

## Chapter HSS 201

## AID TO FAMILIES WITH DEPENDENT CHILDREN

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

## Subchapter I — General Provisions

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

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

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

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

**HSS 201.03 Definitions.** In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Cr. Register, April, 1983, No. 323, eff. 5-1-83; emerg. r. (14), renum. (13) to be (14), cr. (13) and (15), eff. 6-1-86; r. and recr. (14), renum. (3) to (13) to be (4) to (13) and Register, March, 1990, No. 411

(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, February, 1990, No. 410, eff. 3-1-90.

### 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.

**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.

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(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 201.06 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 proceed 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.

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(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.

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

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

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

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

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

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

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

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

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

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

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

(a) The primary person;

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

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

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

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

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

2. If, after making reasonable efforts, the agency is unable to locate an appropriate person to whom protective payments can be made, pay-Register, March, 1990, No. 411

ments for the remaining eligible group members may continue to be made to a caretaker relative who has been sanctioned under s. HSS 201.19 (2) for failure to meet JOBS requirements or who has failed to meet child support requirements under s. HSS 201.18.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

**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., and all other provisions of law relating to official bonds, unless 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

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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 designer 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) The principal wage earner shall be either currently out of work or employed less than 100 hours a month. If the principal wage earner is out of work and has not received AFDC based on unemployment within the last 4 months, eligibility shall not begin sooner than 30 days from the date the unemployment began. If the principal wage earner worked more than 100 hours in a particular month, this requirement may be met if the parent worked less than 100 hours for each of the 2 preceding months and is expected to work fewer than 100 hours during the next month.

(d) The principal wage earner, who was not receiving AFDC the previous month, shall not have lost employment without good cause or refused a bonafide offer of employment without good cause within 30 days prior to application. If the principal wage earner was receiving AFDC in the month previous to the current determination of eligibility and lost employment without good cause or refused a bonafide offer of employment without good cause, the principal wage earner shall not be eligible but any one else in the AFDC group shall be eligible if other requirements are met. 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 such work in the community; the parent is physically able to engage in such 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 workmen's compensation protection is available on the particular job.

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

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

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

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

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

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

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

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

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

(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.

**HSS 201.15 Residence.** (1) To be eligible for AFDC, a person shall live in a dwelling located 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.

**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 as a result of s. 203(a)7, 207(c), 208, or 212(d) (5) of the Immigration and Nationality Act of 1952, as amended, 8 USC 1153, 1157, 1158 and 1182; 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.

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

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

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(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, 1983, 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. (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. Only one person in an AFDC group may be exempt for this reason;

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(b) Age 60 or older;

(d) Working at least 30 hours per week in a job expected to last a minimum of 30 days;

(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.

(2) (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 following review 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;

c. The registrant's right to apply for a fair hearing in accordance with s. PW-PA 20.18 [ch. HSS 225]; and

d. If this is the first sanction, that the sanction ends as soon as the sanctioned individual contacts the agency and agrees to participate in JOBS or accept employment.

(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 the mandatory participant who refuses to participate or accept employment without good cause from the grant, 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 the mandatory participant who refuses to participate or accept employment without good cause and the other caretaker relative who is not participating from the grant, 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) 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 has failed to participate in JOBS 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) A sanction applied under par. (b) shall be effective:

1. Following the first occurrence of nonparticipation, until the failure to comply ceases;

2. Following the second occurrence of nonparticipation, until the failure to comply ceases or for 3 calendar months, whichever is longer; or

3. Following the third and each subsequent occurrence of nonparticipation, until the failure to comply ceases or for 6 calendar months, whichever is longer.

(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 sanctioned individual contacts the agency and indicates that he or she will cooperate 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 all other eligibility factors are met. The agency shall notify the JOBS agency that the individual will cooperate and shall change the status of the individual from sanction to mandatory.

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) (e), 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) (6) 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.

**HSS 201.195 Learnfare.** (1) **AUTHORITY AND PURPOSE.** This section is adopted under the authority of s. 49.50(2) and (7)(h)1, 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 WEOP participation requirements.

(2) **APPLICABILITY.** This section applies to all school districts and all county and tribal income maintenance agencies, and to 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.

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

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(a) "Ceased to attend" means that the teenager has 20 consecutive full school days of unexcused absences.

(b) "Dropout" means a teenager who has ceased to attend school, continues to reside in the school district, does not attend another 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.

(c) "Excused absence" means that the reason for the absence meets the school district's definition of a valid reason for the teenager not to attend school.

(d) "Full day" means the entire school day as defined by the school district.

(e) "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.

(f) "Learnfare" means the program established under s. 49.50(7), Stats., which requires that all teenagers attend school to meet WEOP participation requirements.

(g) "Monthly attendance requirement" means that the teenager has no more than 2 full days of unexcused absences in a calendar month.

