

out good cause or if the principal wage earner has been offered employment or training for employment which was refused without good cause:

1. There was a definite offer of employment at wages meeting the minimum wage requirements and which are customary for that type of work in the community; the parent is physically able to engage in that employment; the parent has the means to get to and from the particular job and commuting time to and from the job is under 2 hours per day; risks to health and safety are not adverse; and workers' compensation protection is available on the particular job.

2. If the social services unit of the agency states in writing in the case record that it is essential to the well-being of the family that this parent should remain in the home, a refusal of employment or loss of employment is considered to have occurred with good cause.

3. Participation in a strike is not good cause to leave employment or to refuse to seek or accept employment.

(e) The principal wage earner shall have either worked 6 out of the last 13 calendar quarters ending within one year prior to the month of application, or have received or have been deemed qualified for unemployment compensation during the last year prior to application.

1. In this paragraph, "quarter of work" means a period of 3 consecutive calendar months ending on March 31, June 30, September 30 or December 31, in which the parent received gross earned income of not less than \$50 in the quarter, or in which he or she participated in a community work experience program under s. 409 of the Social Security Act of 1935, as amended, or was enrolled in a work incentive (WIN) program established under 42 USC 632, a WIN demonstration program established under 42 USC 645 or JOBS.

a. If the principal wage earner was in a refugee camp, having fled hostilities or conditions in his or her own country, or unable to work due to incapacitation, verified by a physician, during any of the quarters which would have been considered in establishing the quarter count, those quarters shall not be included in the 13 quarters to be considered. The principal wage earner shall have been in a refugee camp or incapacitated for the entire quarter for the quarter to be excluded.

b. Work performed by prisoners in prison industries shall be considered employment for the purpose of determining quarters of work. Prisoners employed under the s. 56.065, Stats., work release plan for prison inmates, are considered gainfully employed, and wages earned and quarters worked under that section shall be used to determine quarters of work.

2. A person shall be considered qualified for unemployment compensation if he or she:

a. Would have been eligible to receive benefits upon filing an application;

b. Performed work not covered by unemployment compensation which, if the work had been covered, would have satisfied the eligibility requirements for unemployed compensation;

c. Is self-employed but would have been eligible for unemployment compensation had the work been performed for a covered employer; or

d. Was laid off the job and worked 18 or more weeks within the past 52 weeks for one or more employers.

(f) For purposes of the demonstration project conducted by the department under the authority of s. 49.19 (15), Stats., a principal wage earner who is receiving AFDC unemployed parent benefits or who received AFDC based on unemployment within the last 4 months and whose case has been assigned to the experimental group of the demonstration project may work 100 hours or more a month and maintain non-financial eligibility. The department shall assign cases to the experimental group based on the last digit of the female caretaker's social security number. Eligibility of persons assigned to the experimental group shall continue during the period of the demonstration project as long as all other nonfinancial and financial eligibility criteria are met.

(4) **OFFENDER WORKING WITHOUT PAY.** For deprivation to be based on the parent being an offender working without pay, the parent shall be a convicted offender permitted to live at home but prevented from earning a wage because he or she is required by a court-imposed sentence to perform unpaid public work or unpaid community service.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; emerg. r. and recr. (3) (b), am. (3) (e) 1., eff. 6-1-86; r. and recr. (3) (b), am. (3) (e) 1., Register, November, 1986, No. 371, eff. 12-1-86; emerg. am. (3) (b) and (e) 1., eff. 7-1-89; am. (3) (b) and (e) 1. intro., Register, February, 1990, No. 410, eff. 3-1-90; emerg. r. and recr. (3) (c), am. (3) (d) 1., cr. (3) (f), eff. 10-1-91; r. and recr. (3) (c), am. (3) (d) (intro.) and 1., cr. (3) (f), Register, May, 1992, No. 437, eff. 6-1-92.

**HSS 201.15 Residence.** (1) To be eligible for AFDC, a person shall live in Wisconsin and intend to reside in Wisconsin, except as provided in subs. (2) and (3).

