MA benefits have been received.

(b) If the recipient does not elect the refund option, eligibility shall cease at the time the asset limitation is exceeded, and the person shall remain ineligible until the assets are again below the limit. At that point the person may reapply for MA.

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

HSS 103.04 Relative responsibility. (1) CHILDREN UNDER AGE 18 IN INSTITUTIONS. The eligibility of children residing in institutions approved for medical assistance payments shall be determined by the same method used to determine the eligibility of adults residing in nursing homes except that only the child's income and assets shall be considered in this determination. The income and assets of the child's parent(s) shall be evaluated by the department to determine whether, pursuant to s. 46.10 (14) Stats., such parent(s) is subject to collections. If the child is residing in an institution not specified in s. 46.10 (14), but the institution is approved to receive medical assistance payments, the parental liability shall be the same as that provided in s. 46.10 (14) Stats. and collected in the same manner.

(2) ELIGIBILITY DETERMINATIONS WHERE ONE SPOUSE IS AT LEAST 65 OR BLIND OR DISABLED AND THE OTHER SPOUSE DOES NOT MEET ANY OF THESE CHARACTERISTICS. When spouses reside together and one of them is at least age 65 or blind or disabled (i.e., is "SSI-related") and the other spouse does not meet any of those characteristics, the income and assets of both spouses shall be measured against the eligibility levels for a family of 2, to determine the eligibility of the SSI-related individual. In such cases, the husband and wife shall be referred to as a fiscal test group.

(3) ELIGIBILITY DETERMINATIONS WHEN LEGAL PARENTS ARE NOT ELIGIBLE, BUT THEIR CHILDREN RESIDING WITH THEM MAY BE ELIGIBLE. If a child's legal parents do not satisfy nonfinancial eligibility requirements but the child does, the income and assets of the legally-responsible parents together with the income and assets of the child shall be measured against the eligibility levels for an equivalent number of people to determine the child's eligibility. In such cases, the legal parents and the children will be referred to as a fiscal test group. *Exception:* When the family income or assets exceed AFDC-related levels and the child is SSI-related due to blindness or disability, the child is evaluated for eligibility against the eligibility levels for one person after parental income and assets are deemed to the child.

Note: For deeming rule see section HSS 103.04 (5) below.

(4) WHEN CARETAKER RELATIVES ARE CATEGORICALLY OR MEDICALLY NEEDY AND THE CHILDREN THEY ARE CARING FOR ARE NOT FINANCIALLY ELIGIBLE. When a caretaker relative, (i.e., any relative other than a legally

responsible parent) cares for a child under age 18 and the child does not satisfy the financial eligibility requirements of the medical assistance program, the eligibility of the caretaker relative shall be determined by measuring that relative's income and assets against the eligibility levels for a family of one or, in the case of spouses, against the levels for a family of 2.

(5) DEEMING OF PARENTAL INCOME TO BLIND OR DISABLED CHILD NOT RECEIVING SSI WHEN PARENTS AND CHILD ARE RESIDING TOGETHER. (a) In determining the eligibility of only the blind or disabled child, the basic SSI-related procedures (procedures relating to three classifications of income, unearned, earned and a mixture of unearned and earned), shall be used. Before applying those procedures, up to $88.90 of parental income shall be deemed available to each ineligible child in the home as the child's income.

(b) In cases where there are 2 parents in the home, parental assets in excess of $2,250 are deemed to the blind or disabled child. Where there is one parent, parental assets in excess of $1,500 are deemed to the child. The blind or disabled child is then treated as a family of one for the purpose of determining eligibility.

(6) WHEN A CHILD RESIDES WITH A QUALIFYING NON-LEGALLY RESPONSIBLE CARETAKER RELATIVE. When a child resides with qualifying caretaker relatives (i.e. not legally responsible relatives) and there are no legally responsible parents in the same residence, the child is treated as a family of one for eligibility determination.

(7) WHAT CONSTITUTES "CARING FOR" A CHILD UNDER AGE 18. For the child to be under the care of a person, the person must exercise the primary responsibility for the care and control of the child including making plans for the child, and must maintain a home in which the person and the child live. Furthermore, for MA purposes, a home is considered to exist even though circumstances may require temporary absence from the home of either the child or the caretaker. Absences may include attendance at public educational institutions, specialized schools, hospitalization, employment, visits and similar situations of a temporary nature.

