

Chapter HSS 201

AID TO FAMILIES WITH DEPENDENT CHILDREN

Subchapter I — General Provisions

- HSS 201.01 Authority and purpose
HSS 201.02 Applicability
HSS 201.03 Definitions

Subchapter II — AFDC Administration

- HSS 201.04 Introduction
HSS 201.05 Application
HSS 201.055 AFDC emergency assistance program
HSS 201.06 Access to information
HSS 201.07 Providing correct and truthful information
HSS 201.08 Verification of information
HSS 201.09 Eligibility determination
HSS 201.10 Payment procedures
HSS 201.11 Appeals
HSS 201.12 Fraud
HSS 201.13 Agency bond

Subchapter III — Conditions of Eligibility and Determination of the Grant

- HSS 201.14 Deprivation
HSS 201.15 Residence
HSS 201.16 Citizenship
HSS 201.17 Required relationships and responsibility
HSS 201.18 Assignment of support

- HSS 201.19 JOBS participation requirement
HSS 201.195 Learnfare
HSS 201.198 Parental and family responsibility demonstration project
HSS 201.20 Supplemental security income recipients
HSS 201.21 Strikers
HSS 201.22 Refusal to provide information
HSS 201.23 Social security number
HSS 201.24 Age
HSS 201.25 Maternity care
HSS 201.26 Requests for exclusion
HSS 201.27 Assets
HSS 201.275 Divestment
HSS 201.28 Income
HSS 201.29 Eligibility date
HSS 201.30 Determination of grant amount
HSS 201.305 Two-tier AFDC benefit demonstration project
HSS 201.31 Financial eligibility in children-only cases
HSS 201.32 Determining non-exempt assets and net income of persons not in the AFDC group
HSS 201.33 Income and assets of legally responsible relatives
HSS 201.34 Income and assets of the sponsors of aliens
HSS 201.35 Continuation of the grant
HSS 201.36 Transitional child care

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 or human services, or a tribal agency which administers economic support 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.

(9m) "Economic support specialist" means a person employed by a county agency or tribal agency whose duties, as specified in his or her position description, include determination or redetermination of economic support eligibility and benefits.

(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.

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; emerg. cr. (2m) and (11m), eff. 7-1-89; cr. (2m) and (11m), Register, Feb-

emery
am
3/1/96

emery am
3/1/96

uary, 1990, No. 410, eff. 3-1-90; emerg. am. (4), cr. (9m), eff. 7-1-94; am. (4), cr. (9m), r. (17), Register, February, 1995, No. 470, eff. 3-1-95.

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 follow the procedural guidelines provided by the department and use the forms prescribed by the department.

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

*Emerg. cr
201, 1045
206
3/1/96*

HSS 201.05 Application. (1) RIGHT TO APPLY. Any person may apply for AFDC. Application shall be made on a form prescribed by the department and available from an agency. Applicants and recipients may be assisted in all aspects of the eligibility determination process by any person they choose.

(2) APPLICATIONS FROM OUTSIDE WISCONSIN. (a) Except as provided under par. (b), application for Wisconsin AFDC shall not be accepted for a person residing outside Wisconsin.

(b) If a Wisconsin resident becomes ill or injured when absent from the state or is taken outside the state for medical treatment, application for Wisconsin AFDC for that person shall be made on a Wisconsin application form and witnessed by the public welfare agency in the other state.

(3) WHERE APPLICATION IS MADE. Application shall be made in the county in which the primary person resides.

(4) SPECIAL APPLICATION SITUATIONS. (a) A person 18 years of age or older who is not the primary person, the primary person's spouse, or a dependent 18-year old as defined in s. HSS 201.24 shall have his or her eligibility, and the eligibility of his or her spouse or child, if any, determined separately from the rest of the persons listed on the application.

(b) The eligibility of an unmarried man and woman who are residing together and have a minor child-in-common shall be determined together if the man has been determined in one of the following ways to be the father of the child:

1. A signed sworn admission of paternity has been accepted by a court and a judgment has been obtained;
2. A court proceeding has established paternity; or
3. An acknowledgement of paternity has been filed with the department's section of vital statistics and a birth certificate naming this man as father has been issued.

(c) A minor who is a parent or who is pregnant but not married and not under the care of a qualified relative as specified in s. HSS 201.17 shall be processed on a separate application.

(d) The first generation of a three-generation case as specified in s. HSS 201.31 (5) shall be placed on lines one and 2 of the application form and is considered to be caring for both the second and third generation children. The eligibility of all 3 generations shall be determined together unless the first generation requests that the third generation's eligibility be determined separately.

(5) SIGNING THE APPLICATION. Each application form shall be signed by the applicant or the applicant's responsible relative, legal guardian or authorized representative; or, where the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The application shall be re-signed in the presence of an agency representative in accordance with s. 49.13, Stats. Two witnesses' signatures shall be required when the application is signed with a mark.

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

HSS 201.055 AFDC emergency assistance program. (1) PURPOSE. This section implements s. 49.19 (11) (b), Stats., which directs the department to administer a program of emergency assistance under the AFDC program for persons who are in need due to fire, flood, natural disaster, homelessness or energy crisis and who meet the eligibility criteria under this section

and the eligibility criteria for federal financial participation under 45 CFR 233.120.

(2) APPLICABILITY. This section applies to all applicants for AFDC emergency assistance, all recipients of AFDC emergency assistance and all county and tribal economic support agencies administering the AFDC emergency assistance program under s. 49.19 (11) (b), Stats.

(3) DEFINITIONS. In this section:

(a) "AFDC emergency assistance" means the program of financial assistance under section 406 (e) of the Social Security Act of 1935, as amended, which is intended to avoid destitution of a child or provide living arrangements for the child in a home.

(b) "AFDC emergency assistance group" or "group" means a child or children under the age of 21 and a qualified caretaker relative or relatives specified in s. HSS 201.17 (1) with whom the child is living or was living at the time the emergency occurred.

(c) "Destitution" means extreme want of resources or of the means of subsistence.

(d) "Emergency shelter facility" means any facility, the primary purpose of which is to provide temporary or transitional shelter for the homeless in general or specific populations of the homeless under 24 CFR 576.3.

(e) "Other programs eligibility handbook" means the other programs handbook issued by the department's division of economic support for use by agencies in determining eligibility for public assistance programs including AFDC emergency assistance.

(4) APPLICATION. Application for AFDC emergency assistance shall be made on a form prescribed by the department. Upon receipt of a completed application, the agency shall verify that the emergency was due to fire, flood, natural disaster, homelessness or an energy crisis. Verification of eligibility shall not delay the provision of assistance.

Note: An application form for AFDC emergency assistance may be obtained from a county or tribal economic support agency.

(5) NONFINANCIAL ELIGIBILITY. (a) *Criteria.* The AFDC emergency assistance group shall meet the following nonfinancial eligibility criteria:

1. The group members meet the residence criteria in s. HSS 201.15;
2. The group members are citizens or qualifying aliens as defined in s. HSS 201.16;
3. The child for whom assistance is requested is or, within 6 months prior to the month of application for AFDC emergency assistance, was living with a qualified caretaker relative as specified in s. HSS 201.17 in a place of residence maintained as the caretaker relative's own home;
4. Assistance is needed to avoid destitution of the child or to provide a living arrangement for the child in a home;
5. The child's destitution or need for living arrangements did not result from the child or a qualified caretaker relative specified in s. HSS 201.17 refusing without good cause to accept employment or training for employment; and
6. As determined by the agency, the group's need has resulted from an emergency due to:
 - a. Fire;
 - b. Flood;
 - c. A natural disaster such as a tornado, earthquake, electrical storm or windstorm, hail, sleet, a mud or rock slide, or a natural explosion such as lightning striking an object that then explodes;
 - d. Homelessness as determined under par. (b). The cause of the homelessness need not be the result of a natural disaster; or
 - e. An energy crisis, including lack of essential home heating or imminent loss of essential home heating, with an immediate threat to the health or safety of the group either existing or likely to exist.

(b) *Eligibility due to homelessness.* An AFDC emergency assistance group shall be considered homeless for purposes of determining nonfinancial eligibility under par. (a) if the group needs AFDC emergency assistance to obtain a permanent living accommodation and if any of the following conditions apply:

1. The group lacks a fixed, regular and adequate nighttime residence;

2. The group has a current residence that is a shelter designed for temporary accommodation such as a motel, hotel or emergency shelter facility;

3. The group has to leave or has already left its current housing because it is uninhabitable as determined by the local building inspector, the local health department or other appropriate local authority;

4. The group is living in a place that is not designed for, or ordinarily used as, a regular sleeping accommodation; or

5. A member of the group was subject to domestic abuse as defined under s. 968.075 (1), Stats.

(6) *FINANCIAL ELIGIBILITY.* (a) *Total financial need.* The agency shall compute the AFDC emergency assistance group's total financial need by adding together the AFDC area 1 assistance standard under s. 49.19 (11) (a) 1., Stats., for the family size equal to the AFDC emergency assistance group size determined under sub. (5) and an amount to meet the AFDC emergency assistance group's physical needs under par. (b). The agency shall estimate the amount needed to meet the group's physical needs under par. (b).

(b) *Physical needs.* Physical needs may include:

1. Food;

2. Clothing;

3. Temporary housing when the group is in need of assistance because of fire, flood or natural disaster;

4. First month's rent plus the security deposit;

5. Home energy. This may include heating fuel, electricity, and repair or replacement services necessary to attain or maintain the basic heat and electricity requirements of an average household;

6. Household items;

7. Home repairs and appliances;

8. Transportation; and

9. Medical care.

(c) *Income.* The agency shall determine the amount of income available to the AFDC emergency assistance group in accordance with s. HSS 201.28 except that:

1. The earned income disregards under s. 49.19 (5) (a) 4. and 4m. and (am), Stats., are not allowed;

2. Supplemental security income received by an AFDC emergency assistance group member in the month of the emergency is not counted;

3. An AFDC grant received in the month of the emergency is not counted; and

4. Income received in the month of the emergency but before the date of the emergency and already used for the group's needs is not counted.

(d) *Assets.* The agency shall determine the amount of assets available to the AFDC emergency assistance group in accordance with s. HSS 201.27, except that an asset with a fair market value of less than \$3,000 that would require liquidation at a loss or an asset maintained in an education and employability account under s. HSS 201.27 (1m) is exempt from consideration. No asset may be considered available unless the AFDC emergency assistance group can make it available within 30 days. Assets shall be considered available as provided in 45 CFR 233.20 (a) (3) (ii) (D), that is, both when actually available and when the group has a legal interest in a liquidated sum and has the legal ability to make the sum available for support and maintenance. No available real property

may be included in determining the AFDC emergency assistance group's assets.

(7) *PAYMENT AMOUNT.* (a) In determining the AFDC emergency assistance payment amount, the agency shall subtract the AFDC emergency assistance group's total income, as determined under s. HSS 201.28 and sub. (6) (c), and assets, as determined under s. HSS 201.27 and sub. (6) (d), from the group's total financial need determined under sub. (6) (a).

(b) The AFDC emergency assistance payment amount shall be the amount requested by the AFDC emergency assistance group or the amount computed under par. (a), whichever is less, but may not exceed the maximum payment amount per family member as established by the department. The department shall establish the maximum payment amount and annual changes to it by publishing a public notice in the Wisconsin administrative register and by issuing a revised emergency assistance chapter for its other programs eligibility handbook.

(8) *ELIGIBILITY DETERMINATION AND PAYMENT PROCEDURES.* (a) The agency shall determine eligibility for AFDC emergency assistance within 5 working days after receiving a completed application and, if the group is found eligible, shall issue a payment to the AFDC emergency assistance group within the same 5 working days except that, if the group is eligible under sub. (5) (b), the agency shall issue a payment, following the eligibility determination, within 5 working days of the date that the group notifies the agency that a permanent living accommodation has been obtained. The payment may be made in the form of cash, a voucher or a vendor payment.

(b) The agency shall notify the applicant in writing of the eligibility determination. If the application is denied, the notice shall include reasons for the denial and information about the opportunity to appeal that decision under sub. (10).

(c) 1. AFDC emergency assistance may be issued to an AFDC emergency assistance group for one period of 30 days within any 12 consecutive months.

2. The date of the first authorized payment begins the 30 day period, and the period ends 30 days after the initial payment, whether or not additional requests or payments for the same emergency are made.

(d) AFDC emergency assistance payments shall not be used for activities related to or the costs of providing temporary or transitional shelter or housing except if a group is in need of assistance due to a fire, flood or natural disaster.

(9) *SOCIAL SERVICE NEEDS.* (a) In determining the AFDC emergency assistance group's total need, the agency shall consider the social service needs of the group and shall make appropriate referrals to assist the group in meeting those needs.

(b) Social service needs include but are not limited to the need for:

1. Information and referral to the appropriate service agency;

2. Counseling;

3. Family shelter; and

4. Child care funding through the county or tribal human services or social services agency.

(10) *FAIR HEARING.* Any person whose application for AFDC emergency assistance is not acted upon promptly after filing of the application, or is denied in whole or in part, whose award is modified or canceled, or who believes the award to be insufficient, may request a fair hearing in accordance with s. 49.50 (8), Stats. A request shall be in writing and shall be submitted to the department's office of administrative hearings so that it is received there within 45 days after the decision or failure to act which is being appealed.

Note: The mailing address of the Department's Office of Administrative Hearings is P.O. Box 7875, Madison, WI 53707-7875.

History: Emerg. cr. eff. 4-4-95; emerg. r. and recr. (7) eff. 9-1-95; cr. Register, November, 1995, No. 479, eff. 12-1-95.

HSS 201.06 Access to information. (1) Persons inquiring about or applying for AFDC shall be given the following information by the agency in written form, and orally as appropriate: coverage, conditions of eligibility, scope of the program and related services available, and applicant and recipient rights and responsibilities. Bulletins or pamphlets developed for this purpose shall be available at the agency. In areas where there is a substantial non-English-speaking or limited-English-speaking population, the agency shall take whatever steps are necessary to communicate with that population in its primary language.

(2) Persons may examine program manuals and policy issuances which affect the public, including rules and regulations governing eligibility, need and amount of assistance, recipients' rights and responsibilities and services offered. These documents may be examined at agency offices or the department's state or regional offices on regular work days during regular office hours.

(3) A person or his or her authorized representative may review the entire case record to verify that the content accurately reflects statements and documentation of facts. No part of the record may be withheld during preparation for a fair hearing. When the request is not related to preparation for a fair hearing, it is not required that the entire record be shown unless the reason for seeing the record requires the full record.