(2) The residence requirement shall also be met if the person or a member of the family is a migrant farm worker who entered Wisconsin with a job commitment or seeking employment. "Migrant farm worker" means any person whose primary employment in Wisconsin is in the agricultural field or cannery work; who is authorized to work in the United States; who is not immediate family by blood or marriage to the employer as distinguished from a crewleader; and who routinely leaves an established place of residence to travel to another locality to accept seasonal or temporary employment.

(3) A never-married child under age 18 is a Wisconsin resident when he or she is under the legal custody of the department or an agency, regardless of the state in which he or she is living.

(4) Once established, residence shall be retained until abandoned. Wisconsin residence shall not be lost when a dependent child or caretaker relative is temporarily absent from Wisconsin for the purpose of visiting, hospitalization or education.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; emerg. am. (1), eff. 3-7-92; am. (1), Register, February, 1993, No. 446, eff. 3-1-93.

**HSS 201.16 Citizenship.** To be eligible for AFDC, a person shall be either a U.S. citizen or a qualifying alien. In this section, "qualifying alien" means an alien lawfully admitted to the United States for permanent residence; an alien lawfully present in the United States pursuant to 8 USC 1153, 1157, 1158, 1160 and 1182; an alien granted lawful temporary resident status pursuant to 8 USC 1161 or 1255a who is a Cuban or Haitian applicant as defined in paragraph (1) or (2) (A) of section 501(e)

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of P.L. 96-422, as in effect on April 1, 1983, or who is not a Cuban or Haitian applicant but who was adjusted to lawful temporary resident status more than 5 years prior to application for AFDC; or an alien otherwise permanently residing in the United States under color of law.

**History:** Cr. Register, April, 1983, No. 328, eff. 5-1-83; am. Register, February, 1993, No. 446, eff. 3-1-93.

**HSS 201.17 Required relationships and responsibility.** To be eligible for AFDC a child shall be under the care of a qualified relative.

(1) **QUALIFIED RELATIVE.** The child's relationship to the caretaker or the caretaker's spouse shall be one of the following: son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, stepbrother, stepsister, half brother or half sister, nephew, niece, uncle, aunt, first cousin or grand, great-grand or great-great grand son, daughter, nephew or niece. The caretakers are qualified relatives even when the relationship is terminated by death or divorce.

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(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 divestment 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, including work study, shall be exempt.

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

(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 children's (WIC) benefits, and the special food service program for children under the National School Lunch Act, as amended (P.L. 92-433 and P.L. 93-150); and

(e) Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended.

(6) **REIMBURSEMENT OR PAYMENT FOR SOCIAL SERVICES.** Funds from Title XX of the Social Security Act of 1935, as amended, paid directly by the agency to the applicant or recipient for reimbursement or purchase of services shall be exempt.

(6m) **EARNED INCOME TAX DISREGARD.** Any refund of federal income taxes made by reason of s. 32 of the internal revenue code of 1986 and any advance payment made by an employer under s. 3507 of the internal revenue code of 1986 shall be exempt.

(7) **RENTAL INCOME.** Rental income shall be treated as follows:

(a) When a person reports rent money to the internal revenue service as self-employment income, the procedures specified in sub. (12) shall be followed.

(b) If the person does not report rental income to the internal revenue service as self-employment income, the net rent shall be determined as described in this subsection and counted as unearned income.

(c) When the owner is not an occupant, net rent shall be the rent payment actually received minus the mortgage payment and verifiable operational costs.

(d) In situations where the person receives money from a duplex or triplex operation and lives in one of the units, net rent shall be determined as follows:

1. Total mortgage payment and total operational costs common to the entire operation shall be added;

2. Total expense shall be computed using this formula:

a. Multiply number of rental units by total of subd. 1. Then divide that result by total number of units to get the proportionate share.

b. Add the proportionate share to any operational costs paid by the owner that are unique to the rental unit. The result equals the total expense.