(a) The caretaker's legal spouse, if residing in the home, is included in the medical assistance group (or, if appropriate, the fiscal test group). Temporary absence from the home of the spouse due to employment, short-term hospitalization, or visits does not interrupt the residence of the spouse.

(b) The first generation of 3-generation family configurations is considered to be "caring for" both the 2nd and 3rd generation children.

(c) For purposes of this rule a three-generation case is defined as one having all of the following characteristics: all 3 generations are residing in the home and the second generation has in it at least one never-married parent under age 18.

(8) A "QUALIFYING" RELATIVE FOR THE PURPOSE OF DETERMINING RELATEDNESS TO THE AFDC PROGRAM. Qualifying relative determinations shall be made pursuant to PW-PA 20.06 Wis. Adm. Code.

(9) ELIGIBILITY OF SECOND-GENERATION MINOR PARENT IN A THREE-GENERATION HOME. In homes where all 3 generations are residing and there is a second-generation minor parent who has at one time been married, the eligibility of such minor parent and child of the minor parent shall be determined separately from the rest of the family.

(10) DETERMINATIONS FOR PERSONS 18 YEARS OF AGE OR OLDER. Persons 18 years of age or older who are listed as children on an application for medical assistance shall have their eligibility (and the eligibility of their spouse or child, if any) determined separately from the rest of the persons listed on the application.

(11) EXCLUDING A CHILD FROM THE MEDICAL ASSISTANCE ELIGIBILITY DETERMINATION. A child's income and assets may be excluded from the MA determination if one of the following conditions is met:

(a) There is a court order designating funds to be used exclusively for the maintenance needs of the child; or

(b) Social security benefits are designated for the needs of the child and not any other members of the family, regardless of who receives and cashes the check; or

(c) Court-ordered child support is designated for the needs of the child alone; or

(d) There is other income or assets restricted by law for only the child's needs.

(12) EXCLUDING AN ADULT. An adult may be excluded from medical assistance benefits if the adult so wishes, but if the adult is legally responsible for anyone else applying, the adult's income and assets will be considered in the eligibility determination.

(13) APPLICATIONS INVOLVING NO MINOR CHILDREN WHEN ONE SPOUSE IS UNDER AGE 21 OR 3 MONTHS PREGNANT AND ONE IS SSI-RELATED (BLIND, DISABLED OR AT LEAST AGE 65). (a) A husband and wife with no minor children, where one spouse is under age 21 or pregnant and one is blind or disabled or at least age 65, shall have their financial eligibility determined according to SSI-related medical assistance procedures.

(b) Pursuant to s. 49.19 (4) (g), Stats., aid shall be granted to a pregnant woman who is otherwise eligible for aid during the period extending from the time that pregnancy is confirmed. The pregnant woman shall count as one person in determining family size for grant determination.

(14) FAMILIES IN WHICH SOME ARE RECEIVING AFDC AND SOME ARE APPLYING FOR MEDICAL ASSISTANCE ONLY. (a) If a person in the medical assistance-only group is legally responsible for, or the legal responsibility of, someone in the home who has been determined eligible for AFDC, the income of the MA-Only group (or, if appropriate, of the fiscal test group) will be measured against its share of the total family income limit. However, the assets of the entire family will be measured against the medical assistance asset limits.

(b) 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, children who do not have a legally responsible parent in the home, or children excluded from medical assistance according to section HSS 103.04 (11).

(15) ALLOCATION OF INSTITUTIONALIZED PERSON'S INCOME TO DEPENDENT OUTSIDE THE INSTITUTION. (a) No allocation shall be made from an institutionalized applicant or recipient to a spouse who is eligible for SSI but who refuses to obtain SSI. Likewise, no allocation shall be made to a spouse or minor children under the spouse's care, if the spouse or any of the children are receiving AFDC or SSI.