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

HSS 201.07 Providing correct and truthful information. Applicants, recipients, or persons described in s. HSS 201.05 (5) acting in their behalf, shall provide to the agency, the department or its delegated agent, full, correct and truthful information necessary for eligibility determination or redetermination. Changes in income, resources or other circumstances which may affect eligibility shall be reported to the agency within 10 days of the change.

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

HSS 201.08 Verification of information. If the person does not have the power to produce verification, or requires assistance to do so, the agency may not deny assistance and shall pro-

ceed immediately to seek the verification. Assistance shall be denied when a person has the power to produce required verification but refuses or fails to do so.

(1) The following items shall be verified, when applicable, prior to determining eligibility:

- (a) Income.
- (b) A pregnancy which is the basis of nonfinancial eligibility.
- (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. 328, eff. 5-1-83; emerg. cr. (5), eff. 5-30-87; cr. (5), Register, December, 1987, No. 384, eff. 1-1-88.

Next page is numbered 3

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 a 2-party payment as defined in s. HSS 201.10 (2i) (a) 8. or to payment by means of electronic funds transfer under s. HSS 201.10 (4) and, if it has been terminated, that the AFDC group may be eligible for transitional child care benefits under s. HSS 201.36. In this subsection, "timely" means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the action would become effective. 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 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 6 months 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; emerg. am. (2) (a), eff. 4-1-90; am. (2) (a) and (3) (d), Register, November, 1990, No. 419, eff. 12-1-90; am. (2) (a), Register, July, 1995, No. 475, eff. 8-1-95.

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, payments 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.

(cm) An AFDC applicant or recipient may request that the agency issue a protective or vendor payment for heat or electricity for all or part of the grant amount, or for rent as provided under s. 49.19(5)(ce), Stats. The request shall be in writing and shall be recorded or retained in the case file. The protective or vendor payment shall be discontinued promptly upon the written request of the applicant or recipient. In this paragraph, "promptly" means in the next possible payment month.

(d) The agency director or designee shall authorize all protective and vendor payments for a period not to exceed 12 months, or whenever the circumstances that required a protective or vendor payment under par. (b) or (c) change. 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.

(2i) TWO-PARTY PAYMENTS. (a) Definitions. In this subsection:

1. "Failed to pay rent" means that the recipient has failed to pay the amount agreed to in the rental agreement.

2. "Landlord" means a person who owns and rents dwelling units.

3. "Payment month" means a month in which the tenant was a recipient.

4. "Person" means an individual, partnership, corporation, association, estate, trust or any other legal or business entity.

5. "Recipient" means a person who received an AFDC benefit during either the current month or the previous month.

6. "Rental agreement" means a written agreement for the rental or lease of a dwelling unit.

7. "Tenant" means an individual who signed a rental agreement to occupy a dwelling unit under that rental agreement.

8. "Two-party payment" means a check for current rent which is drawn in favor of an AFDC recipient and the recipient's landlord, jointly.

(b) *Condition for 2-party payment.* As provided in s. 49.19 (5) (cm), Stats., a 2-party payment shall be made whenever a recipient has failed to pay rent to the landlord in each of 2 or more payment months, unless the failure to pay rent is authorized by law.

(c) *Agency action on landlord's report.* Upon receiving a report from a landlord that a recipient who is a tenant has failed to pay rent in each of 2 or more payment months within the past 6 months, an agency shall investigate the report and, if it appears to be accurate, the agency shall send a written notice to the recipient and the landlord which includes:

1. The name and address of the landlord;

2. The amount of monthly rent agreed to in the rental agreement;
3. The months the recipient failed to pay rent as reported by the landlord, and the total amount of unpaid rent; and
4. The steps the recipient is to follow in responding to the notice.

(d) *Recipient's opportunity to respond.* The recipient shall respond in writing to the notice under par. (c) within 10 days from the notice date. The response shall be sent to the agency and shall include:

1. Confirmation or denial of the information contained in the notice;
2. Whether the recipient is the only tenant or if another recipient or other individual is also a tenant; and
3. Any reason for nonpayment of the rent, including any authority under law.

(e) *Agency determination.* Upon receiving the written report from the recipient, or if the recipient fails to contact the agency in writing within 10 days after the date of the notice under par. (c), the agency shall promptly:

1. Determine if a 2-party payment is required;
2. Verify whether more than one individual has signed the rental agreement as a tenant and the amount of the rent under any shared rental agreement that is subject to the 2-party payment under par. (f); and
3. Notify the landlord and the recipient of its determination.

(f) *Determining the amount of the 2-party payment under a shared rental agreement.* If the agency verifies that more than one individual signed the rental agreement as a tenant, the agency shall determine the amount of the 2-party payment as follows:

1. If a recipient is a tenant and an individual who is not a recipient is also a tenant of the same dwelling unit, and the agency verifies that the recipient has paid the amount of the rent that is his or her responsibility, then no 2-party payment may be issued; or
2. If a recipient is a tenant and another individual who is a recipient is also a tenant of the same dwelling unit, the agency shall verify whether one or both failed to pay rent for 2 months or more. If only one failed to pay rent, the agency shall make a 2-party payment in the amount the recipient who failed to pay rent is responsible to pay. If the landlord states that both recipients failed to pay rent and the agency verifies that both failed to pay, the agency shall issue 2-party payments for both recipients, apportioning the 2-party payments between the recipients in the amount each recipient who failed to pay rent is responsible for, but in no case exceeding the amount of the rent or the AFDC benefits of each recipient.

(g) *Notice of determination.* If a 2-party payment is required, the agency shall send a notice to the recipient and the landlord which includes the following information:

1. The amount of the 2-party payment that will be paid from the recipient's monthly benefit amount;
2. The date the 2-party payment will begin;
3. The procedure the agency will follow in issuing the 2-party payment;
4. A statement that the total amount of the 2-party payment will not exceed the monthly grant amount for which the recipient is eligible;
5. A statement that the remainder of the grant will be paid directly to the recipient;
6. A statement that the 2-party payment will continue until any of the following occurs:
 - a. A 2-party payment has been made for 24 consecutive months;
 - b. The recipient has reimbursed the landlord for all back rent owed; or

c. The recipient has notified the agency in writing that he or she has moved to another address and has a different landlord;

7. The procedure the recipient must follow to notify the agency that the conditions requiring 2-party payments have changed; and

8. Information regarding the recipient's right to a fair hearing in accordance with s. 49.50 (8), Stats., on the determination that a 2-party payment is required.

(h) *Issuance of 2-party payment.* If the recipient does not request a fair hearing within the timely notice period under s. HSS 201.09 (2) (a) or, after a fair hearing has been held, the hearing officer finds that the recipient has failed to pay rent without authority under law, the agency shall issue the 2-party payment to the recipient in the next possible payment month.

(i) *Authorization of 2-party payment.* The agency director or the director's designee shall authorize all 2-party payments. The reason for the authorization shall be documented in the case record and shall show the name of the recipient, the name of the landlord and the amount of the payment.

(j) *Review of 2-party payment cases.* The agency director or the director's designee shall review whether or not a 2-party payment should continue at least once every 12 months and whenever a recipient or a landlord reports that the conditions requiring the 2-party payment have changed.

(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 (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 required EFT participation have changed. In no case may mandatory EFT participation under par. (c) 2. be required for more than 2 consecutive 12 month periods.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; emerg. renum. (2) (b) and am. eff. 6-1-86; renum. (2) (b) to be (2) (b) 1. and am., cr. (2) (b) 2., Register, November, 1986, No. 371, eff. 12-1-86; emerg. cr. (2m) and (4), am. (3), eff. 5-31-87; cr. (2m) and (4), am. (3), Register, December, 1987, No. 384, eff. 1-1-88; emerg. am. (2) (b) 1. and 2., eff. 7-1-89; am. (2) (b) 1. and 2., Register, February, 1990, No. 410, eff. 3-1-90; cr. (2) (cm), (2i), am. (2) (d), Register, July, 1995, No. 475, eff. 8-1-95.

HSS 201.11 Appeals. Any applicant or recipient may ask for and shall receive a fair hearing in accordance with established procedures and consistent with applicable state law and federal regulations when grieved by action or inaction of the agency or the department of health and social services.

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

HSS 201.12 Fraud. When the agency director or designee decides that possible fraud exists, the case shall be referred to the district attorney.

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

HSS 201.13 Agency bond. (1) SURETY BOND. The person in charge of the administration of AFDC in each county shall furnish a bond having as surety a company authorized to do surety business in this state. The bond shall be in an amount fixed by the board of supervisors of the county in which the bonded person is to perform his or her functions and shall be substantially in the form provided in s. 19.01 (2), Stats.

(2) APPROVAL AND FILING. The form of the bond shall be approved by the district attorney, and the bond shall be filed in the office of the clerk of the court in which the bonded person performs his or her functions.

(3) NOTICE OF BOND. The clerk shall give notice in writing to the county board or its chairperson and to the department, stating the amount of the bond filed, the name of the surety, the date of filing and the date of approval by the district attorney. The notice shall be given within 5 days after the person required to be bonded has entered upon his or her office or employment. The notice shall be published with the proceedings of the county board.

(4) AMOUNT FIXED BY COUNTY BOARD. The provisions of ss. 19.01 (2), (3), (5), (6) and (8), 19.015, and 19.02 to 19.06, Stats., clearly inapplicable or inconsistent with this chapter, shall apply to all matters in connection with the official bonds required by this chapter. As soon as possible after the convening of the November annual meeting of the county board of supervisors in each county, each board shall by resolution fix, and at any subsequent meeting may change, the required amount of the bond.

(5) JUDGES EXEMPT. This section shall not apply to judges.
History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

Subchapter III Conditions of Eligibility and Determination of the Grant

HSS 201.14 Deprivation. To be eligible for AFDC, children shall be deprived of parental support or shall be pregnant. To be eligible for AFDC, adults shall be either caretakers of deprived children or pregnant. A child is deprived of parental support or care by reason of the following: death of parent, continued absence of a parent from the home, or, if both parents are in the home, incapacitation of a parent, unemployment of a parent, or a parent is an offender working without pay.

(1) PARENTAL ABSENCE. The deprivation may be based on continued absence regardless of the length of time a parent is absent.

(2) INCAPACITATION OF A PARENT. For deprivation to be based on incapacitation of a parent, eligibility shall depend on a finding of a legal parent's physical or mental incapacity to provide proper parental support or care. The incapacitation shall be expected to last for a period of at least 30 days. The incapacitation decision shall be made by the agency director or a *designee* based on competent medical testimony. The incapacitation shall be of such a debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for the child. The agency director or a designee may presume incapacitation and initiate payments on the basis of reliable information. If the medical findings later received indicate that the presumed incapacitation does not exist, the agency shall terminate the case with proper notice.

(3) UNEMPLOYMENT OF A PARENT. For deprivation to be based on the unemployment of a parent, the principal wage earner shall meet the requirements detailed in this subsection. If AFDC was received the previous month and the deprivation of the child was based on the unemployment of a parent, then the parent who was the principal wage earner remains the principal wage earner. Otherwise, the principal wage earner is the parent who earned the greater amount of income in the 24-month period that ended at the end of the preceding month.

(a) The principal wage earner shall apply for and accept any unemployment compensation to which she or he is entitled.

(b) The principal wage earner shall be referred to a JOBS agency unless exempt from JOBS participation under s. HSS 201.19. A principal wage earner who is exempt from JOBS participation under s. HSS 201.19 (1) (h) shall register with the state employment service.

(c) Except as provided in par. (f), the principal wage earner shall be either out of work or employed less than 100 hours a month. If the principal wage earner worked 100 hours or more in a particular month, this requirement may be met if the parent worked less than 100 hours for each of the 2 months preceding the month of 100 hours or more and is expected to work fewer than 100 hours during the next month. If the principal wage earner is out of work, eligibility may begin:

1. As of the date of application, if he or she has received AFDC based on unemployment within the last 4 months; or

2. No sooner than 30 days from the date unemployment began, if he or she has not received AFDC based on unemployment within the last 4 months except that, if he or she was employed less than 100 hours in the 30 days preceding the last day of employment, eligibility may begin as of the date of application.

(d) The principal wage earner, who was not receiving AFDC based on unemployment the previous month, shall not have lost employment without good cause within 30 days prior to application. The following factors shall be considered in determining if employment was lost without 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 re-

lease 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 nonfinancial 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

*emerg.
am
3/1/96*

defined in paragraph (1) or (2) (A) of section 501 (e) of PL 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.

(2) **UNDER THE CARE.** (a) A child shall be considered under the care of a relative when the relative:

- 1. Exercises the primary responsibility for the care and control of the child, including making plans for the child; and
- 2. Maintains a home in which he or she and the child live.

(b) 1. A child may be absent from the caretaker relative's home but still be considered under the care of the caretaker relative, or the caretaker relative may be absent from the home but still be considered the caretaker relative, if the following conditions are met:

- a. The continuous absence is expected to be for a period of no more than 6 months;
- b. The absence is not the result of removal of the child under a dispositional order issued under s. 48.355, Stats., which places custody of a child outside the home for an indefinite period or a period of 3 months or more; and
- c. The caretaker relative continues to exercise responsibility for the care and control of the child.

2. The agency may approve an extension of a child's temporary absence from the home beyond 6 months when a written plan exists which demonstrates that the intent is to return the child to the home of the caretaker relative.

(c) When a never-married minor parent is residing with his or her parent, the parent of the minor parent is considered the caretaker.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; r. and recr. (2) (b), Register, July, 1988, No. 391, eff. 8-1-88.

HSS 201.18 Assignment of support. (1) The parent or caretaker shall assign all rights to child support and maintenance payments in order to be eligible for AFDC. If there is a refusal to make the assignment, the person who refuses shall not be eligible for AFDC.

(2) The agency shall refer all cases involving paternity and support to the county child support agency. The parent shall cooperate with the local child support agency in identifying or locating the absent parent, in obtaining support payments or any other payments or property and in establishing paternity. If the parent refuses to cooperate, the parent is not eligible unless it is determined under s. HSS 215.03 that there is good cause for the parent to refuse cooperation.