3. In this subsection, "net rent" means total expense subtracted from total rent payments.

(8) **LUMP SUM PAYMENTS.** In this subsection, "lump sum payment" means a nonrecurring payment or accumulation of individual payments of earned or unearned income paid in one sum to an AFDC group member such as social security benefits, unemployment compensation, personal injury and workers' compensation awards, and lottery and bingo winnings. A lump sum payment shall be treated as follows:

(a) Any amount earmarked and used for the purpose for which it was paid, such as to pay for back medical bills resulting from an accident or injury, funeral and burial costs or the cost of replacing or repairing a resource, shall be disregarded;

(b) When the AFDC group's income, after applying applicable disregards, exceeds the assistance standard under s. 49.19 (11) (a), Stats., for the appropriate family size because of the receipt of a lump sum payment, the AFDC group shall be ineligible for AFDC for the full number of months derived by dividing the sum of the lump sum income and other available income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility or grant reduction begins in the next possible payment month immediately after the month in which the lump sum was received;

(c) The agency shall recompute the AFDC group's period of ineligibility due to receipt of a lump sum payment as of the date of the change using the method outlined in par. (b) when:

1. The former AFDC group's grant would have increased due to a statutory increase in the assistance standard and the family allowance under s. 49.19 (11) (a), Stats.;

2. The lump sum income or a portion of it becomes unavailable to the former AFDC group for a reason beyond the group's control, for example:

a. The lump sum amount was used because an immediate threat to the health, safety or welfare of the former AFDC group existed;

b. There has been a loss or theft of income; or

c. The group member who received the lump sum leaves the group; or



3. Medical expenses were incurred and paid during the period of ineligibility. Only medical expenses which equal or exceed any balance remaining after calculating the period of ineligibility may be counted; and

(d) If the size of the AFDC group increases during the period of ineligibility, the eligibility of the person added to the AFDC group shall be determined separately.

(9) **CONTRACTUAL INCOME.** Income received on other than an hourly or piecework basis from employment under a contract which is renewable on an annual basis shall be averaged over a 12-month period. The person shall be considered compensated for an entire year even though predetermined non-work or vacation periods are involved or actual compensation is scheduled for payment during work periods only.

(10) **IN-KIND BENEFITS.** When in-kind benefits are regular, predictable, and received in return for a service or product delivered, these benefits shall be treated as earned income. When in-kind benefits do not meet all three of these criteria, they shall not be counted when determining eligibility and grants. The value of in-kind income shall be determined by the prevailing wage-rate in the community for the type of work the person is doing, but shall not be less than the minimum wage for that type of work.

(11) **ROOM AND BOARD PROFIT.** Room and board profit shall be treated as earned income. To determine room and board profit, the expenses of providing room and board shall be deducted from the gross room and board income received as follows: roomer only — \$15.00; boarder only — current food stamp allotment for one; or roomer and boarder — current food stamp allotment for one plus \$15.00.

(12) **FARM AND SELF-EMPLOYMENT.** Farm and self-employment income to be counted in AFDC calculations shall be determined by adding the following items back into the net earnings: 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 return has been filed, the person shall complete a 1040 form of the internal revenue service to determine net earnings or loss, or to anticipate, in the case of relatively new businesses, net earnings as required by the internal revenue service. If the latest income tax return does not accurately reflect actual circumstances because a substantial increase or decrease in business has occurred, the agency shall calculate the self-employment income based on anticipated earnings. Agencies shall determine if 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.

(14) **INCOME OF YOUTH.** The earned income of a person who is less than 18 years old or who is a dependent 18-year old as defined in s. HSS 201.24 shall be treated as follows: If the person is a part-time student and employed less than 30 hours a week or is a full-time student, the person's earned income shall be exempt when the amount of the grant is determined. However, the person's earned income shall be counted when determining eligibility, unless the person was an AFDC recipient in any one of the 4 preceding months in which case the earned income shall also be exempt for this determination.

(15) DEDUCTIONS. The following deductions from income shall be made in the order shown:

(a) *Allocation.* 1. Where the parents are included in the AFDC group and the child in-common is determined ineligible, an amount up to the average of the differences between the area 1 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, shall be allocated to the child to bring the child's income up to this amount. This income shall be deducted from the group's income before determining eligibility and amount of grant.