(b) 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 medical expenses that would be allowed under the spend-down provision, 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 may be allocated in an amount sufficient to bring the spouse's and children's income up to their monthly need. The total net income is equal to unearned income plus net earned income. The spouse's and children's net earned income shall equal their gross earned income minus 18% for work-related expenses plus a deduction for work-related child care.

(c) If the spouse is not caring for a minor child, the SSI payment level for one person plus the Wisconsin supplement shall be used to determine the spouse's monthly need. The spouse's earned income shall be netted by subtracting 18% for work-related expenses, and $20 from earned or unearned income or both. If the spouse's 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.

(d) The following amounts shall be excluded when computing the income of the spouse or children under the provisions of this rule:

1. All earnings of a child less than 14 years old.

2. All earnings of a child less than 18 years old who is a full time student.

3. All earnings of a child less than 18 years old, who attends school part time and is not employed full time (greater than 30 hours a week).

4. Any portion of any grant, scholarship, or fellowship used to pay the costs of tuition, fees, books, transportation to and from classes (e.g., not used for basic maintenance).

5. Amounts received for foster care or subsidized adoption.

6. Bonus value of food stamps and the value of foods donated by the federal department of agriculture.

7. Home produce grown for personal consumption.

8. Income actually set aside as an educational plan for a child who is a junior or senior in high school.

(e) If the spouse of an institutionalized applicant or recipient has income greater than the spouse's monthly need (or spouse's and children's monthly need), and if the county agency questions whether the spouse ought to make a contribution (or a greater contribution) to the cost of institutional care, the criteria in sub. (16) below should be used to determine whether court action under s 52.01 Stats. should be pursued. Subsection (16) also applies if the county agency questions whether or not the assets of the spouse are sufficient to warrant referral for a support action.

(16) CRITERIA TO DETERMINE WHETHER THE SPOUSE OF AN INSTITUTIONALIZED APPLICANT OR RECIPIENT SHOULD BE REFERRED FOR SUPPORT ACTION UNDER S. 52.01 STATS. (a) In no case shall support from the spouse of an institutionalized applicant or recipient be pursued when the spouse's assets, not counting homestead property, and an automobile, are less than $1,500, and when the spouse's income is less than monthly need as specified in section HSS 103.04(15).

(b) In any other situation, the county agency shall decide if a spouse is to be referred for support action. When deciding whether to refer for support action, the county agency shall consider the spouse's basic and essential needs and present and future expenses which invariably cannot be anticipated by rule.

(17) WHEN BOTH SPOUSES ARE INSTITUTIONALIZED AND THERE IS AN APPLICATION FOR MEDICAL ASSISTANCE. When both spouses are institutionalized, the following shall apply:

(a) If one spouse applies for medical assistance, the total income of both spouses may be combined to see if their combined total income is less than total need, providing that the spouse not applying:

1. Has income obviously exceeding that spouse's needs; and

2. Is willing to make that income available.

(b) If the combined income of both spouses is less than total need, separate determinations shall be made to see which spouse has the excess income. The excess may be allocated to the other spouse. Either one or both of the spouses could be eligible depending on income allocation.

(c) 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 shall be used in determining the eligibility of the other spouse.

(d) If a spouse refuses to make a reasonable amount available, the county agency shall review the case to determine whether legal action for support should be taken pursuant to s. 52.01 Stats. and section HSS 103.04(16) above.

(18) METHOD OF DETERMINING ELIGIBILITY FOR INSTITUTIONALIZED PERSON WHEN SPOUSE RESIDES OUTSIDE OF INSTITUTION. Eligibility of all institutionalized applicants or recipients shall be determined individually. Only income and assets actually contributed by a relative or spouse or ordered by a court shall be considered as available. Nothing in this subsection shall limit or prevent a county agency from seeking a support action under s. 52.01 Stats.

(19) DETERMINING ELIGIBILITY FOR A STEPCHILD ONLY OR THIRD-GENERATION CHILD ONLY. (a) In stepparent families or three-generation families, the children of each legal parent form an MA group for purposes of determining eligibility. Each group of children shall be tested against a medical assistance income test limit. That limit is a proportionate share of the MA standard for the appropriate family size.