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

HSS 201.19 JOBS participation requirement. (1) **REGISTRATION.** All persons in an AFDC group shall register for JOBS as a condition of eligibility for AFDC. A properly witnessed signature under s. HSS 201.05 (5) on the application for AFDC shall constitute JOBS registration for each person included in the AFDC group at the time of application or added to the AFDC

group at a later date. Participation in JOBS shall not be required of an AFDC recipient who is:

(a) The primary caretaker relative who personally provides care for a child under 2 years of age living in the home except that, if the primary caretaker relative is under the age of 20 and has not completed high school or received a high school equivalency diploma, he or she shall participate in educational activities described under 45 CFR 250.44 (a) (1). Only one person in an AFDC group may be exempt for this reason;

(b) Age 60 or older;

(d) Except as provided in sub. (1m), working for wages at least 30 hours per week in a job expected to last a minimum of 30 days and his or her hourly earnings are at least equal to the legally established minimum wage for the type of job held. This may include self-employment if the recipient's monthly net earnings divided by the lesser of the state or federal minimum wage equal or exceed 120 hours a month;

(e) Under age 16, or age 16 or age 17 and enrolled as a full-time student in an elementary or secondary school or a vocational or technical school that is equivalent to a secondary school. A student shall be considered enrolled if the student has not graduated, has not been legally excused from school attendance by the school board, or has an excused absence for no more than 30 days due to a physical or mental condition;

(f) An 18-year old full-time student in a high school, or in the equivalent level of vocational or technical training, who is reasonably expected to complete the program before reaching age 19, or, an 18-year old enrolled in and regularly attending a high school program leading to a high school diploma;

(g) Incapacitated, ill or injured with a medically-determined physical or mental impairment which prevents the person from temporarily or permanently participating in JOBS activities or holding a job. This shall include a period of recuperation after childbirth if prescribed by the woman's physician. Unless the medical condition is determined by a physician to be permanent, the person shall be reexamined by a physician annually or on or before the date a physician stated the incapacity is expected to cease, whichever comes first. Any person who is exempt from participation in JOBS on the basis of incapacitation for more than 60 days shall be referred to the department's division of vocational rehabilitation;

(h) Living in a county without a JOBS office or living so far from the JOBS office that he or she cannot get to it within one hour with available transportation. The time required to take children to and from child care shall not be included in this computation. Available transportation means transportation which is available to the person on a regular basis and includes public transportation and private vehicles;

(i) Needed, as determined by the agency, to remain at home to look after another member of the household because of that person's medical condition;

(j) Medically-verified pregnant and in the second or third trimester of pregnancy;

(k) Participating in learnfare under s. HSS 201.195; or

(l) A full-time volunteer serving under the Volunteers in Service to America (VISTA) program, pursuant to Title I of the Domestic Volunteer Service Act of 1973, as amended, 42 USC 4951 to 4958.

(1m) **MANDATORY PARTICIPANT.** A recipient who is determined to be a mandatory participant under sub. (1) remains a mandatory participant even if, subsequent to that determination, he or she begins to attend school or work at a job and would otherwise be considered exempt because he or she is attending school or is employed. Dropping out of school, terminating employment or reducing earnings without good cause shall result in the recipient being subject to sanction under sub. (2) unless another exemption reason applies.

emerg am 3/1/96

emerg am ejs 3/1/96

(2) **SANCTION FOR FAILURE TO PARTICIPATE.** (a) Upon receiving written notice from the JOBS agency that a registrant who is not exempt under sub. (1) has failed without good cause to participate in the program and determining that application of a sanction is appropriate, the agency shall:

1. Change the JOBS status of the registrant from mandatory to sanction; and

2. Send written notice to the primary person which specifies:

a. That AFDC benefits are terminated or reduced because the registrant did not have good cause for failing to participate in JOBS and gives a specific reason for the action;

b. The beginning date, length of sanction and person or persons in the AFDC group to whom the sanction applies; and

c. The registrant's right to apply for a fair hearing in accordance with ch. HSS 225.

(b) If the registrant does not request a fair hearing or if, after a fair hearing has been held, the hearing officer finds that the registrant has failed to participate in JOBS without good cause, the agency shall:

1. Deny aid in an AFDC unemployed parent case as follows:

a. In a case in which both caretaker relatives are required to participate in JOBS, remove from the grant the mandatory participant who refuses to participate or accept employment without good cause or who terminates employment or reduces earnings without good cause, but continue to provide aid to each remaining eligible child and adult in the household if the other caretaker relative is participating in JOBS; and

b. In a case in which only one caretaker relative is required to participate in JOBS, remove from the grant the mandatory participant who refuses to participate or accept employment without good cause or who terminates employment or reduces earnings without good cause and the other caretaker relative who is not participating, but continue to provide aid to each eligible child in the household. If the other caretaker relative who meets an exemption reason under sub. (1) continues to be exempt or volunteers to participate in JOBS, he or she shall be included in the grant;

2. In an AFDC-regular case, deny aid to any nonexempt caretaker relative or nonexempt dependent child who refuses to participate in JOBS or accept employment without good cause or who terminates employment or reduces earnings without good cause, but continue to provide aid to each remaining eligible child and adult in the household; and

3. If application of a sanction would otherwise close the case because the sanctioned individual is a dependent child and there are no other eligible children in the household, continue benefit payments to meet the needs of the caretaker relative or relatives as long as the case continues to meet all other eligibility criteria.

(c) 1. A sanction applied under par. (b) shall be effective:

a. Following the first occurrence of nonparticipation, until the failure to comply ceases. If the sanctioned individual becomes exempt under sub. (1) before the failure to comply ceases, the sanction shall no longer apply as of the date he or she becomes exempt;

b. Following the second occurrence of nonparticipation, until the failure to comply ceases or for 3 calendar months, whichever is longer. If the sanctioned individual becomes exempt under sub. (1) during the sanction period, the sanction shall no longer apply as of the first day of the month following the end of the 3-month minimum sanction period or, if the individual becomes exempt after the 3-month minimum sanction period, as of the date the individual becomes exempt; or

c. Following the third and each subsequent occurrence of nonparticipation, until the failure to comply ceases or for 6 calendar months, whichever is longer. If the sanctioned individual becomes exempt under sub. (1) during the sanction period, the sanction shall no longer apply as of the first day of the month following the end of the 6-month minimum sanction period or, if the individ-

ual becomes exempt after the 6-month minimum sanction period, as of the date the individual becomes exempt

2. In this paragraph, "failure to comply ceases" means that the sanctioned individual first contacts the agency and agrees to participate and then returns to a JOBS program activity and satisfactorily participates for 2 weeks. If no JOBS program activity is available, the sanction terminates as of the day the sanctioned individual agreed to participate.

(d) If the sanctioned individual leaves the household, the sanction continues for that individual. The agency shall review eligibility for the remaining household members and shall make any necessary adjustments to the grant immediately. The sanction period shall run concurrently with other reasons of ineligibility of the individual or the other household members. If, during the sanction period, other circumstances of the household change, the agency shall review eligibility for the household.

(e) The sanction period under par. (c) shall include any other period during which the sanctioned AFDC unemployed parent group, nonexempt primary person or nonexempt dependent child is ineligible for AFDC.

(f) The agency shall send written notice to a sanctioned individual as follows:

1. After 2 months to an individual being sanctioned for the first refusal or failure to cooperate, stating that the sanctioned individual may immediately end the sanction by contacting the agency and agreeing to participate in JOBS or to accept employment;

2. After 2 months to an individual being sanctioned for the second refusal or failure to cooperate, stating that the sanctioned individual may end the sanction after a period of 3 months from the beginning of the sanction has elapsed by contacting the agency and agreeing to participate in JOBS or to accept employment; and

3. After 5 months to an individual being sanctioned for the third or any subsequent refusal or failure to cooperate, stating that the sanctioned individual may end the sanction after a period of 6 months from the beginning of the sanction has elapsed by contacting the agency and agreeing to participate in JOBS or to accept employment.

(g) The agency shall end the sanction pursuant to par. (c) when the JOBS administrative agency contacts the agency and indicates that the registrant is cooperating with the JOBS agency. The agency shall add the individual who had been sanctioned to the grant from the date he or she agrees to participate if the conditions under par. (c) 2. and all other eligibility factors are met. The agency shall change the status of the individual from sanction to mandatory.

(3) **PARTICIPATION IN EDUCATION AND TRAINING ACTIVITIES AND PAYMENT FOR CHILD CARE.** A recipient who is not a mandatory JOBS participant under sub. (1) who requests payment for child care expenses under s. HSS 206.10 (2) in order to participate in education and training activities under s. HSS 206.15 shall volunteer for the JOBS program. The JOBS program shall pay the recipient's child care expenses if:

(a) The child care meets the criteria for approval under s. HSS 206.10 (2); and

(b) The recipient's education and training activities meet the criteria for approval under s. HSS 206.15 and are included in the recipient's employability plan under s. HSS 206.09 (3).

History: Cr Register, April, 1983, No. 328, eff. 5-1-83; emerg. r. and recr. eff. 6-1-86; r. and recr. Register, November, 1986, No. 371, eff. 12-1-86; emerg. am. (1) (intro.), (i) and (j), cr. (1) (k), eff. 11-1-87; am. (1) (intro.), (a), (i) and (j), cr. (1) (k), r. (1) (c), Register, December, 1988, No. 396, eff. 1-1-89; emerg. am. (1) (intro.) to (b), (g), (h), (j), (2) (a) (intro.) to 2. a., (c) 1. and 2., r. and recr. (2) (b) and (d), cr. (2) (c) 3., (f) and (g), eff. 7-1-89; emerg. r. and recr. (2) (d), eff. 8-29-89; am. (1) (intro.) (b), (g), (h), (j) and (k), (2) (a) (intro.) to 2., (c) 1. and 2., cr. (1) (l), (2) (a) 2. d., (c) 3., (f) and (g), r. and recr. (2) (b) and (d), Register, February, 1990, No. 410, eff. 3-1-90; correction in (2) (a) 2. c. made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1995, No. 470; am. (1) (a), (d), (2) (a) (intro.), 2. b. and c., (b) 1. a. and b., 2. and (g), cr. (1m) and (3), r. (2) (a) 2. d., r. and recr. (2) (c), Register, February, 1995, No. 470, eff. 3-1-95.

*Emerg. cr.
(2 m)
ebb. 3/1/90*

HSS 201.195 Learnfare. (1) AUTHORITY AND PURPOSE. This section is adopted under the authority of s. 49.50 (2) and (7) (h) 1. and 1m., Stats., to provide rules for the administration of learnfare, a program that requires that all teenagers who are included in a grant under s. 49.19, Stats., who are parents or who are residing with a natural or adoptive parent and who have not graduated from high school or received a high school equivalency diploma attend school to meet JOBS participation requirements, and that all preteens living in a pilot county designated by the department under s. 49.50 (7) (j), Stats., who are included in a grant under s. 49.19, Stats., who are parents or who are residing with a natural or adoptive parent and who have not graduated from high school or received a high school equivalency diploma attend school to meet JOBS participation requirements.

(2) APPLICABILITY. This section applies to:

- (a) All school districts and all county and tribal economic support agencies;
- (b) All teenagers included in an AFDC group who are parents or who are residing with a natural or adoptive parent and all AFDC groups which include a teenager who is a parent or who is residing with a natural or adoptive parent; and
- (c) In a pilot county designated by the department under s. 49.50 (7) (j), Stats., all preteens included in an AFDC group who are parents or who are residing with a natural or adoptive parent and all AFDC groups which include a preteen who is a parent or who is residing with a natural or adoptive parent as follows:

1. Beginning on the first day of the fall 1994 school term, as defined in s. 115.001 (12), Stats., the preteen is 10 to 12 years of age;
2. Beginning on the first day of the fall 1995 school term, as defined in s. 115.001 (12), Stats., the preteen is 8 to 12 years of age; and
3. Beginning on the first day of the fall 1996 school term, as defined in s. 115.001 (12), Stats., the preteen is 6 to 12 years of age.

(3) DEFINITIONS. In this section:

- (a) "Case management" means intervention for the purpose of assessing family needs, developing a family service plan and assisting in the implementation of the plan for the purpose of furthering regular school attendance by the preteen or the teenager.
- (b) "Ceased to attend" means that the preteen or the teenager has 20 consecutive full school days of unexcused absences.
- (c) "Dropout" means a preteen or a teenager who has ceased to attend school, has not graduated from high school or received a high school equivalency diploma and does not have an acceptable excuse under s. 118.15 (1) (b) to (d) or (3), Stats.
- (d) "Excused absence" means that the reason for the absence meets the school district's definition of a valid reason for the preteen or the teenager not to attend school.
- (e) "Full day" means the entire school day as defined by the school district.
- (f) "High school equivalency diploma" means a certificate of educational achievement issued under s. 115.29 (4), Stats., and ch. PI 5 following completion of a course of study.
- (g) "Learnfare" means the program established under s. 49.50 (7), Stats., which requires that all preteens living in a pilot county designated by the department under s. 49.50 (7) (j), Stats., and all teenagers attend school to meet JOBS participation requirements.
- (h) "Monthly attendance requirement" means that the preteen or the teenager has no more than 2 full days of unexcused absences in a calendar month.
- (i) "Preteen" means a person who is 6 to 12 years of age, lives in a pilot county as provided under s. 49.50 (7) (j), Stats., is a member of an AFDC group and is a parent or residing with his or her natural or adoptive parent.

(j) "School" has the meaning prescribed in s. 49.50 (7) (a), Stats., namely, any one of the following:

1. A public school, as described in s. 115.01 (1), Stats.;
2. A private school, as defined in s. 115.001 (3r), Stats.;
3. A technical college pursuant to a contract under s. 118.15 (2), Stats.; or
4. A course of study meeting the standards established by the state superintendent of public instruction under s. 115.29 (4), Stats., for the granting of a declaration of equivalency of high school graduation.

(k) "School attendance officer" has the meaning prescribed in s. 118.16 (1) (b), Stats., namely, an employe designated by the school board to deal with matters relating to school attendance and truancy.

(l) "School district" means the territorial unit for school administration as specified in s. 115.01 (3), Stats.

(m) "Teenager" means a person who is 13 to 19 years of age, a member of an AFDC group and a parent or residing with his or her natural or adoptive parent.

(n) "Unexcused absence" means that the reason for the absence does not meet the school district's definition of a valid reason for the preteen or the teenager not to attend school.

(4) PARTICIPATION IN LEARNFARE. (a) A preteen or a teenager shall attend school full or part time except that a preteen or a teenager who has graduated from high school or received a high school equivalency diploma is exempt from the school attendance requirement under this section.