2. If there is a court order requiring a person in the AFDC group to pay support to a person who is not in the AFDC group, this income shall be deemed unavailable to the AFDC group and shall be deducted from the group's income before determining eligibility and amount of grant.

(b) *Deductions from earned income.* 1. If a person is employed, \$90 shall be deducted from that person's earned income.

2. An amount equal to \$30 plus  $\frac{1}{3}$ , or \$30 plus  $\frac{1}{6}$  as provided under s. 49.19 (5) (am), Stats., of the earned income not already disregarded in subd. 1 shall be deducted from the person's earned income unless one of the following conditions applies:

a. The person has received the \$30 plus  $\frac{1}{3}$  deduction for 4 consecutive months and, since then, has not been off AFDC for 4 consecutive months, or has received the \$30 plus  $\frac{1}{6}$  deduction for 12 consecutive months and, since then, has not been off AFDC for 4 consecutive months; or

b. In the last 12 months the person has been excluded from the AFDC group for the sole purpose of avoiding the \$30 plus  $\frac{1}{3}$  deduction for 4 consecutive months or for 12 consecutive months if receiving the \$30 plus  $\frac{1}{6}$  deduction.

3. When employment cannot be maintained without dependent care for a dependent child or incapacitated adult in the AFDC group, the dependent care costs actually paid shall be deducted, but not more than \$175 each month for each dependent child age 2 or over or incapacitated adult or \$200 each month for each dependent child under 2.

(16) INCOME TESTS. The following income tests shall be made:

(a) *Test for 150% of assistance standard.* The AFDC group shall be ineligible in any month in which the group's income, not counting AFDC payments, exceeds 150% of the assistance standard for that size group. The exemptions specified in sub. (14) do not apply to this determination. If the income exceeds 150% of the assistance standard, the primary person, the primary person's spouse, and any children for whom they are both legally responsible shall not be eligible. The financial eligibility of other children in the AFDC group shall be determined under s. HSS 201.31.

(b) *Determination of eligibility.* Eligibility shall be determined by measuring the income, after applicable disregards, against the appropriate assistance standard for the AFDC group size. If a person has not received AFDC in one of the 4 prior months, the \$30 plus  $\frac{1}{3}$  deduction to earned income specified in sub. (15) (b) 3. and the exemption of student earnings in the determination of eligibility as specified in sub. (14) are

not applied. If the income exceeds the assistance standard, the primary person, the primary person's spouse, and any children for whom they are both legally responsible shall not be eligible. The financial eligibility of other children in the AFDC group shall be determined under s. HSS 201.31.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; emerg. r. (13), eff. 12-1-84; r. (13), Register, May, 1985, No. 353, eff. 6-1-85; emerg. r. and recr. (1) (b), am. (15) (b) 3. c., eff. 6-1-86; r. and recr. (1) (b), am. (15) (b) 3. c., Register, November, 1986, No. 371, eff. 12-1-86; emerg. cr. (6m), r. and recr. (15) (b), ef. 1-2-89; cr. (6m), am. (15) (intro.), r. and recr. (15) (b), Register, March, 1990, No. 411, eff. 4-1-90; r. and recr. (8), Register, March, 1992, No. 435, eff. 4-1-92; am. (1) (a) and (b), Register, February, 1993, No. 446, eff. 3-1-93.

**HSS 201.29 Eligibility date.** (1) Except for maternity care cases the beginning eligibility date shall be the date or receipt of a signed and completed application or the date all eligibility requirements are met, whichever is later. The beginning eligibility date for maternity care cases shall be the first day of the month in which the medically verified seventh month of pregnancy begins, or the first day of the month of application, whichever is later.

(2) If required by the agency, a home visit shall be conducted prior to release of the check. This requirement does not affect the amount of the check.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; emerg. r. (2) (b), eff. 6-1-86; r. and recr. (2), Register, November, 1986, No. 371, eff. 12-1-86.

**HSS 201.30 Determination of grant amount.** (1) **ON-GOING PAYMENTS.** The AFDC grant shall be determined by subtracting the AFDC group's

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