

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.

(2m) "AFDC-regular case" means an AFDC group in which the child or children are deprived of parental support or care because a parent has died or is continually absent from the home or, if both parents are in the home, a parent is incapacitated or is an offender working without pay.

(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.

(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.

(11m) "JOBS" means the job opportunities and basic skills training program established under 42 USC 682 and s. 49.50 (7b), Stats., for the purpose of assisting AFDC recipients to develop marketable work skills and obtain gainful employment.

(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 Register, March, 1990, No. 411

(c) Incapacitation which is the basis of nonfinancial eligibility, unless incapacitation is presumed to exist according to s. HSS 201.35 (2).

(d) Information required of an applicant who has a history of fraud or who is known to have provided erroneous information on a previous application which resulted in an incorrect issuance of assistance. The agency shall verify those data elements considered appropriate under the circumstances of the case history.

(2) The following items shall be verified, when applicable, within 60 days after the eligibility decision date:

- (a) Social security numbers.
- (b) Age, when it is a requirement for nonfinancial eligibility.
- (c) Citizenship or alien status.
- (d) Pregnancy.
- (e) Assets.

(3) Additional verifications may be obtained on a case-specific basis when statements of the applicant are unclear, incomplete or conflicting, or when circumstances make credibility doubtful.

(4) Social security number and birth date shall be verified only once. Other information contained in the application subject to change shall be re-verified.

(5) An agency may verify the original or a copy of the checking or savings account statement of a recipient who is receiving benefits by means of electronic funds transfer under s. HSS 201.10 (4). The verification shall be done at the time of eligibility review, or more often if the agency director or the director's designee decides more frequent verification is justified.

History: Cr. Register, April, 1983, No. 323, eff. 5-1-83; emerg. cr. (5), eff. 5-30-87; cr. (5), Register, December, 1987, No. 384, eff. 1-1-88.

**HSS 201.09 Eligibility determination.** (1) **DECISION DATE.** As soon as possible, but no later than 30 days after the date the agency receives a signed application, completed to the best of the applicant's ability, the agency shall conduct a personal interview with the applicant, determine the applicant's eligibility for AFDC and, on finding the applicant eligible, issue the first payment. If a delay in processing the application occurs because necessary information cannot be obtained within the time limits, the agency shall notify the applicant in writing that there is a delay in processing the application, specify the reason for the delay, and inform the applicant of the right to appeal the delay.

(2) **NOTICE OF DECISION.** (a) Timely and adequate notice shall be sent to applicants and recipients to indicate that AFDC has been authorized or that it has been reduced, denied, terminated or changed to a protective or vendor payment or payment by means of electronic funds transfer under s. HSS 201.10 (4). In this subsection, "timely" means in accordance with s. 49.19 (13), Stats. In this subsection, "adequate notice" means a written notice that contains a statement of the action taken, the reasons for and specific regulations supporting the action, and an explanation of the person's right to request a hearing and the circumstance under which aid will be continued if a hearing is requested. Aid shall be

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continued in all circumstances except where it is not required by federal regulation.

(b) When changes in either state or federal law require automatic grant adjustments for classes of recipients, timely notice of the grant adjustments shall be given. The notice shall be adequate if it includes a statement of the intended action, the reasons for the intended action, a statement of the specific change in law requiring such action and statement of the circumstances under which a hearing may be obtained and assistance continued.

(3) **REVIEW OF ELIGIBILITY.** A recipient's eligibility shall be redetermined:

(a) When information previously obtained by the agency concerning anticipated changes in the recipient's situation indicates the need for redetermination;

(b) Promptly after a report is obtained which indicates changes in the recipient's circumstances that may affect eligibility;

(c) At any time the agency can justify the need; and

(d) Within 90 days from the date initial eligibility is determined and every 6 months thereafter.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; am. (2) (a), Register, December, 1987, No. 384, eff. 1-1-88.

**HSS 201.10 Payment procedures.** (1) **DESIGNATION OF PAYEE.** Checks shall be made payable as appropriate to:

(a) The primary person;

(b) Spouse of the primary person. The spouse shall be living in the home unless designated as protective payee or appointed by a court to be legal representative;

(c) Guardian or conservator of the AFDC recipient; or

(d) An unrelated person acting temporarily for a caretaker relative in an emergency which deprives the child of the relative's care. This person may be the payee only for the time necessary to make and carry out plans for the child's continuing care.

(2) **PROTECTIVE AND VENDOR PAYMENTS.** (a) In this subsection, "protective payment" means a money payment to a payee designated by the agency as the receiver of a recipient's total or partial monthly financial assistance check. In this subsection, "vendor payment" means a money payment made in behalf of a recipient directly to a provider of goods or services.