(b) A preteen or a teenager who is required to participate in learnfare under this section shall be considered to be meeting the school attendance requirements under the following circumstances:

1. A preteen or a teenager who is required to attend school shall be considered to have met the attendance requirement by having fewer than 10 full days of unexcused absences from school during the most recently completed school semester.

2. A preteen or a teenager who has 10 or more full days of unexcused absences from school during the most recently completed school semester or who was a dropout and returned to school during the semester under review or who is unable to verify previous attendance shall comply with the monthly attendance requirement.

3. If the school that the preteen or the teenager is currently enrolled in does not keep daily attendance records, the preteen or the teenager shall be considered to be meeting the school attendance requirement if the school verifies the continuing enrollment of the preteen or the teenager in the semester under review.

4. The preteen or the teenager is not required to comply with the monthly attendance requirements when the school the preteen or the teenager is attending is not in regular session, including during the summer.

(c) The preteen, teenager or the primary person shall cooperate in providing information needed to verify enrollment information or good cause under sub. (7). If none of these individuals cooperates, the preteen or the teenager shall be ineligible for aid as provided under s. HSS 201.22.

(d) A teenager who is required to attend school but has good cause under sub. (7) for not attending may be referred by the agency to the JOBS program.

(e) The preteen or the teenager who is a dropout or the primary person shall notify the agency of the preteen's or teenager's non-attendance at school in compliance with s. HSS 201.07.

(5) AGENCY RESPONSIBILITIES. (a) The agency shall review attendance information at all initial eligibility determinations and at all reviews under s. HSS 201.09 (3).

(b) The agency shall inform the primary person that the signature of the parent, guardian, caretaker or pupil on the AFDC ap-

plication for initial eligibility or eligibility redetermination constitutes permission for the release of school attendance information by the school district.

(c) 1. The agency shall request information from the school attendance officer in the preteen's or the teenager's school district about the preteen's or teenager's attendance in the school district's most recently completed semester of attendance.

2. If information about the preteen's or the teenager's previous school attendance is not available or cannot be verified, the agency shall require the preteen or teenager to meet the monthly attendance requirement for one semester or until the information is obtained.

(d) The agency shall use the attendance information provided by a school to verify attendance for a preteen or a teenager.

(e) The agency shall review a preteen's or a teenager's claim that he or she has a good cause reason under sub. (7) for not attending school, and shall determine if a preteen should be referred to case management under sub. (8) or if a teenager excused under sub. (7) from attending should be referred to JOBS.

(f) The agency shall administer day care and transportation funds available to parents under age 20 under s. 49.50 (7) (e), Stats. Payment for the cost of transportation to and from the child care provider shall be in the amount equal to the cost of transportation by the most appropriate means as determined by the department or the agency.

(6) SCHOOL DISTRICT RESPONSIBILITIES. (a) The school attendance officer shall provide information to the agency about the attendance of a preteen or a teenager who is enrolled in a public school in the school district within 5 working days after the date of receipt of the written request from the agency.

(b) The requirement under 20 USC 1232g and s. 118.125 (2), Stats., that written consent be given for a school district to make available the attendance records of a pupil shall be met in the case of a preteen or a teenager in an AFDC group by the signature of the parent, guardian, caretaker or pupil on the AFDC application for initial eligibility or eligibility redetermination.

(c) The school district shall define how many hours of attendance count as a full day and shall provide that definition, upon request, to the agency.

(d) In reporting attendance, the school district may not add partial day absences together to constitute a full day of absence.

(7) GOOD CAUSE CRITERIA. (a) A preteen or a teenager who is required to attend school to meet the learnfare participation requirements under s. 49.50 (7) (g), Stats., shall comply except when there is good cause which shall be demonstrated by any of the following circumstances:

1. The preteen or a teenager is the caretaker of a child who is less than 45 days old;

2. The preteen or the teenager is the caretaker of a child who is 45 to 89 days old and child care for the preteen's or the teenager's child is required but:

- a. There is no on-site day care at the school;
- b. The school has no home instruction program; or
- c. The preteen or the teenager has a physician's excuse;

3. The preteen or the teenager is the caretaker of a child who is 90 or more days old and the preteen or the teenager has a physician's excuse;

4. Child care services for the preteen's or the teenager's child are necessary for the preteen or the teenager to attend school but child care licensed under s. 48.65, Stats., certified under s. 48.651, Stats., or established under s. 120.13 (14), Stats., is not available. Child care shall be considered unavailable if there is no space available for the child in day care licensed under s. 48.65, Stats., certified under s. 48.651, Stats., or established under s. 120.13 (14), Stats., within reasonable travel time and distance, or if the cost of the care where space is available exceeds the maximum rate established by the county under s. 46.98 (4), Stats.;

5. Transportation to and from child care is necessary for the preteen's or the teenager's child and there is no public or private transportation available;

6. The preteen or the teenager is temporarily excused from school attendance by the school district under s. 118.15 (3), Stats.;

7. The preteen or the teenager is prohibited by the school district from attending school and an expulsion under s. 120.13 (1), Stats., is pending. This exemption no longer applies once the preteen or the teenager has been formally expelled;

8. The preteen or the teenager is unable to attend school because he or she was expelled under s. 120.13 (1), Stats., and another school is not available because:

a. There is no public or private school within reasonable travel time or distance which will accept the preteen or the teenager;

b. There is no public or private transportation available to another school; or

c. There is a public or private school which will accept the preteen or the teenager but the tuition charge is prohibitive and the preteen's or the teenager's school district refuses to pay the tuition; or

9. The preteen or the teenager failed to attend school for one or more of the following reasons:

a. Illness, injury or incapacity of the preteen or the teenager or a member of the preteen's or the teenager's family. In this subparagraph, "member of the preteen's or the teenager's family" means a spouse, child, parent or other dependent relative who lives with the preteen or the teenager;

b. Court-required appearance or temporary incarceration;

c. Medical or dental appointments for the preteen or the teenager or his or her child;

d. Death of a relative or a friend;

e. Observance of a religious holiday;

f. Family emergency;

g. Breakdown in transportation;

h. Suspension; or

i. Any other circumstance beyond the control of the preteen or the teenager.

(b) Additional good cause criteria may be defined by the department through the fair hearing process.

(8) CASE MANAGEMENT. The first time that a preteen or a teenager fails to meet the attendance requirements under sub. (4), the agency shall send a written notice offering case management services to the individual and his or her family. The notice shall include information regarding the components of case management services including assessment, family service plan development and implementation and monitoring of the family service plan.

(9) CRITERIA FOR APPLYING A SANCTION. (a) 1. Except as provided under subd. 2., a preteen who fails to meet the attendance requirements under sub. (4) without good cause under sub. (7) may be sanctioned under sub. (10) if all of the following apply:

a. The agency has offered case management services to the preteen and his or her family;

b. The primary person fails or refuses to respond to or rejects an offer of case management or fails or refuses to participate in an assessment or the development of a family service plan, or the preteen or the preteen's family fails or refuses to engage in any activities identified by the case manager in the family service plan as being necessary to improve the preteen's school attendance; and

c. The preteen, without first complying with attendance requirements under sub. (4) (b) 1., fails without good cause under sub. (7) to meet the attendance requirements under sub. (4) (b) 2. in a subsequent month.

2. No sanction may be imposed and any existing sanction shall be removed in the next possible payment month in which a sanction is not already being applied for the preteen under any of the following circumstances:

a. The agency has not made a case manager available to a preteen who has failed to meet the attendance requirements under sub. (4);

b. The preteen or preteen's family is unable to comply with the family service plan because a service identified is not available and no appropriate alternative service as determined by the case manager is available; or

c. A good cause reason under sub. (7) (a) 9. precluded the preteen or preteen's family from cooperating under subd. 1. b.

(b) A teenager who fails to meet the attendance requirements under sub. (4) without good cause under sub. (7) may be sanctioned under sub. (10) as long as he or she continues to do so or a good cause reason under sub. (7) is verified.

(10) SANCTIONS FOR NOT PARTICIPATING. (a) *Notice.* Upon determining that a sanction is proper under sub. (9), the agency shall send written notice to the primary person which specifies:

1. That the preteen or the teenager will be removed from the AFDC grant in the next possible payment month because the preteen required to attend school has failed to meet attendance requirements and has failed to participate in case management or the teenager required to attend school has failed to meet attendance requirements. If the preteen or the teenager is the only child in the grant, the notice shall also state that the grant will be reduced and only a payment to meet the needs of the caretaker will be made as long as the case continues to meet all other AFDC eligibility criteria;

2. The beginning date of the sanction, and the preteen or the teenager to whom the sanction applies;

3. How the primary person can contact the school district for information regarding the children at risk program under s. 118.153, Stats.; and

4. The preteen's, teenager's or primary person's right to request a fair hearing under par. (b).

(b) *Fair hearing.* The preteen, teenager or primary person may request a fair hearing in accordance with s. 49.50 (8), Stats., and ch. HSS 225 on the agency's determination that a sanction is proper under sub. (9).

(c) *Failure to meet monthly attendance requirement.* If the preteen, teenager or primary person does not request a fair hearing under par. (b) or if, after a fair hearing has been held, the hearing officer finds that a sanction is proper under sub. (9), the agency shall discontinue or deny aid to the preteen or the teenager in the next possible payment month in which a sanction is not already being applied for the preteen or the teenager. If application of a sanction would otherwise close the case because the preteen or the teenager is the only eligible child in the grant, benefit payments to meet the needs of the caretaker only shall continue as long as the case continues to meet all other AFDC eligibility criteria.

(d) *Effective period of sanction for failure to meet monthly attendance requirement.* A sanction applied under par. (c) shall be effective for one month for each month the preteen fails to meet the monthly attendance requirement and fails to participate in case management or the teenager fails to meet the monthly attendance requirement.

(e) *Dropping out of school.* 1. If the preteen, teenager or primary person does not request a fair hearing under par. (b) or if, after a fair hearing has been held, the hearing officer finds that the preteen is a dropout and has failed to participate in case management or the teenager is a dropout, the agency shall discontinue or deny aid in the next possible payment month after the preteen or the teenager dropped out to the preteen or the teenager who has ceased to attend school. If application of a sanction would otherwise close the case because the preteen or the teenager is the only eligible child in the grant, benefit payments to meet the needs of the caretaker only shall continue as long as the case continues to meet all other AFDC eligibility criteria.

2. If the fair hearing decision finds against the preteen or the teenager or if the preteen or the teenager failed to comply with the reporting requirements under s. HSS 201.07, the month or months the preteen was included in the grant but did not meet the school attendance requirements and failed to participate in case management or the teenager was included in the grant but did not meet the school attendance requirements shall be considered an overpayment under s. HSS 201.30 (3) (c).

(f) *Effective period of sanction for dropping out of school.* A sanction applied under par. (e) shall be effective for a preteen who is a dropout and who has failed to participate in case management until the preteen provides verification from the case manager that he or she is no longer failing to participate in case management, provides written verification from the school district that he or she has re-enrolled and has met the monthly attendance requirement under sub. (4) for one calendar month or a good cause reason under sub. (7) for failing to attend school is verified. In this paragraph, "no longer failing to participate in case management" means that the preteen's family accepts the offer of case management, participates in an assessment and development of a family service plan and begins to engage in the activities identified as being necessary to improve the preteen's school attendance. A sanction applied under par. (e) shall be effective for a teenager who is a dropout until the teenager provides written verification from the school district that he or she has re-enrolled and has met the monthly attendance requirement under sub. (4) for one calendar month or a good cause reason under sub. (7) is verified. For either a preteen or a teenager, any month in which school is in session at least 10 days during that month may be used to meet the attendance requirement under sub. (4). This includes attendance at summer school. The sanction shall be removed in the next possible payment month.

History: Emerg. cr. eff. 11-1-87; emerg. r. and recr. eff. 12-4-87, except (7) (a) 1. to 3. and (b), eff. 3-1-88 and (8), eff. 2-1-88; emerg. am. (8) (c) (e) and (f), eff. 6-1-88; emerg. am. (1), (2) (intro.), (3) (j), (4) (b) 1. and 2., (6) (a) and (b), (8) (c) and (e) 1., renum. (4) (c) and (d), (5) (b) to (e) to be (4) (d) and (e), (5) (c) to (f) and am. (5) (c) 1., cr. (3) (hm), (4) (c), (5) (b) and (6) (c), eff. 9-1-88; cr. Register, December, 1988, No. 396, eff. 1-1-89; am. (1), (4), (5) (c) to (f), (6) (a), (b), r. and recr. (2), (3), (7), renum. (8) to be (10) and am. (a) (intro.), 1., 2., 4., (b) to (f), cr. (8), (9), Register, September, 1994, No. 465, eff. 10-1-94; correction in (10) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1994, No. 469.

HSS 201.198 Parental and family responsibility demonstration project. (1) **AUTHORITY AND PURPOSE.** This section is adopted under the authority of ss. 49.25 (7) and 49.50 (2), Stats., to provide rules for the administration of the parental and family responsibility demonstration project, in pilot counties, for applicants for and recipients of AFDC who are under the age of 20 and first-time parents, and for their spouses or adjudicated fathers of their children who are living with them and non-custodial parents.

(2) **APPLICABILITY.** This section applies to the department, to county economic support agencies participating in the project, to PFR administrative agencies and to AFDC applicants and recipients and noncustodial parents living in a pilot county who are required to participate in the parental and family responsibility demonstration project.

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

(a) "Adjudicated father" means a parent whose paternity of a child is established as provided under s. HSS 201.05 (4) (b) 1. to 3.

(b) "Case management" means the client-centered, goal-oriented process for assessing the needs of a PFR participant and his or her family for education on parenting, human growth and development, family planning, independent living skills, education and employment training and supportive services and assisting the PFR participant in obtaining those services.

(c) "Economic support agency" means the county department of social services or human services, or a tribal agency which administers economic support programs including AFDC.

(d) "Non-custodial parent" means an individual living in a pilot county whose child is deprived by reason of the continued absence of that parent from the home under s. 49.19 (1) (a) 1., Stats., and who is required to participate in the parental and family responsibility demonstration project under s. 767.078 (1) (d), Stats.

(e) "Parental and family responsibility demonstration project" or "PFR" means the pilot program under s. 49.25, Stats., designed to promote and preserve families by encouraging couples to delay having additional children and removing disincentives in the welfare system that serve as barriers to young couples marrying and working.

(f) "PFR administrative agency" means a public or private organization having a contract with the department to provide PFR services to AFDC recipients referred to the agency by economic support agencies.

