

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 may hold a life estate without affecting eligibility for MA. If the property or the life estate is sold, any proceeds received by the applicant or recipient shall be considered assets. In this subsection, "life estate" means a claim or interest a person has in a homestead or other property, the duration of the interest being limited to the life of the party holding it with that party being entitled to the use of the property including the income from the property in his or her lifetime.

(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.

(14) **LAND CONTRACTS.** (a) The applicant or recipient shall obtain a written estimate of the fair market value of a land contract from a source active in the market for land contracts in Wisconsin.

(b) If the applicant's or recipient's vendor interest in a land contract exceeds the medically needy asset limit under s. 49.47 (4) (b), Stats., the applicant or recipient shall offer the land contract for sale. The applicant's or recipient's vendor interest in a land contract shall be counted as an available asset unless he or she provides written documentation from Register, July, 1989, No. 403

a source active in the market for land contracts in Wisconsin proving that his or her interest in the land contract cannot be sold.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (1) (d), r. and recr. (1) (e), Register, January, 1987, No. 373, eff. 2-1-87; am. (6), cr. (14), Register, July, 1989, No. 403, eff. 8-1-89.

**HSS 103.07 Income.** (1) **SPECIAL SITUATIONS OF INSTITUTIONALIZED PERSONS.** (a) *Support received by institutionalized persons.* 1. Any financial 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

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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 in-

come 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.

(h) *Income from land contracts.* Income received from a land contract shall be counted as unearned income. If the income is received on a monthly basis, it shall be included as monthly income. Payments received on less than a monthly basis shall be prorated to a monthly amount over the period between payments. Any expenses that the applicant or recipient is required to pay under the terms of the land contract shall be deducted from the gross income received from the land contract.

(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; cr. (2) (h), Register, July, 1989, No. 403, eff. 8-1-89.

**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.

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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. 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.

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(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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