(b) 1. A protective payment shall be made whenever there is a refusal to assign child support rights to the state or to cooperate in establishing paternity and obtaining support. When there is a refusal to register with or a failure to cooperate with JOBS, the payment to any remaining eligible persons shall be in the form of a protective payment or a vendor payment.

2. If, after making reasonable efforts, the agency is unable to locate an appropriate person to whom protective payments can be made, pay-  
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ments for the remaining eligible group members may continue to be made to a caretaker relative who has been sanctioned under s. HSS 201.19 (2) for failure to meet JOBS requirements or who has failed to meet child support requirements under s. HSS 201.18.

(c) If continued mismanagement of funds is a threat to the health and safety of the child, all or part of the grant may be a protective payment or part of the grant may be a direct payment and part a protective or vendor payment or both. The agency shall investigate reports of mismanagement before instituting protective or vendor payments.

(d) The agency director or designee shall authorize all protective and vendor payments. The reason for the authorization shall be documented in the case record and shall show the name of the eligible recipient, the name of the protective or vendor payee, and the amount and form of payment authorized. Authorization shall only be made with the recipient's knowledge, providing he or she is able to understand it.

(2m) METHOD OF PAYMENT. Payment shall be made by check or by means of electronic funds transfer under sub. (4).

(3) RESTRICTION ON USE OF ASSISTANCE NOT PERMITTED. Payment shall consist of an unconditional transfer and delivery of the benefits to the payee with no restrictions imposed by the agency on the use of the funds.

(4) ELECTRONIC FUNDS TRANSFER. (a) In this subsection:

1. "EFT" or "electronic funds transfer" means a computerized mechanism for the direct deposit of payments into a checking or savings account in a bank, credit union, or savings and loan association located in Wisconsin, Illinois, Iowa, Minnesota, or Michigan. EFT functions as a "warrant" as that term is used in 45 CFR 234.11\$sp(a).

2. "State account" means a savings account owned by the department for which a record of transactions is provided by the bank, credit union or savings and loan association to the account's owner on a regular basis.

3. "State co-owned account" means a savings account owned jointly by the department and an AFDC recipient and for which a record of transactions is provided by the bank, credit union or savings and loan association to the account's owners on a regular basis.

(b) Payment of monthly AFDC benefits by means of EFT shall be made no later than the 5th working day of the month.

(c) Except as provided under par. (e), payment shall be made by means of EFT if:

1. A recipient who has an individual checking or savings account in a bank, credit union or savings and loan association that accepts electronic funds transfers requests that payments be transferred into that account by means of EFT; or

2. A recipient is required by the agency director or the director's designee to receive assistance payments by means of EFT. An agency may require EFT participation for a recipient who has:

a. Made 2 or more requests for duplicate checks in the past 6 months;

b. Been found guilty of fraud under s. 49.12 or 49.49, Stats., in the past 6 months;

c. Requested EFT participation but been refused ownership of an individual checking or savings account and, in the judgment of the agency director or the director's designee, would benefit from receiving payments by means of EFT; or

d. Failed to provide verification of a home address and there is reason to believe that the recipient is not a resident of the county in which the AFDC payments are made.

(d) A recipient shall apply to receive assistance payments by means of EFT on a form prescribed by the department.

Note: Application forms are available from county or tribal income maintenance agencies.

(e) The agency director or the director's designee may deny payments by means of EFT to a recipient who cannot produce verification of a home address and there is reason to believe that the recipient is not a resident of the county in which the AFDC payments are made or to a recipient who does not have a checking or savings account in a bank, credit union or savings and loan association in the community in which he or she lives and there is a bank, credit union or savings and loan association located in that community.

(f) If EFT participation is required under par. (c) 2, payments shall be deposited in a state co-owned account. Financial transactions made with an account required under this paragraph shall be limited to AFDC benefit deposits by means of EFT and in-person withdrawals.

(g) If a recipient is required under par. (c) 2 to receive assistance payments by means of EFT and refuses to cooperate in establishing a state co-owned account, payments shall be deposited in a state account. Financial transactions made with an account required under this paragraph shall be limited to AFDC benefit deposits by means of EFT and in-person withdrawals by the recipient.

(h) If it is necessary to identify the AFDC grant in an account, a first-in, first-out accounting procedure shall be used to distinguish the AFDC grant from non-AFDC funds. In this paragraph, "first-in, first-out accounting procedure" means an accounting method under which it is assumed that funds are withdrawn from an account in the order in which they are deposited.

Note: For example, an AFDC grant of \$250.00 is deposited in an account on April 1. The balance in the account is \$250.00. On April 3, a deposit of \$25.00 is made, bringing the new balance to \$275.00. With first-in, first-out accounting, the AFDC funds are identified as the first \$250.00 to be withdrawn from the account after the deposit is made. If a portion of the \$250.00 has been withdrawn from the account and a portion remains in the account, the AFDC funds are the amount of withdrawals plus the amount remaining in the account equal to \$250.00. The non-AFDC funds are the monies remaining after the \$250.00 AFDC grant deposit has been accounted for.