(g) "PFR participant" means an AFDC recipient who lives in a pilot county and has been assigned to a PFR demonstration group by the department.

(h) "Spouse" means a person who is legally married as recognized under state law.

(4) DEPARTMENT RESPONSIBILITIES. (a) *Selection of pilot counties.* The department shall select the counties to participate in the demonstration project in accordance with s. 49.25 (1), Stats.

(b) *Provision of case management services.* The department shall contract with the county department under s. 46.215, 46.22 or 46.23, Stats., in each county selected to be a pilot county, to provide case management services to persons subject to PFR and to persons subject to orders under s. 767.078 (1) (d), Stats. The county department may contract with other agencies for the provision of these services.

(c) *Assignment to PFR.* The department shall randomly assign an applicant or recipient who lives in a pilot county and who meets the eligibility criteria for PFR participation under sub. (5) to either a demonstration group or a control group.

(5) PARTICIPATION IN PFR. (a) *Who is required to participate.* Except as provided in par. (c), an individual shall participate in PFR if he or she is living in a pilot county, is assigned to the demonstration group under sub. (4) (c), receives AFDC on behalf of a dependent child or for himself or herself on or after the date the demonstration project begins, and is:

1. A woman who is under the age of 20, has no children of her own and has entered the third trimester of pregnancy, if that third trimester of pregnancy began after June 30, 1994;

2. A woman who is under the age of 20, is not pregnant and is the mother of only one child, if that child was born after June 30, 1994;

3. A woman who is under the age of 20, is not pregnant and is the mother of more than one child, if the children were all born as a result of one pregnancy and were born after June 30, 1994;

4. A man who is under the age of 20 and is the father of only one child living, if that child was born after June 30, 1994, and, if the man is married and living with his spouse, whose spouse is not pregnant;

5. A man who is under the age of 20 and is the father of more than one child, if the children were all born as a result of one pregnancy and were born after June 30, 1994, and, if the man is married and living with his spouse, whose spouse is not pregnant; or

6. A man who has been adjudicated to be the father of a child of a woman subject to PFR under subd. 1., 2. or 3., if the man is living with the woman.

(b) *Who may be required to participate.* 1. A court may refer a non-custodial parent of a child whose custodial parent is required to participate in the PFR project to the PFR administrative agency to participate in PFR employment training and education activities under s. 767.078 (1) (d), Stats.

2. The PFR administrative agency shall report to the court on the comprehensive service plan that is developed for the non-cus-

todial parent under sub. (11) (c) and on the parent's progress in following the plan. The agency may recommend to the court modifications in the order under s. 767.078 (1) (d) 1., Stats., based on the non-custodial parent's employment, progress in following the plan or on the PFR administrative agency's evaluation of the non-custodial parent's needs.

(c) *Who is not required to participate.* An AFDC group is not required to participate in PFR if:

1. The parent in a single-parent AFDC case is an SSI recipient or an alien who does not meet the definition of a qualifying alien under s. HSS 201.16; or

2. Both parents in a two-parent AFDC case are living in the home and are SSI recipients or aliens who do not meet the definition of a qualifying alien under s. HSS 201.16.

(d) *Inclusion of a stepparent in the AFDC group.* An AFDC applicant or recipient who is required to participate in the PFR project may choose to have the needs and income of his or her spouse who is the stepparent of the PFR participant's child or children and who is living in the household taken into consideration and included in the assistance unit as an AFDC recipient. If the stepparent is included in the AFDC grant, he or she shall participate in the PFR project.

(e) *Continuing participation.* An AFDC recipient required to participate in PFR shall continue in the demonstration project as long as he or she lives in a pilot county and the program is in effect, unless the family leaves AFDC for at least 36 consecutive months. An AFDC recipient who was required to participate in PFR, who continues to live in a pilot county and who becomes eligible for AFDC again after having been off AFDC for less than 36 consecutive months shall again be subject to the PFR provisions.

(6) ELIGIBILITY FACTORS SPECIFIC TO PFR. (a) If the parents are married, neither member of the couple is required to meet the AFDC-Unemployed parent eligibility requirements under s. HSS 201.14 (3) (c), (d) and (e).

(b) A stepparent who is the spouse of a PFR participant and who is included in the AFDC group under sub. (5) (d) shall have his or her needs and income taken into consideration in determining the AFDC benefit, shall receive the same earned income disregards as the mandatory PFR participant and shall participate in PFR case management activities.

(7) DEDUCTIONS FROM EARNED INCOME. Each PFR participant who is included in an AFDC group and has earned income shall receive the following earned income disregards:

(a) Instead of the amounts provided in s. HSS 201.28 (15) (b) 1 and 2, \$200 plus an amount equal to 1/2 of the remaining earned income shall be deducted from the earned income in determining the AFDC benefit amount and in determining AFDC eligibility, except that the \$90 standard work expense deduction under s. HSS 201.28 (15) (b) 1. shall be included in the eligibility test under s. HSS 201.28 (16) (a) for a participant who did not receive AFDC benefits in one of the 4 months before he or she applied for AFDC; and

(b) 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.

(8) ADJUSTMENT OF GRANT FOR ADDITIONAL FAMILY MEMBERS. (a) When a child or a child's parent is a member of a PFR family, the economic support agency shall adjust the grant amount for additional AFDC group members as provided under s. 49.25 (4), Stats., as follows:

1. If the child is or children are born or adopted after the family includes either one child of that parent or more than one child who were all born as a result of one pregnancy, the grant amount increase when a second child is born or adopted shall be \$38 for a single child or \$38 for one of the children and a full payment as

provided under s. 49.19 (11) (a), Stats., for the other children who are all born as a result of one pregnancy; and

2. No grant amount increase may be provided to a family participating in PFR when a third or subsequent child is born or adopted.

(b) The agency shall add a pregnancy allowance to the assistance standard under s. 49.19 (11) (a), Stats., for a PFR participant as appropriate under s. HSS 201.30 (3).

(9) ECONOMIC SUPPORT AGENCY RESPONSIBILITIES. In a PFR county, the economic support agency shall:

- (a) Administer the PFR demonstration project;
- (b) Determine who is required to participate in PFR;
- (c) Refer recipients to the PFR administrative agency for case management services;

(d) Notify each recipient in writing of the referral to the PFR administrative agency. The notice shall include information regarding program activities, availability of supportive services and the sanctions a participant may incur for failure to cooperate with his or her comprehensive service plan and shall direct the recipient to send a copy of his or her school or work schedule to the PFR administrative agency. The notice shall also inform the participant that no sanctions for failure or refusal to cooperate with PFR case management services will be applied if the participant is:

1. Age 60 or older;
2. Incapacitated, ill or injured with a medically-determined physical or mental impairment which prevents the person from temporarily or permanently participating in PFR activities or holding a job. This shall include a period of recuperation after childbirth if prescribed by the woman's physician;
3. Living so far from the PFR administrative agency that he or she cannot get to it within one hour with available transportation. The time required to take children to and from child care shall not be included in this computation. In this subdivision, "available transportation" means transportation which is available to the person on a regular basis and includes public transportation and transportation by private vehicle;
4. Needed, as determined by the economic support agency, to remain at home to look after another member of the household because of that person's medical condition;
5. A full-time volunteer serving under the Volunteers in Service to America (VISTA) program, pursuant to Title I of the Domestic Volunteer Service Act of 1973, as amended, 42 USC 4951 to 4958;
6. An SSI recipient who is the parent of a dependent child included in an AFDC group required to participate in PFR under sub. (5) (a); or
7. An alien who does not meet the definition of qualifying alien under s. HSS 201.16 who is the parent of a dependent child included in an AFDC group required to participate in PFR under sub. (5) (a).

(10) ENROLLMENT IN PFR CASE MANAGEMENT. (a) *Initial appointment.* Upon receiving a referral from the economic support agency, the PFR case manager shall schedule an initial appointment with the participant. The PFR case manager shall schedule the appointment at a time when it will not interfere with the participant's school or work schedule or required learnfare or JOBS program activities if the participant has provided a copy of his or her school or work schedule to the PFR case manager. The PFR case manager shall send written notice of the initial appointment to the participant at least 7 calendar days before the appointment date. The notice shall:

1. Ask the participant to provide a copy of his or her school or work schedule to the PFR case manager if not already provided;
2. Clearly state that if the participant is unable to attend, he or she shall contact the PFR case manager before the scheduled appointment date to reschedule the appointment; and

3. Inform the participant that a contact with the economic support agency is not sufficient for this purpose.

(b) *Rescheduling the initial appointment.* 1. The PFR case manager shall reschedule the initial appointment upon request of the participant and shall send a written notice to the participant confirming the new appointment.

2. If the participant fails to report for the initial appointment or fails to reschedule the first appointment, the PFR case manager shall send a second appointment notice which shall serve as notice to the participant that conciliation under sub. (12) is available if requested.

(c) *Failure to keep initial appointment.* The PFR case manager shall refer a participant back to the economic support agency for sanction under s. HSS 201.19 (2) after the participant fails to respond to 2 initial appointment notices, the second of which constitutes the offer of conciliation under sub. (12), without good cause as determined under sub. (12) (c).

(11) CASE MANAGEMENT. (a) *Orientation.* The PFR case manager shall orient the PFR participant to the PFR program components and requirements. The case manager shall provide information regarding:

1. PFR eligibility, earned income disregards and sanctions for failure to cooperate;
2. Employment, education and training opportunities available to a PFR participant;
3. Supportive services available through the PFR program such as transportation, child care and assistance with other work-related expenses to enable participants to participate in PFR;
4. Types of child care, availability and location of child care providers and information on how to select a child care provider; and
5. The PFR participant's rights, responsibilities and obligations under the PFR project.

(b) *Assessment.* Within 30 days after receiving a referral, the PFR case manager shall complete an assessment of the PFR participant's needs to determine needed services. The assessment shall take into consideration the participant's:

1. Educational background including the highest grade completed;
2. Prior training and work experience;
3. Independent living skills, including the ability to achieve financial self-sufficiency;
4. Child development and parenting skills;
5. Health and personal development;
6. Emotional self-sufficiency; and
7. Family circumstances.

(c) *Comprehensive service plan.* 1. The PFR case manager shall develop a comprehensive service plan based on the assessment under par. (b) for a participant and the PFR family to assist the parent or parents in acquiring the knowledge, skills, decision-making abilities and parenting skills he or she needs to support his or her family. Each PFR participant and the case manager shall sign the service plan. The plan shall address the following areas:

- a. Needed coordination with required learnfare or JOBS program activities;
- b. Appropriate education or training activities under s. 49.193, Stats.;
- c. Education on parenting, human growth and development, family planning and independent living skills;
- d. Referrals to social service agencies to meet social service needs such as alcohol and other drug abuse treatment; and
- e. Necessary supportive services needed to enable the PFR participant to participate in PFR activities.

2. The PFR case manager shall closely monitor the family's circumstances and shall monitor the PFR participant's com-

pliance with the service plan. The PFR case manager shall fully review the service plan with the PFR participant when needed but at least every 6 months.

3. The PFR case manager shall keep the PFR case active and provide PFR services until the AFDC case is closed for more than 30 days.

(12) CONCILIATION. (a) *Initiation of conciliation.* The PFR case manager shall initiate conciliation when a PFR participant:

1. Fails or refuses to keep an initial or review appointment; or
2. Fails or refuses to participate in PFR program activities included in his or her service plan.

(b) *Fact-finding interview.* The PFR case manager shall schedule a fact-finding interview with a participant who has failed to cooperate with his or her service plan to determine:

1. If he or she had good cause as determined under par. (c) for failure to cooperate and the participant will agree to return to program activities;
2. If he or she did not have good cause as determined under par. (c) for failure to cooperate and the participant will agree to return to program activities or will be referred for appropriate program activities; or
3. If he or she did not have good cause as determined under par. (c) for failure to cooperate and refuses to return to PFR program activities.

(c) *Good cause.* The PFR case manager shall determine if a participant had good cause for failing to keep an initial or review appointment or not cooperating with the PFR service plan. In making the determination, the PFR case manager may require the participant to provide written documentation that good cause existed. Good cause for failing to keep an initial or review appointment or not cooperating with the PFR service plan shall be any of the following circumstances:

1. A family emergency, which means the illness, injury, incapacity or death of the participant or a member of the participant's family. In this paragraph, "member of the participant's family" means a spouse, child, parent, adjudicated father of the participant's child who lives with the participant or a dependent relative who lives with the participant;
2. A court-required appearance;
3. Temporary incarceration;
4. Child care was necessary for the participant to participate, child care was unavailable and the PFR case manager was unable to provide child care or refer for alternative child care arrangements;
5. Failure to be properly notified of a PFR program activity;
6. Participation in learnfare or JOBS program activities or employment hours conflicted with PFR activities; or
7. Other circumstances beyond the control of the participant but only as determined by the PFR case manager.

(d) *Agreement.* The PFR case manager shall prepare a resolution agreement when the participant agrees to satisfactorily participate in PFR. The participant and the PFR case manager shall sign and date the resolution agreement. The agreement shall include a statement that if the participant fails to adhere to the agreement within 30 days after signing it, the PFR case manager may refer him or her to the economic support agency for sanction without another fact-finding interview.

(13) SANCTIONS FOR NOT COOPERATING. (a) *Notice.* 1. Upon receiving notice from the PFR case manager that a sanction should be applied and determining that application of a sanction is appropriate, the economic support agency shall send written notice of the sanction to the primary person and the PFR case manager. The notice shall specify:

a. That the person who has failed to participate will be removed from the AFDC grant in the next possible payment month;

b. That the primary person has a right to request a fair hearing as provided under s. HSS 201.11; and

c. That the sanction will continue until the participant cooperates. In this subparagraph, "cooperates" means that the participant contacts the PFR case manager and resumes participating in PFR activities. The PFR case manager shall provide the PFR participant with the opportunity to resume participating in PFR activities within 10 calendar days after the date the participant contacts the PFR case manager.

2. If the economic support specialist determines under subd. 1. that no sanction will be applied, the economic support specialist shall notify the PFR case manager accordingly.

(b) *Failure to cooperate with the PFR service plan.* The economic support agency shall remove a recipient from the AFDC grant for failure to cooperate with the PFR service plan without good cause.

(c) *Effective period of sanction.* 1. The economic support agency shall end a sanction when the PFR case manager contacts the agency and indicates that the PFR participant is cooperating with the service plan or the PFR participant meets an exemption reason under sub. (9) (d). The economic support agency shall add the individual who has been sanctioned to the grant from the date he or she resumes cooperation or meets an exemption reason if all other eligibility factors are met.