(h) "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 vocational, technical and adult education school 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.

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

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

(k) "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.

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

(4) PARTICIPATION IN LEARNFARE. (a) A teenager shall attend school full or part time except that 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 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 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 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 teenager is currently enrolled in does not keep daily attendance records, the teenager shall be considered to be meeting the school attendance requirement if the school verifies the continuing enrollment of the teenager in the semester under review.

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

(c) Either the teenager or the primary person shall cooperate in providing information needed to verify enrollment information or good cause under sub. (7). If neither one cooperates, 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 WEOP program under ch. HSS 208.

(e) Either the teenager who is a dropout or the primary person shall notify the agency of the teenager's nonattendance 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 application 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 teenager's school district about the teenager's attendance in the school district's most recently completed semester of attendance.

2. If information about the teenager's previous school attendance is not available or cannot be verified, the agency shall require the 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 teenager.

(e) The agency shall review 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 teenager excused under sub. (7) from attending should be referred to WEOP under ch. HSS 208.

(f) The agency shall administer day care and transportation funds available to teen parents under s. 49.50(7)(e)1, 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 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 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 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 teenager is the caretaker of a child less than 90 days old;

2. Child care services are necessary for 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 care where space is available exceeds the maximum rate established by the county under s. 46.98(4), Stats.;

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

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

5. 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 teenager has been formally expelled;

6. 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 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 teenager but the tuition charge is prohibitive and the teenager's school district refuses to pay the tuition;

7. The teenager is age 16 to 19 and the school district determines that he or she will not graduate from high school by the age of 20; or

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

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

b. Court-required appearance or temporary incarceration;

c. Medical or dental appointments for 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 circumstances beyond the control of the teenager.

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

(8) **SANCTIONS FOR NOT PARTICIPATING.** (a) *Notice.* Upon determining that a teenager has failed without a good cause reason under sub. (7) to attend school, the agency shall send written notice to the primary person which specifies:

1. That the teenager will be removed from the AFDC grant in the next possible payment month because the teenager required to attend school has failed to meet attendance requirements. If the teenager is the only child in the grant and benefit continuation under par. (c) or (e) will no longer apply, the notice shall also state that the entire grant will be discontinued;

2. The beginning date of the sanction, and 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 teenager's or primary person's right to request a fair hearing under par. (b).

(b) *Fair hearing.* The teenager or primary person may request a fair hearing in accordance with s. 49.50(8), Stats., and s. PW-PA 20.18 on the agency's determination that the teenager has not been attending school.

(c) *Failure to meet monthly attendance requirement.* If the 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 teenager has failed without good cause to meet the monthly attendance requirement, the agency shall discontinue or deny aid to the teenager in the next possible payment month in which a sanction is not already being applied for the teenager. If application of a sanction would close the case, benefit payments to meet the needs of the caretaker shall continue for one time up to 3 months the first time the teenager is sanctioned.

(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 teenager fails to meet the monthly attendance requirement.

(e) *Dropping out of school.* 1. If the 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 teenager is a dropout, the agency shall discontinue or deny aid in the next possible payment month after the teenager dropped out to the teenager who has ceased to attend school. If application of a sanction would close the case, benefit payments to meet the needs of the caretaker shall continue for one time up to 3 months the first time the teenager is sanctioned.

2. If the fair hearing decision finds against the teenager or if the teenager failed to comply with the reporting requirements under s. HSS 201.07, the month or months 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 until the teenager who is a dropout 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. 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 7. 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.

**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. 323, 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 elig-

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ble. In this section, "striker" means a person involved in a strike or concerted stoppage of work by employes or any concerted slowdown or other interruption of operations by employes.

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 people 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.

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**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) 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.

(2) Assets owned by members of the AFDC group shall be treated as follows:

(a) 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. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Cash;

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

3. Other property;

4. Discharge of a debt;

5. Prepayment of a bonafide and irrevocable contract; or

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

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

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

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

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

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

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

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

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

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

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

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

6. If the divested amount plus the AFDC group's other assets are greater than \$1,000, the excess over \$1,000 is the amount of the divestment to be expended for maintenance needs and medical care under par. (c).

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

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

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

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

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

(c) *Removing divestment as a barrier to eligibility.* 1. To remove the divestment as a barrier to eligibility for AFDC, the amount of the divestment under par. (a) 6. to be satisfied shall be expended for maintenance

needs and medical care, or 2 years shall have elapsed since the act of divestment, whichever occurs first.

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

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

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

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

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

(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  
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exempt: Menominee Indian Bond interest; homestead relief payments; judgement payments to the Grand River Band of Ottawa Indians, Lac du Flambeau Band and the Minnesota Bois Forte Band of Chippewa Indians, or any other judgement payment to an Indian tribe through the Indian Claims Commission; payments under the Alaskan Native Claims Settlement Act; payments to the Bad River Band and Lac Courte Oreilles Band of Chippewa Indians as well as the Stockbridge Munsee Indian Community of Mohicans; and payments made under any other Federal legislation that specifically exempts funds paid to an Indian tribe from being counted as income for public assistance purposes.