(i) 1. The agency director or the director's designee shall authorize mandatory EFT participation under par. (c) 2 for a period not to exceed 12 months. This authorization shall be reviewed when redetermining the recipient's eligibility as provided in s. HSS 201.09 (3) or whenever the circumstances that required EFT participation change.

2. The agency director or the director's designee may terminate mandatory EFT participation under par. (c) 2 if the circumstances which Register, March, 1990, No. 411

(2) If it is the spouse or only one parent who is in the home but not in the AFDC group, all net income but the average of the differences between the area I standards set by s. 49.19 (11) (a), Stats., for family sizes 3 and 2, 4 and 3, 5 and 4, and 6 and 5, is deemed as unearned income to the AFDC group. When both parents are in the home but not in the AFDC group, an amount which exceeds twice the average shall be deemed. Net income is determined under s. HSS 201.32.

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

**HSS 201.34 Income and assets of the sponsors of aliens.** The income and assets of the sponsor and the sponsor's spouse, if living together, shall be deemed for the purposes of determining eligibility and the grant amount for an alien for a period of 3 years after the alien's entry into the United States. In this section, "sponsor" means a person, not an organization, who executed an affidavit of support or similar agreement on behalf of an alien who is not the person's child as a condition of the alien's entry into the United States. The alien shall obtain the cooperation of the sponsor in supplying the information and documentation which the agency requests to determine the alien's eligibility.

(1) **EXCEPTIONS.** Deeming of the sponsor's income and assets shall not apply in the case of any alien who:

(a) Was admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of s. 203 (a) (7) of the Immigration and Nationality Act (8 USC 1153);

(b) Was admitted to the United States as a result of the application, after March 31, 1980, of the provisions of s. 207 (c) of the Immigration and Nationality Act (8 USC 1157);

(c) Was paroled into the United States as a refugee under s. 212 (d) (5) of the Immigration and Nationality Act (8 USC 1182);

(d) Was granted political asylum by the attorney general under s. 208 of the Immigration and Nationality Act (8 USC 1158);

(e) Is a Cuban or Haitian entrant, as defined in s. 501 (e) of the Refugee Education Assistance Act of 1980, P. L. 96-422; or

(f) Is a dependent child, and the sponsor or the sponsor's spouse is the parent of the dependent child.

(2) **DEEMING OF THE SPONSOR'S INCOME AND ASSETS.** The deeming of the income and assets of the sponsor, and the sponsor's spouse, if living together, shall be done as follows:

(a) All but \$1,500 of nonexempt assets as determined under s. HSS 201.32 shall be deemed.

(b) All earned and unearned income remaining after applying the following reductions shall be deemed as unearned income to the sponsored alien:

1. \$175.00 or 20% of gross earned income, whichever is less. For the self-employed, the 20% applies to the net earnings; after that calculation the costs incurred in producing the self-employment income shall be added back in as available income.



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2. The AFDC needs standard according to family size and composition of the household who are claimed as dependents on the sponsor's or sponsor's spouse's federal income tax return.

3. Dollars paid to persons not in the household who are also claimed as dependents on the federal income tax return.

4. Payments of alimony and child support on behalf of persons not in the household.

(c) When a person is a sponsor for more than one alien, the method of determining the amount of income and assets is not changed, but the amount deemed to each alien shall be equally divided by the number of sponsored aliens who are applying for assistance.

(3) CORRECTION OF OVERPAYMENTS. Unless the sponsor is without fault, the sponsor and the alien shall be jointly responsible for any overpayment made to the alien due to failure of the sponsor to provide correct information. Overpayments shall be recouped under s. HSS 201.30 (3).

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

**HSS 201.35 Continuation of the grant.** A basic eligibility requirement for AFDC is that the child be deprived of parental support. Eligibility ceases at the time deprivation ends unless the child is still in need and has been deprived as provided in this section.

(1) If the deprivation reason was institutionalization or incapacitation of a parent, the grant shall be continued in the same amount for 2 months following the end of the deprivation. If the deprivation reason was unemployment of the parent, the grant shall be continued until the first wages are received, but not beyond 60 days.

(2) Recipients whose incapacitation has ceased but who are participating in division of vocational rehabilitation training may continue to receive a grant beyond the 2-month income continuation period. If the recipient is continuing to acquire skills through training which was designed to reduce impairment, the grant may be continued until the training is completed or discontinued.

(3) To determine if the AFDC group is still in need when the deprivation has been based on the absence of the parent who was institutionalized, the income and assets of the returning parent shall be deemed according to s. HSS 201.33.

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

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