2. If an AFDC case assigned to PFR has been closed for more than 30 days and includes an individual who was sanctioned for failing or refusing to enroll in PFR case management or for failing or refusing to cooperate with his or her service plan, the individual shall reapply for AFDC through the economic support agency and shall be rereferred to PFR. A PFR sanction ends after the PFR case has been closed for more than 30 days and does not carry over to the new application.

History: Emerg. cr. eff. 7-1-94; cr. Register, February, 1995, No. 470, eff. 3-1-95.

HSS 201.20 Supplemental security income recipients. No person receiving SSI shall be eligible for AFDC. The income and assets of SSI recipients shall not be used when determining eligibility of others for AFDC or the amount of assistance to be granted.

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

HSS 201.21 Strikers. Any person who is a striker on the last day of the month shall not be eligible. If the primary person or the primary person's spouse is a striker, the primary person, the primary person's spouse and all children for whom the striker is legally responsible, shall not be eligible. In this section, "striker" means a person involved in a strike or concerted stoppage of work by employees or any concerted slowdown or other interruption of operations by employees.

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

HSS 201.22 Refusal to provide information. If an applicant or recipient refuses to provide information necessary to determine AFDC eligibility, the person whose eligibility depends upon this information shall not be eligible. A person shall not be found ineligible for failure to provide verification if it is not within the person's power to provide verification.

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

HSS 201.23 Social security number. A social security number shall be furnished for each person in the AFDC group or, if a person does not have one, application for a number shall be made. If there is a refusal to furnish a number or apply for a number, the person for whom there is a refusal shall not be eligible for AFDC.

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

HSS 201.24 Age. To be eligible for AFDC as a deprived child, the individual shall be under age 18 or qualify as a dependent 18-year old. In this section, "dependent 18-year old" means a person who meets either of the following sets of criteria:

(1) **FIRST SET OF CRITERIA.** Is age 18 and a full-time student in a high school or in a equivalent level of vocational or technical training and can reasonably be expected to complete the program before reaching age 19. In this subsection, "full-time student" means a student who is classified as full-time or who is carrying sufficient credits to be reasonably expected to graduate or receive a general education diploma before reaching age 19.

(2) **SECOND SET OF CRITERIA.** Is age 18 and regularly attending a high school program leading to a high school diploma and shall be determined to be an essential person. In this subsection, "regularly attending" means attendance which conforms to school rules. A student shall not be required to participate in summer school to be considered regularly attending. In this subsection, "essential person" means a person whom the primary person recognizes to be essential to the well-being of another recipient in the home who is a child under age 18 receiving either AFDC or SSI or a pregnant relative.

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

HSS 201.25 Maternity care. Even though there is no deprived child in the home, maternity care may be granted to a pregnant woman. To be eligible for maternity care the woman shall be at least 7 months pregnant. This requirement shall be met on the first of the month in which she becomes 7 months pregnant. The seventh month of pregnancy shall be established by counting back 3 calendar months from the medically verified expected date of delivery. Only the pregnant woman is eligible for maternity care. If the pregnant woman is married and living with her husband, either she or her husband shall meet the requirements under s. HSS 201.14 (2), (3) or (4) for the pregnant woman to be eligible.

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

HSS 201.26 Requests for exclusion. Anyone may be excluded from the AFDC grant subject to the following limitation: Persons and their income and assets may not be excluded from the eligibility determination when federal regulations prohibit the exclusion.

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

HSS 201.27 Assets. (1) LIMIT ON NONEXEMPT ASSETS. Except as provided in sub: (1m), the total nonexempt assets of the AFDC group may not exceed \$1,000. If the nonexempt assets exceed \$1,000, the primary person, the primary person's spouse and any children for whom they are both legally responsible shall not be eligible. If there is a child in the AFDC group who is not the legal responsibility of the primary person or primary person's spouse, the child's financial eligibility shall be determined under s. HSS 201.31.

(1m) EDUCATION AND EMPLOYABILITY ACCOUNT. (a) Definitions. In this subsection:

1. "Child" means a natural or legally adopted child or a step-child, or a child living with a caretaker relative other than a legally responsible relative.

2. "Emergency needs" means a need for medical care not included as a covered service under the medical assistance program under s. 49.46 or 49.47, Stats., a threat of homelessness as verified by the agency with the recipient's landlord or other appropriate source, breakdown in transportation that precludes a recipient or a member of his or her family from attending employment or training or any other crisis posing a danger to the health or safety of the recipient or his or her family such as a need for furnace repair.

3. "Essential person" means a individual who is not himself or herself eligible for AFDC but whose needs are considered in determining the benefits payable to the AFDC group.

4. "Family" means a group that lives together and that consists of the legally responsible caretaker relative, his or her spouse or the adjudicated parent of the legally responsible caretaker relative's child, a child of the legally responsible caretaker relative or his or her spouse and any essential person, or that consists of a caretaker relative other than a legally responsible relative and a child or children.

(b) *Who may participate.* An AFDC group which has been determined eligible for AFDC and which has been assigned to the special resource account demonstration group under s. 49.19 (4) (bu), Stats., and par. (e) may accumulate funds in an education and employability account as provided in par. (c).

(c) *Establishment of an education and employability account.*

1. a. An agency may authorize an AFDC group which has been assigned to the special resource account demonstration group under par. (e) to establish an education and employability account at a financial institution, as defined in s. 705.01 (3), Stats., including a bank or trust company, a savings bank, a building and loan association, a savings and loan association or a credit union.

b. The first \$10,000 in the account established under subpar. a. shall not be counted against the asset limit in sub. (1) if the AFDC group provides a statement signed by the primary person to the agency identifying the account as a special resource account, the financial institution, the account number and the amount in the account. The AFDC group shall provide the signed statement at the time of establishing the account and at all reviews of eligibility under s. HSS 201.09 (3).

c. An agency shall consider income deposited in an education and employability account in determining AFDC eligibility and benefits for the AFDC group in accordance with s. HSS 201.28.

2. An AFDC group member assigned to the demonstration group may not be an owner of an education and employability account with an individual who is not included in the AFDC group unless that individual is:

a. A parent or other caretaker relative who lives in the same household as the recipient but is not included in the AFDC group because he or she is nonfinancially ineligible; or

b. A caretaker relative who is not a legally responsible relative and who lives in the same household as the recipient.

3. Interest earned on the account established under subd. 1. a. and retained in the account or withdrawn for an approved purpose as defined under par. (d) is not considered income for purposes of s. HSS 201.28.

(d) *Treatment of funds withdrawn from an education and employability account.* The agency shall consider money withdrawn from an education and employability account as income in the month in which it is withdrawn unless it is used for one of the following purposes:

1. The recipient's own education or training or the education or training of a child, including:

a. His or her own education at an academic college or university or at a technical college or other vocational training program approved by the agency;

b. The education of a child at a public or private preschool, elementary, middle or high school, at an academic college or university or at a technical college or other vocational training program approved by the agency; and

c. Expenditures related to attending education or training, including the cost of housing, tuition and mandatory fees, books and school supplies, purchase of equipment related to the course of study, transportation and child care necessary for the recipient or the child to attend education or training when the expenses are not covered by another funding source;

2. Improving the employability of a member of the family. The agency may approve expenditures related to improving the employability of a member of the family that are reasonable, necessary and directly related to a recipient accepting or maintaining

employment and that are for services that are included as approvable services under the department's JOBS program supportive services state plan required under 45 CFR 255.1; or

3. Emergency needs of the recipient or a member of his or her family as determined by the agency. An AFDC group may not use more than \$200 every 12 months for emergency needs.

(e) *Assignment to the demonstration group.* The department shall randomly assign an AFDC group to either a demonstration group or a control group through the automated eligibility determination system so that one-third of the AFDC cases, but no AFDC case participating in the vehicle asset limit demonstration project under sub. (2) (am), are participating in the special resource account demonstration project.

(2) **TREATMENT OF ASSETS.** Assets owned by members of the AFDC group shall be treated as follows:

(a) Except as provided in par. (am), up to \$1,500 of the equity value of one motor vehicle used to provide transportation of persons or goods shall be exempt. If more than one vehicle is owned, up to \$1,500 of equity value from the vehicle with the greatest equity shall be exempt. The equity value of any other vehicle shall be counted as an asset. Any amount of equity value in excess of \$1,500 shall be counted toward the asset limit in sub. (1). In this paragraph, "equity value" means the wholesale value as given in a standard guide on motor vehicle values or the value as estimated by a sales representative at a local car dealership minus any encumbrances which are legally debts.

(am) 1. For an AFDC group participating in the vehicle asset limit demonstration project under s. 49.19 (4) (by), Stats., up to \$2,500 of the combined equity value of the motor vehicles owned by the group and used to provide transportation of persons or goods shall be exempt. Any amount of equity value in excess of \$2,500 shall be counted toward the asset limit in sub. (1). Equity value has the meaning prescribed in par (a).

2. The department shall randomly assign an AFDC group to a demonstration group or a control group through the automated eligibility determination system so that one-third of the AFDC cases, but no AFDC case participating in the special resource account demonstration project under sub. (1m), are participating in the vehicle asset limit demonstration project.

(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; am. (1) and (2) (a), cr. (1m) and (2) (am), Register, February, 1995, No. 470, eff. 3-1-95.

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 non-exempt, 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 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; judgment 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 judgment 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.

(4m) **EMERGENCY ASSISTANCE.** Payments made under the emergency assistance program, s. HSS 201.055, 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.

(13) CHILD SUPPORT PAYMENTS. The first \$50 of any current child support, as defined in s. HSS 80.02 (6), or family support, as defined in s. HSS 80.02 (11), paid by an absent parent is disregarded when it is:

(a) Court-ordered, whether assigned to the state under s. 49.19 (4) (h) 1. b., Stats., or unassigned, and paid to:

1. The clerk of courts; or

2. Directly to or for an AFDC group member; or

(b) Voluntary and paid directly to or on behalf of an AFDC group member.

(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 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, shall be allocated to the child to bring the child's income up to this amount. This income shall be de-

ducted 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.* The following shall be deducted from earned income in the order shown except from the earned income of a person who violates 45 CFR 233.20 (a) (1) (iii):

1. The first \$90 of earned income of:
 - a. Any dependent child or relative applying for or receiving aid; and
 - b. Any other person living in the same home as the dependent child whose needs are considered in determining the budget;
2. Earned income not already disregarded in subd. 1. equal to one of the following:

- a. \$30 plus an amount equal to 1/3 of the remaining earned income not disregarded as provided under s. 49.19 (5) (a) 4., Stats., unless the person has received the \$30 plus 1/3 deduction for 4 consecutive months and, since then, has not been off AFDC for 12 consecutive months;

- b. \$30 as provided under s. 49.19 (5) (a) 4m., Stats., unless 8 months have passed since the person received the fourth consecutive month of the \$30 and 1/3 deduction under subd. 2. a., and, since then, has not been off AFDC for 12 consecutive months; or

- c. \$30 plus an amount equal to 1/6 of the remaining earned income not disregarded as provided under s. 49.19 (5) (am), Stats., unless the person has received the \$30 plus deduction for 12 consecutive months and, since then, has not been off AFDC for 12 consecutive months;

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 age 2 as provided under s. 49.19 (5) (a) 4s., Stats., if:

- a. The amount is used to provide care for a dependent child or for an incapacitated person who is living in the same home as the dependent child;
- b. The person receiving care is also receiving AFDC; and
- c. The person requires care during the month the AFDC is received.

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

(a) *Test for 185% of assistance standard.* The AFDC group shall be ineligible in any month in which the group's income, not counting AFDC payments, exceeds 185% of the assistance standard for that size group. A monthly allowance in the amount specified under s. 49.19 (11) (a) 4., Stats., shall be added to the assistance standard for each applicant or recipient who meets the criterion under s. HSS 201.30 (3). The exemptions specified in sub. (14) do not apply to this determination. If the AFDC group's income exceeds 185% 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 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 ex-

ceeds 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), eff. 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; cr. (13), r. and recr. (15) (b), am. (16) (a), Register, February, 1995, No. 470, eff. 3-1-95; emerg. cr. (4m), eff. 4-4-95; cr. (4m), Register, November, 1995, No. 479, eff. 12-1-95.

HSS 201.29 Eligibility date. (1) Except for maternity care cases the beginning eligibility date shall be the date of 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 income from the family allowance appropriate for the size of the AFDC group. As provided under s. 49.19 (11) (a) 7., Stats., no payment shall be made for a month if the amount of the payment would be less than \$10 except when the benefit amount is reduced below \$10 because of recoupment under s. HSS 201.30 (5). Members of an AFDC group which receives no money payment because of the application of s. 49.19 (11) (a) 7., Stats., shall be deemed recipients for all other AFDC purposes except for participation in community work experience under s. 49.193 (4) (h), Stats.

(2) **FIRST PAYMENT.** If the beginning eligibility date is the first of the month, the first payment is a full month's grant. Otherwise the first payment shall be prorated as follows:

- (a) The number of days from the beginning eligibility date to the end of the month shall be counted.
- (b) The number of eligible days shall be divided by the number of days in the month.
- (c) The full-month's grant amount shall be multiplied by the result of par. (b) to get the first grant.

(3) **ADDITION OF A PREGNANCY ALLOWANCE.** A pregnancy allowance as provided in s. 49.19 (11) (a) 4., Stats., shall be added to the assistance standard when, in the AFDC group, there is a woman who is medically verified to be in the final trimester of pregnancy. To establish the month in which the pregnancy allowance shall begin, the agency shall count back 3 calendar months from the expected date of delivery.

(4) **CORRECTION OF UNDERPAYMENTS.** Agencies shall promptly correct any underpayments to current recipients and those who would be current recipients if the error causing the underpayment had not occurred. A retroactive corrective payment shall not be considered as income or an asset in the month paid or the following month.

(5) **CORRECTION OF OVERPAYMENTS.** (a) *Agency responsibility.* Agencies shall promptly recover all overpayments. An agency shall recover an overpayment from the AFDC group which was overpaid, or from any AFDC group of which a member of the overpaid group has subsequently become a member.