(b) For purposes of this rule, the family shall include parents and all children in the household for whom either spouse is legally responsible, including the 3rd generation. Family shall not include SSI recipients or NLRR children.

(c) The legal parent's net income and assets (except an automobile and the homestead) are considered available to the parent's children. If the stepchild or third-generation child is ineligible for medical assistance because of excess income, the applicant may elect either a family spend-down or a children-only spend-down.

(20) The county agency may seek proof of actual contribution by relatives or other persons by review of the income tax returns of the applicant or other person suspected of contributing to the child's support. Such proof of support or contribution may also be obtained by direct inquiry of the adult family members residing in the home.

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

HSS 103.05 Institutional status—monthly need computation for institutionalized persons. The monthly need of institutionalized applicants or recipients shall be determined by including the following:

(1) The cost of institutional care.

(2) The standard personal allowance.

(3) The cost of health insurance (if the person is already carrying such insurance at the time of application).

(4) Other medical expenses allowed under the spend-down provisions.

(5) Any court-ordered support obligation, and any other support obligation recognized in section HSS 103.04(5), (6) and (7).

(6) If employed, 18% of gross income to cover the expenses of producing the income.

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

HSS 103.06 Other factors. (1) CHILDREN UNDER AGE 18 IN LICENSED FOSTER OR GROUP HOMES. A foster child under age 18 residing in a licensed foster home or group home satisfies the non-financial eligibility requirements of the medical assistance program. 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 a standard for one.

(2) APPLICATION ON BEHALF OF DECEASED PERSONS. An application on behalf of a deceased person may be made by an interested person who attests to the correctness of the eligiblity information submitted on behalf of the deceased.

(3) SOCIAL SECURITY NUMBER. If a social security number (SSN) is required as a condition of eligibility for public assistance or other categorical aid programs leading to the medical assistance entitlement, the county agency shall obtain a SSN from each individual (including children) for whom medical assistance is requested. An applicant's failure to provide immediately the SSN shall not be reason to withhold processing of the original application or to deny an application for original eligibility, if such eligibility otherwise exists. If the applicant does not have a SSN, the county agency shall assist the person in filling out such forms as may be required by the social security administration. The county agency shall terminate eligibility in the program if, by the time of the first review of eligibility determination, the applicant has not provided the SSN, or has not applied for and has not given the county agency permission to apply for the SSN.

(4) WHEN A STRIKER REJECTS A WISCONSIN JOB SERVICE REFERRAL. A striking applicant or recipient shall not be forced to surrender the rights and benefits the striker has accumulated in the striker's present job. A rejection of a job referral by Wisconsin job service, when acceptance would have required the striker to quit or resign the job from which the striker is on strike, shall not cause ineligibility for medical assistance.

(5) SPECIAL ELIGIBILITY PROCEDURES FOR SEASONALLY EMPLOYED MIGRANTS. Nonfinancial and financial criteria are the same for migrant and nonmigrant cases except as noted in this subsection.

(a) In determining eligibility for MA-only medically needy, annual income shall be taken into account.

(b) Because of the unusual circumstances of the average migrant a special transportation allowance of $400.00 shall be deducted from the annual income of the family group in determining eligibility for MA-only medically needy.

(c) The method of computing annual income by multiplying current monthly income by 12 is not appropriate because of the highly variable nature of a migrant's employment and the frequent periods of unemployment. If no basis for estimating income can be established, the current monthly Wisconsin income shall be multiplied by the number of months in the annual period it is believed the family will be employed in Wisconsin.

(d) If the applicant is unable to produce adequate information on income, the employer may be contacted for such information. If the information obtained from the employer differs from that given by the appplicant, the applicant shall be provided an opportunity to concur with or refute that information.

(e) Children of migrant laborers are considered Wisconsin residents by virtue of their parent's employment in this state or by virtue of their parents being in this state to secure such employment.

(f) The eligibility certification period shall be the period of time it is anticipated the family will remain in Wisconsin, not to exceed the maximum periods of eligibility determination allowed under state statute. If the family remains longer than expected, eligibility shall be reviewed and a new certification period will be initiated, if indicated.

(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 dispostion" 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 accomodations 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.

(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 $1500.

(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.