

Chapter HSS 201

AID TO FAMILIES WITH DEPENDENT CHILDREN

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

Subchapter I — General Provisions

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

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

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

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

HSS 201.03 Definitions. In this chapter:

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

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

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

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(4) "Agency" means the county department of social services, public welfare or human services, or a tribal agency which administers income maintenance programs.

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

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

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

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

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

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

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

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

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

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

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

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

(17) "WEOP" means the Wisconsin employment opportunities program established under 42 USC 645 and s. 49.50 (7), Stats., for the purpose of assisting AFDC recipients to develop marketable work skills and obtain gainful employment.

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

Subchapter II — AFDC Administration

HSS 201.04 Introduction. Agencies shall administer the AFDC program in accordance with ss. 49.19 to 49.41, Stats., and this chapter, and Register, January, 1987, No. 373

(b) A home owned by a member of the AFDC group shall be exempt if the AFDC group lives there or, if temporarily absent, expects to return and live there within the next 12 months.

(c) A life estate in a home held by a member of the AFDC group shall be exempt if the AFDC group lives there. If the group leaves the property and it is sold and proceeds from the sale are received by a group member, the proceeds shall be counted as assets.

(d) Real property listed for sale with a licensed realtor at the price that realtors certify it can be sold for shall be exempt while listed.

(e) Assets which are not available shall be exempt. Trust funds are available unless the trustee is legally unable to disburse the money on behalf of the AFDC applicants or recipients.

(f) Equal shares of joint accounts and jointly held property shall be deemed available to each person whose name is on the account or listed as an owner.

(g) Household and personal effects shall be exempt unless they are of unusual value.

(h) Loans shall be exempt unless available for current living expenses. If available for current living expenses, loans shall be counted as assets even if there is a repayment schedule.

(i) Work-related items essential to employment or self-employment, except for motor vehicles, are exempt. AFDC shall not be used to subsidize a failing farm or business operation. If the operation does not show a profit in one out of 3 years, as verified by internal revenue service tax records, then all assets related to this operation shall be counted in the determination of eligibility.

(j) If non-home property owned by an AFDC group member produces a reasonable amount of income the property shall be exempt. What is reasonable depends on whether the income is a fair return based on the value and marketability of the property.

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

HSS 201.275 Divestment. (1) **PURPOSE.** This section implements s. 49.19 (2) (p), Stats., which makes an applicant for or recipient of AFDC ineligible for benefits when the applicant or recipient has disposed of property without receiving adequate and full consideration for it within 2 years before the date of application for AFDC.

(2) **APPLICABILITY.** This section applies to any person who is an applicant for or recipient of AFDC and to all persons for whom that person has legal responsibility and for whom aid is being sought.

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

(a) "Adequate and full consideration" means 100% of net market value.

(b) "Compensation received" means the dollar value that can be attached to what is received in return for property. The "compensation received" may be in the form of:

1. Cash;

2. Other assets such as accounts receivable and promissory notes, both of which must be valid and collectible to be of value, and stocks, bonds, and both land contracts and life estates;

3. Other property;

4. Discharge of a debt;

5. Prepayment of a bonafide and irrevocable contract; or

6. Services assigned a valuation equal to the cost of purchase on the open market.

(c) "Conveyance, transfer, or disposition" means the act of changing legal title or other right of ownership to exempt or nonexempt, real or personal property.

(d) "Divestment" means the conveyance, transfer, or disposition of any property, except exempt assets as specified in s. HSS 201.27, for a compensation received which is less than adequate and full consideration.

(e) "Exempt assets" means assets listed under s. HSS 201.27 (2) which a person or group may retain and still be eligible for AFDC.

(f) "Net market value" means the market value on the date of transaction minus the actual costs of the transaction not to exceed costs for comparable transactions on the open market.

(g) "Property" means anything to which a person has legal title or other right of ownership and includes exempt or nonexempt, real or personal property.

(4) DETERMINING DIVESTMENT. (a) *Amount of divestment.* For a person who, within 2 years before making application for AFDC, has disposed of property without receiving adequate and full consideration for it, the agency shall determine the amount of the divestment in the following manner:

1. Determine the net market value of all properties the person has disposed of within 2 years before making application for AFDC, except a homestead or other exempt asset, as of the date of the transaction;

2. Determine the compensation received for the properties identified under subd. 1. In determining compensation received, the presumption that services and accommodations rendered to each other by members of a family or other relatives were gratuitous may be rebutted only by direct and positive evidence of a prior express contract for payment;

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

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

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

6. If the divested amount plus the AFDC group's other assets are greater than \$1,000, the excess over \$1,000 is the amount of the divest-

ment to be expended for maintenance needs and medical care under par. (c).

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

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

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

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

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

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

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

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

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

(1) **PAYMENTS FOR EDUCATION OR TRAINING.** (a) Loans and grants for undergraduate educational purposes made or insured under any programs administered by the federal commissioner of education shall be exempt. Loans and grants obtained and used under conditions that prevent using them for current living costs shall be exempt. Any other loans or grants available for current living costs after payment of tuition, fees, books, transportation essential to education or training, and dependent care, shall be treated as unearned income.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, including women, infants and