(b) *Procedures for recoupment from current recipients.* 1. 'Involuntary repayment'. Except as provided under subd. 2, recoupment shall be obtained by reduction of the grant. The recoupment withheld from the grant shall continue every month until the

Emerg.
am.
4/6
1/1/96

overpayment is paid back in full. The amount recouped from the grant shall be:

a. Seven percent of the family allowance, unless a court orders a different amount, when the overpayment is the result of applicant or recipient error that is other than that described under subd. 1. b, department or agency error, continued payments pending a fair hearing decision when it is against the applicant or recipient, continuation of the grant because of the necessary 10 day notice or an AFDC group member participating in a strike on the last day of the month in which AFDC is received; or

b. Ten percent of the family allowance as provided under s. 49.19 (17), Stats., when the overpayment is the result of an intentional program violation determined under s. 49.123 (2), Stats.

2. 'Voluntary repayment'. A recipient may make a voluntary repayment in addition to the amount withheld from the grant under subd. 1.

(c) *Procedures for recoupment from former recipients.* The agency shall ask former recipients to voluntarily repay the overpayments. If a former recipient refuses to repay voluntarily and the overpayment is \$35 or more, the agency shall refer the former recipient for collection or court action. The agency may suspend collection efforts if the overpayment balance is less than \$35.

(6) **CASES WITH BOTH UNDERPAYMENTS AND OVERPAYMENTS.** When both an underpayment of assistance has been made to an AFDC group and an overpayment of assistance has been made to the same AFDC group, the agency shall offset one payment against the other in correcting the payments. An overpayment shall be offset only in a month in which a supplemental benefit payment is issued to correct an underpayment for a prior month.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; cr. (3) (d), Register, January, 1988, No. 385, eff. 2-1-88; am. (1), r. and recr. (3), cr. (4) to (6), Register, February, 1995, No. 470, eff. 3-1-95.

*Emergency
201.303
eff. 1/1/96*

HSS 201.305 Two-tier AFDC benefit demonstration project. (1) **AUTHORITY AND PURPOSE.** This section is adopted under the authority of ss. 49.19 (11m) (a) and 49.50 (2), Stats., to provide rules for the administration of a two-tier AFDC benefit demonstration project, on a pilot basis, under which the department provides a person who is eligible for AFDC and who is required to participate in the demonstration project with monthly payments, for the first 6 months that he or she lives in Wisconsin, calculated on the basis of the AFDC benefit level in the state in which the primary person most recently resided for at least 30 days.

(2) **APPLICABILITY.** This section applies to all county economic support agencies participating in the pilot and to all applicants and recipients living in a pilot county who are required to participate in the two-tier AFDC benefit demonstration project.

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

(a) "Flat grant" means an AFDC benefit amount which a state determines covers basic needs such as food, clothing, household items, shelter and utilities.

(b) "Former state of residence" means the state, other than Wisconsin, in which the family most recently resided for at least 30 days.

(c) "Special needs payment" means a payment made to meet needs that are essential for some persons but not all.

(d) "Standard of need" means the income a state determines is essential as provided under 45 CFR 233.20 (a) (3) (ii).

(e) "State" means one of the 49 other states or the District of Columbia.

(f) "Typical family" means a family with one adult caretaker and a dependent child or children.

(4) **DEPARTMENT RESPONSIBILITIES.** (a) *Selection of pilot counties.* The department shall select the counties to participate in the demonstration project in accordance with s. 49.19 (11m) (c), Stats.

(b) *Determination of benefit levels.* 1. 'Maximum AFDC benefit levels'. The department shall establish maximum AFDC

benefit levels for families participating in the demonstration project based on the former state of residence and family size. In determining the maximum AFDC benefit levels for families participating in the demonstration project, the department shall take into account the following factors:

a. The AFDC benefit level available to a typical family of the same size in each state;

b. That portion of each state's AFDC benefit amount which is comparable to a flat grant;

c. A state's special needs payments that are regular, predictable and available to a typical family of that size except that a special needs allowance related to pregnancy shall be determined as provided under subd. 2. c. Special needs payments covered by another funding source in Wisconsin such as low income energy assistance under s. 49.80, Stats., AFDC emergency assistance under s. 49.19 (11) (b), Stats., or JOBS program reimbursements under s. 49.193, Stats., are not considered;

d. Whether a state varies benefit amounts by geographical area. For states that do so, the department shall use the benefit amount provided to recipients in a major urban area. If a state has more than one major urban area, the department shall use the benefit amount provided to recipients in the major urban area in which a majority of the AFDC population resides; and

e. If the benefit amount in a state is arrived at by subtracting countable income from a standard of need rather than from the maximum AFDC payment amount, the department shall use the same method.

2. 'Payment amount for an individual family'. In determining the payment amount for a family subject to the demonstration project, the department shall:

a. Determine the family's countable income based on s. HSS 201.28;

b. Choose the appropriate benefit level according to family size and former state of residence of the primary person; and

c. Add a pregnancy allowance as provided under s. HSS 201.30 (3) as appropriate.

(c) *Establishment of initial benefit levels and annual updates.* Maximum AFDC benefit levels, for the period July 1, 1994 through June 30, 1995, available to families participating in the demonstration project according to family size and former state of residence are set out in Table 201.305. The department shall update the benefit levels annually beginning July 1, 1995, for each year of the demonstration project by publishing updated benefit levels as a public notice in the Wisconsin administrative register. All benefit levels shall be established by the department only after consultation with the federal department of health and human services.

(d) *No issuance or supplementation of AFDC benefits.* 1. Except as provided in subd. 2., the department may not issue or supplement an AFDC benefit amount in a month when a family:

a. Moves to Wisconsin and applies for AFDC benefits, has already received an AFDC grant from their former state of residence and that AFDC benefit amount covers the period for which they are applying; or

b. Moves from a pilot to a non-pilot county and has already received an AFDC grant based on residence in the pilot county.

2. The department may issue a supplemental AFDC benefit for an individual who was not included in the AFDC grant issued in the former state of residence or pilot county for a reason that no longer applies or for an individual added to the AFDC group such as a newborn.

(e) *Issuance of AFDC benefits after 6 months based on Wisconsin standards.* The department shall ensure that after the sixth consecutive month of residency, the family receives AFDC benefits based on Wisconsin AFDC payment standards as long as all other eligibility factors are met. In determining when the family meets the sixth consecutive month of residency, the agency shall

count an initial partial month of residency as a full month. AFDC benefits based on Wisconsin AFDC payment standards shall begin in the next possible payment month.

(5) WHO IS REQUIRED TO PARTICIPATE. Except as provided under sub. (6), an AFDC group living in a pilot county and requesting AFDC benefits in that pilot county on or after the beginning date of the demonstration project shall participate in the demonstration project if the primary person has not previously resided in Wisconsin for at least 6 consecutive months and either:

(a) 1. Applies for AFDC benefits more than 90 days but fewer than 180 days after moving to Wisconsin; and

2. Is unable to demonstrate to the satisfaction of the economic support agency that he or she was employed for at least 13 weeks after moving to Wisconsin; or

(b) Applies for AFDC within 90 days after moving to Wisconsin.

(6) WHO IS NOT REQUIRED TO PARTICIPATE. An AFDC group is not required to participate in the demonstration project if the primary person is:

(a) A migrant farm worker as defined in s. HSS 201.15 (2);

(b) An individual who moves to Wisconsin solely to provide care for minor children and:

1. The minor children for whom he or she is providing care are not his or her natural or adopted children;

2. All of the minor children included in the application for benefits have lived in Wisconsin for a period of at least 6 consecutive months; and

3. The request for assistance is solely for those children;

(c) An individual who has lived in Wisconsin for at least 6 consecutive months except for brief absences which do not interrupt residency under s. HSS 201.15;

(d) Participating in the parental responsibility pilot program under s. 49.25, Stats.;

(e) An individual who was required to participate under sub. (4) and moves from a pilot to a non-pilot county; or

(f) An individual who moved to Wisconsin from a place other than the 49 other states or the District of Columbia.

(7) AGENCY RESPONSIBILITY. The agency shall:

(a) Determine who is required to participate in the demonstration project;

(b) In addition to the verification requirements in s. HSS 201.08, verify:

1. The primary person's former state of residence;

2. Whether the AFDC group received AFDC benefits in the former state of residence and the most recent AFDC benefit period; and

3. The primary person's or other legally responsible relative's employment, if that is the basis for claiming an exemption from participation in the demonstration project under sub. (5) (a) 2.;

(c) Assist the AFDC group in obtaining the needed verifications when the AFDC group is unable to produce adequate documentation independently;

(d) 1. If the primary person claims prior Wisconsin residence but the agency is not able to verify Wisconsin residence history, presume that the primary person has failed to meet the exemption under sub. (6) (c);

2. If the primary person is complying with requirements under s. HSS 201.07 but cannot obtain the needed verification regarding previous state of residency, determine, using the best available evidence, the state on which the AFDC group's benefit amount will be based. If the primary person fails or refuses to produce the required verification regarding the previous state of residency, deny the application as provided under s. HSS 201.08; and

(e) Provide information to the applicant or recipient regarding appeal rights under sub. (8).

(8) APPEAL RIGHTS. An applicant or recipient may request a fair hearing in accordance with ch. HSS 225 except that a request for a fair hearing shall be received in the department's office of administrative hearings within 45 days of the effective date of the action being appealed.

History: Emerg. cr. eff. 7-1-94; cr. Register, February, 1995, No. 470, eff. 3-1-95; cr. (b) 3., Register, April, 1995, No. 472, eff. 5-1-95.

TABLE 201.305

WISCONSIN AFDC TWO-TIER TABLE OF STATE MAXIMUM BENEFIT AMOUNTS BY FAMILY SIZE - EFFECTIVE 7/1/94 - 6/30/95

STATE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
AL	111	137	164	194	225	252	287	315	344	372	400	428	457	485	513	541	541	541
AK	514	821	923	1025	1127	1229	1331	1433	1535	1637	1739	1841	1943	2045	2147	2249	2351	2453
AZ	204	275	347	418	489	561	632	703	775	846	917	988	1060	1131	1202	1274	1346	1416
AR	81	162	204	247	286	331	373	415	457	457	457	457	457	457	457	457	457	457
CA	299	490	607	723	824	926	1017	1108	1197	1286	1286	1286	1286	1286	1286	1286	1286	1286
CO	214	280	356	432	512	590	652	715	779	840	902	959	1016	1072	1129	1186	1243	1300
CT	356	473	581	683	781	884	997	1102	1193	1304	1359	1489	1527	1643	1744	1799	1882	1966
DE	201	270	338	407	475	544	612	681	750	819	888	957	1026	1095	1164	1233	1302	1371
DC	265	330	420	513	591	695	797	881	968	1053	1111	1194	1248	1316	1366	1434	1574	1610
FL	180	241	303	364	426	487	549	610	671	733	795	857	919	981	1043	1105	1167	1229
GA	155	235	280	330	378	410	444	470	496	530	568	568	568	568	568	568	568	568
HI	418	565	712	859	1006	1153	1300	1446	1593	1740	1887	2034	2181	2328	2475	2621	2767	2913
ID	205	251	317	382	448	513	579	645	710	776	841	906	971	1036	1101	1166	1231	1296
IL	212	283	382	424	495	560	589	624	655	689	725	761	801	842	886	931	979	1030
IN	139	229	288	346	405	463	522	580	639	697	762	827	892	957	1022	1087	1152	1217
IA	183	361	426	495	548	610	670	731	791	865	952	1039	1126	1213	1300	1387	1474	1561
KS	241	326	403	471	532	593	654	715	776	837	898	959	1020	1081	1142	1203	1264	1325
KY	162	196	228	285	333	376	419	419	419	419	419	419	419	419	419	419	419	419
LA	72	138	190	234	277	316	352	391	427	462	501	540	580	620	662	707	741	789
ME	198	312	418	526	632	739	846	953	1060	1167	1274	1381	1488	1595	1702	1809	1916	2023

MD	162	286	366	441	511	562	632	695	751	810	869	927	984	1042	1102	1161	1221	1281
MA	392	486	579	668	760	854	946	1037	1128	1220	1315	1410	1505	1600	1695	1790	1885	1980
MI	276	371	459	563	659	792	868	944	1020	1096	1172	1248	1324	1400	1476	1552	1628	1704
MN	250	437	532	621	697	773	850	916	980	1035	1089	1142	1195	1248	1301	1354	1407	1460
MS	60	96	120	144	168	192	216	240	264	288	312	336	360	384	408	432	456	480
MO	136	234	292	342	388	431	474	514	554	595	635	675	715	755	795	835	875	915
MT	235	318	401	484	567	650	732	816	855	893	926	959	988	1017	1044	1068	1068	1068
NE	222	293	364	435	506	577	648	719	790	861	932	1003	1074	1145	1216	1287	1358	1429
NV	229	288	348	408	468	527	587	647	706	766	826	885	945	1005	1065	1124	1184	1244
NH	414	481	550	613	673	754	817	910	962	1039	1126	1198	1265	1332	1399	1466	1533	1600
NJ	162	322	424	488	552	616	677	728	778	828	878	928	978	1028	1078	1128	1178	1228
NM	209	283	357	431	504	578	652	726	800	873	947	1021	1095	1169	1243	1269	1295	1321
NY	327	429	524	619	716	787	901	979	1039	1099	1159	1219	1279	1339	1399	1459	1519	1579
NC	181	236	272	297	324	349	373	386	406	430	448	473	496	521	546	571	596	621
ND	221	333	409	501	569	628	669	712	755	798	841	884	927	970	1013	1056	1099	1142
OH	203	279	341	421	493	549	613	680	748	816	881	949	1016	1082	1150	1234	1318	1402
OK	200	251	324	402	470	538	606	666	723	723	723	723	723	723	723	723	723	723
OR	310	395	460	565	660	755	840	925	985	1090	1195	1300	1405	1510	1615	1720	1825	1930
PA	215	330	421	514	607	687	770	853	936	1019	1102	1185	1268	1351	1434	1517	1600	1683
RI	327	449	554	632	710	800	880	970	1042	1132	1212	1293	1375	1461	1542	1628	1714	1800
SC	118	159	200	240	281	321	362	402	443	483	524	564	605	645	686	726	767	796
SD	293	368	417	464	512	560	607	655	702	750	798	845	892	940	987	1035	1082	1129
TN	95	142	185	226	264	305	345	386	425	467	508	549	589	630	670	711	750	790
TX	78	163	188	226	251	288	313	356	382	425	451	494	520	563	589	632	675	718
UT	240	332	414	484	551	607	636	666	697	726	756	786	816	846	876	906	936	966
VT	437	536	638	717	804	860	955	1037	1114	1192	1269	1346	1423	1501	1578	1655	1732	1810
VA	174	257	322	386	457	509	570	636	692	754	815	876	937	998	1059	1120	1181	1242
WA	349	440	546	642	740	841	971	1075	1075	1075	1075	1075	1075	1075	1075	1075	1075	1075
WV	145	209	257	328	376	437	485	509	509	509	509	509	509	509	509	509	509	509
WY	195	320	360	390	450	510	575	640	700	765	777	789	801	813	825	837	849	861

Note: For subsequent 12 month schedule after June 30, 1995, see Wisconsin Administrative Register dated June 30th.

HSS 201.31 Financial eligibility in children-only cases. Children with no legally responsible relative in the home, stepchildren, and pregnant children may be eligible even though the primary person, the primary person's spouse and the children for whom they are both legally responsible are not eligible.

(1) **NONLEGALLY RESPONSIBLE RELATIVE CASE.** When children with no legally responsible relative in the home are the only ones in the AFDC group, no income or assets may be considered available from the nonlegally responsible caretakers. Only the children's own income and assets shall be used in testing their eligibility and determining the amount of their grant. An exception to this occurs when the legal parent separates from the stepparent caretaker, in which case stepparent deeming rules shall apply until the marriage is terminated.

(2) **STEPCHILDREN CASE.** To determine the financial eligibility of a stepchild, the income, assets, and needs of ineligible family members shall be considered. Specific amounts of income and assets shall be protected for the ineligible persons. If assets exceed the protected amount, the excess shall be available to legal dependents. If income exceeds the protected amount, the excess shall be available to legal dependents and stepchildren.

(a) The assets considered available to the child from the parent who is legally responsible for the child shall be the dollar amount of the ineligible family members' nonexempt assets above \$1,000 or the dollar amount of the legal parent's nonexempt assets,

whichever figure is less. The nonexempt assets are determined according to s. HSS 201.32. The total amount of assets available to the child, including the child's own, shall be tested against \$1,000. If the assets exceed \$1,000, the child shall be ineligible. If the assets are less than \$1,000, the child shall pass the assets test.

(b) If both caretakers in the home have stepchildren in the AFDC group, the children shall be separated into subgroups according to their legal parent and each subgroup shall be tested separately against \$1,000. The nonexempt assets are determined according to s. HSS 201.32.

(c) The income considered available to the children in the AFDC group shall be the dollar amount of the ineligible parent's and ineligible stepparent's net income above the assistance standard appropriate for the number of ineligible family members. The net income shall be determined according to s. HSS 201.32. The grant amount shall be the difference between the income available to the children, including the children's own income, and the family allowance appropriate for them.

(3) **MIXTURE OF STEPCHILDREN AND NONLEGALLY RESPONSIBLE RELATIVE CASES.** When the caretaker is a nonlegally responsible relative of a child the procedures in sub. (1) apply. In determining the eligibility of such children in a stepparent case, each child for whom the caretakers have no legal responsibility shall be treated individually as a subgroup for both the assets test and the income test. If both caretakers in the home have stepchildren in the AFDC group, the stepchildren shall be separated into 2 subgroups according to their legal parent for the assets test but shall be together in one subgroup for the income test.

(a) Each subgroup's assets shall be measured against \$1,000. If the assets exceed \$1,000, the subgroup shall not be eligible; if the assets are \$1,000, or less, the subgroup shall pass the asset test.

(b) For the income test, an individual-test amount shall be determined by dividing the appropriate family allowance by the total number of children in the subgroups. The individual-test amount shall be multiplied by the number of stepchildren to determine the stepchildren's test amount. If the stepchildren's combined income, including any made available from the parents, exceeds the stepchildren's test amount, the stepchildren shall not be eligible.

(c) If the income of any child for whom the caretakers have no legal responsibility exceeds the individual test amount, that child shall not be eligible.

(d) The grant for the eligible children shall be the difference between their income and a family allowance for the number of eligible children.

(4) PREGNANT CHILD CASE. If a pregnant child is not deprived under s. HSS 201.14 her financial eligibility is determined as follows:

(a) In determining assets available from her ineligible parents, the ineligible family members' nonexempt assets above \$1,000 or the parents' nonexempt assets, whichever is less, shall be considered available to the pregnant child. The nonexempt assets shall be determined under s. HSS 201.32. If this amount plus the pregnant child's own assets exceeds \$1,000, the pregnant child shall not be eligible.

(b) In determining how much income is available from her ineligible parents, the amount of the appropriate assistant standard for the ineligible family members shall be protected as follows: The amount of the net income above the standard or the parents' income, whichever is less, shall be considered available to the pregnant child. The net income shall be determined under s. HSS 201.32. The child's own net income shall be added to the income made available from the parents and the total shall be subtracted from the family allowance appropriate for the pregnant child. If there is a deficit, the amount of the deficit shall be the amount of the AFDC grant. If there is no deficit, the pregnant child shall not be eligible.

(5) THREE-GENERATION CASE. A three-generation case has the following characteristics: All 3 generations are living in the home, the second generation is a never-married minor parent, and there is a third generation child who has not been voluntarily excluded. If the three-generations taken together are financially ineligible, the financial eligibility of the third generation shall be tested by itself. To test the financial eligibility of the third generation, it is necessary to determine how much of the minor parent's income and assets are available to the third-generation child.

(a) The amount of assets considered available to the third generation shall be the combined amount of the first and second generations' nonexempt assets above \$1,000 or the minor parent's nonexempt assets, whichever is less. The non-exempt assets shall be determined according to s. HSS 201.32. The third generation's nonexempt assets shall be added to those considered available from the minor parent. If the result is greater than \$1,000, the case shall not be eligible.

(b) The income considered available to the third generation shall be the combined first and second generations' net income above the assistance standard or the minor parent's net income, whichever is less. The net income shall be determined under s. HSS 201.32. The third generation's net income shall be added to that made available from the minor parent and subtracted from the appropriate family allowance. If there is a deficit, the amount of the deficit shall be the amount of the AFDC grant. If there is no deficit, the case shall not be eligible.

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

HSS 201.32 Determining nonexempt assets and net income of persons not in the AFDC group. When an ineli-

gible person who resides in the home has a legally responsible relationship to an AFDC group member, the ineligible person's non-exempt assets and net income shall be determined as follows:

(1) The following assets are exempt:

(a) Homestead property;

(b) Household effects; and

(c) Up to \$1,500 of equity value for one motor vehicle if there is one ineligible caretaker. If there are 2 ineligible caretakers, up to \$750 of equity value for one motor vehicle for each ineligible caretaker.

(2) To determine net income the following deductions shall be made:

(a) If a person is employed, \$90 shall be deducted from earned income.

(b) Deductions from earned income as specified in s. HSS 201.28 (15) (b) 2; however, this deduction shall not be allowed if any person in the AFDC group has already received a deduction for the same dependent.

(c) Payments for education or training shall be exempt as specified in s. HSS 201.28 (1) (a).

(d) Court-ordered support actually paid for a person outside the home shall be deducted from the income.

(3) Net income of persons not in the AFDC group shall be considered unearned income when used in determining the financial eligibility of any person in the AFDC group.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; emerg. r. and recr. (2) (a), eff. 10-2-89; r. and recr. (2) (a), Register, March, 1990, No. 411, eff. 4-1-90; am. (2) (a), Register, February, 1995, No. 470, eff. 3-1-95.

HSS 201.33 Income and assets of legally responsible relatives. This section applies where a person living in the home is not in the AFDC group but is the spouse or parent of someone who is in the AFDC group. This section does not apply to stepchildren, pregnant children, and three-generation cases covered by s. HSS 201.31.

(1) All nonexempt assets of legally responsible relatives shall be considered available to the AFDC group. Nonexempt assets are determined under s. HSS 201.32.

(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); 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.

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.

HSS 201.36 Transitional child care. (1) **PURPOSE.** This section implements s. 49.50 (6g), Stats., which provides that an individual whose AFDC case closes on or after March 31, 1990, due to an increase in earned income, an increase in hours of employment for AFDC-unemployed parent cases or loss of the earned income disregards under s. 49.19 (5) (a), Stats., may be eligible for

a period of time for payment of child care costs necessary for the individual to accept or retain employment.

(2) **APPLICABILITY.** This section applies to any person who loses eligibility for AFDC due to an increase in earned income, an increase in hours of employment for AFDC-unemployed parent cases or loss of the earned income disregards under s. 49.19 (5) (a), Stats., and who needs child care to accept or retain employment.

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

(a) "Eligibility period" means the 12 month period that begins with the first month of ineligibility for AFDC benefits.

(b) "Family" means the former AFDC group.

(c) "Transitional child care" means the program established under s. 49.50 (6g), Stats., which pays a portion of child care for a family for a period of time after that family loses eligibility for AFDC under any of certain circumstances related to being employed.

(4) **WHO MAY BE ELIGIBLE.** A family may be eligible for a period of 12 months beginning with the first month of ineligibility for AFDC for payment of child care expenses if all of the following conditions are met:

(a) Eligibility for AFDC ended because of increased earnings, increased hours of employment for AFDC-unemployed parent cases or loss of the earned income disregards under s. 49.19 (5) (a), Stats.;

(b) The family was eligible for AFDC in at least 3 of the last 6 months immediately preceding the month in which ineligibility begins;

(c) Child care is needed to permit a member of the family to accept or retain employment. Payment for child care is limited to those children who are dependent as defined under s. 49.19 (1) (a), Stats., and to those children who would be dependent as defined under s. 49.19 (1) (a), Stats., except for the receipt of SSI or benefits under Title IV-E of the Social Security Act of 1935, as amended, and who are:

1. Under age 13;

2. Age 13 or older and meets one or more of the following conditions as documented by the agency in the case record:

a. The child is physically or mentally incapable of caring for himself or herself, as verified by a physician or a psychologist; or

b. The child is under court supervision as verified by a social worker or the court record; and

(d) The family resides in Wisconsin.

(5) **ELIGIBILITY DETERMINATION.** (a) The agency shall send a notice as provided under s. HSS 201.09 (2) (a) to an individual who loses eligibility for AFDC due to an increase in earned income, an increase in hours of employment for AFDC-unemployed parent cases or loss of the earned income disregards under s. 49.19 (5) (a), Stats., regarding possible eligibility for transitional child care benefits.

(b) If the family wishes to apply for transitional child care benefits, application shall be made to the agency on a form developed by the department. The agency shall determine eligibility for transitional child care benefits within 30 days after receiving the application and shall send a notice of decision to the family as provided in s. HSS 201.09 (2) (a). The notice of decision shall include information regarding the applicant's right to a fair hearing, which shall be governed by procedures under ch. HSS 225 except that petition for a fair hearing shall be received in the department's office of administrative hearings within 45 days after the effective date of the action being appealed, and information regarding the applicant's right to apply for day care funds under s. 46.98 (4) (d), Stats., and s. HSS 55.75 if determined ineligible for transitional child care benefits.

(c) If the family is determined eligible for transitional child care benefits, the agency shall issue a voucher monthly to the family to cover child care costs minus the copayment amount deter-

mined under sub. (7) (a) 2. The voucher amount may not exceed the maximum rate set by the county and approved by the department under s. 46.98 (4) (d), Stats., and s. HSS 55.72 (2) and (7).

(6) ELIGIBILITY PERIOD. Transitional child care benefits are available for the 12 month period beginning with the month in which the family was first ineligible for AFDC. The family may apply for transitional child care benefits at any time within that 12 month period. The period of eligibility for transitional child care benefits shall begin on the first day of the month of application if child care is necessary. If the family applies after the first month of AFDC ineligibility and requests retroactive transitional child care benefits, the agency shall pay benefits retroactive to the first month of AFDC ineligibility if the agency determines that eligibility for transitional child care existed.

(7) CONTINUING ELIGIBILITY. (a) To maintain eligibility for transitional child care benefits, the family shall:

1. Need child care to permit a family member to accept or retain employment;

2. Pay a copayment amount to the child care provider as defined under s. 49.50 (1), Stats. This amount shall be determined by the agency based on the family's ability to pay as determined under s. 46.98 (4) (b), Stats., and s. HSS 55.77. The family may appeal the copayment amount in accordance with the procedures under ch. HSS 225 except that petition for a fair hearing shall be received in the department's office of administrative hearings within 45 days after the effective date of the copayment amount. Eligibility for initial or continuing transitional child care benefits shall exist if the family pays the copayment amount determined by the agency pending the fair hearing decision. If the family prevails in the fair hearing, the agency shall reimburse the family for the overpayments; and

3. Report changes in circumstances as required under s. HSS 201.07 which may affect eligibility for transitional child care benefits.

(b) Eligibility for transitional child care benefits shall end if the caretaker relative:

1. Fails to cooperate with the local child support agency as provided in s. HSS 201.18 (2);

2. Quits a job without good cause as provided in s. HSS 201.14 (3) (d).

(c) If the caretaker relative leaves a job for a good cause and finds another job, the family may be eligible for the remaining portion of the 12 month eligibility period if the family meets the requirements in sub. (4).

(d) If the caretaker relative leaves employment without good cause as provided in s. HSS 201.14 (3) (d), reestablishes eligibility for AFDC and subsequently eligibility for AFDC ends for a reason under sub. (4) (a), the family may be eligible for a full 12 month period of transitional child care benefits if the family meets the eligibility requirements in sub. (4).

(8) TERMINATION OF ELIGIBILITY. (a) Eligibility for transitional child care benefits ends when:

1. The caretaker relative leaves employment without good cause as provided in s. HSS 201.14 (3) (d). The family is not eligible for any remaining portion of the 12 month eligibility period;

2. The family fails to meet a condition under sub. (4) or (7);

or

3. The eligibility period ends.

(b) The agency shall send a notice which meets the requirements under s. HSS 201.09 (2) (a) to a family when the period of eligibility for transitional child care benefits ends. The notice shall include information regarding the family's right to appeal the decision as provided in ch. HSS 225, except that petition for a fair hearing shall be received in the department's office of administrative hearings within 45 days after the effective date of the action being appealed, and information about applying for day care funds under s. 46.98 (4) (d), Stats., and s. HSS 55.75 if determined ineligible for transitional child care benefits.

History: Emerg. cr. eff. 4-1-90; cr. Register, November, 1990, No. 419, eff. 12-1-90; correction in (5) (b), (7) (a) 2. and (8) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1995, No. 470; am. (4) (c) (intro.), (5) (b), (7) (a) 2. and (8) (b), Register, February, 1995, No. 470, eff. 3-1-95.