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

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

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

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

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

(d) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, including women, infants and children's (WIC) benefits, and the special food service program for children under the National School Lunch Act, as amended (P.L. 92-433 and P.L. 93-150); and

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

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

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

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

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

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

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

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

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

2. Total expense shall be computed using this formula:

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

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

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

(8) **LUMP SUM PAYMENTS.** In this subsection, "lump sum payment" means a nonrecurring accumulation of individual payments paid in one sum to an AFDC group member. Accumulated earned income such as union settlements and compensatory-time payments is not counted as a lump sum payment. Examples of lump sum payment sources are social security benefits, veterans benefits and unemployment compensation. Lump sum payments shall be treated as follows:

(a) The amount of the non-recurring lump sum payment, all countable unearned income, and the net earned income shall be added together. This sum shall be divided by the amount of the assistance standard appropriate for the size of the AFDC group. The number which results from this division is the number of months that everyone in the AFDC group is ineligible. Any income remaining after this calculation shall be budgeted the first month following the period of ineligibility. If the size of the AFDC group increases during the period of ineligibility, a recalculation shall be done.

(b) The period of ineligibility shall be shortened if the county agency director determines that a life-threatening circumstance exists and there are no remaining assets or income sufficient to meet the AFDC group's financial needs.

(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

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providing room and board shall be deducted from the gross room and board income received as follows: roomer only — \$15.00; boarder only — current food stamp allotment for one; or roomer and boarder — current food stamp allotment for one plus \$15.00.

(12) **FARM AND SELF-EMPLOYMENT.** Farm and self-employment income to be counted in AFDC calculations shall be determined by adding the following items back into the net earnings: depreciation, personal business and entertainment expenses, personal transportation, purchases of capital equipment, and payments on the principal of loans. The total shall be divided by 12 to get monthly earnings. If no return has been filed, the person shall complete a 1040 form of the internal revenue service to determine net earnings or loss, or to anticipate, in the case of relatively new businesses, net earnings as required by the internal revenue service. If the latest income tax return does not accurately reflect actual circumstances because a substantial increase or decrease in business has occurred, the agency shall calculate the self-employment income based on anticipated earnings. Agencies shall determine if it is necessary to use anticipated earnings on a case-by-case basis and shall document the reasons for the determination in the case record.

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

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

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

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

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

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

a. The person has received the \$30 plus  $\frac{1}{2}$  deduction for 4 consecutive months and, since then, has not been off AFDC for 4 consecutive months, or has received the \$30 plus  $\frac{1}{6}$  deduction for 12 consecutive

months and, since then, has not been off AFDC for 4 consecutive months; or

b. In the last 12 months the person has been excluded from the AFDC group for the sole purpose of avoiding the \$30 plus  $\frac{1}{2}$  deduction for 4 consecutive months or for 12 consecutive months if receiving the \$30 plus  $\frac{1}{6}$  deduction.

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

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

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

(b) *Determination of eligibility.* Eligibility shall be determined by measuring the income, after applicable disregards, against the appropriate assistance standard for the AFDC group size. If a person has not received AFDC in one of the 4 prior months, the \$30 plus  $\frac{1}{2}$  deduction to earned income specified in sub. (15) (b) 3. and the exemption of student earnings in the determination of eligibility as specified in sub. (14) are not applied. If the income exceeds the assistance standard, the primary person, the primary person's spouse, and any children for whom they are both legally responsible shall not be eligible. The financial eligibility of other children in the AFDC group shall be determined under s. HSS 201.31.

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

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 Register, March, 1990, No. 411

income from the family allowance appropriate for the size of the AFDC group.

(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) **ADJUSTMENTS TO THE GRANT.** (a) *Pregnancy allowances.* A pregnancy allowance of \$60 shall be added to the grant 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.

(b) *Correction of underpayments.* The agency shall promptly correct any underpayments to current recipients and those who would be current recipients if the error causing the underpayment had not occurred. Retroactive corrective payments shall not be considered as income or an asset in the month paid or the following month.

(c) *Correction of overpayments.* Agencies shall recover all overpayments. This includes overpayments resulting from the continuation of payments pending a fair hearing when the fair hearing decision subsequently finds against the recipient, and overpayments resulting from continuation of the grant because of the necessary 10 day notice. The agency shall recover the 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.

1. Procedures for recoupment from current recipients. A recipient may make a voluntary repayment. Otherwise recoupment shall be obtained by reduction of the grant. If the recipient is willing to repay more in a month, the agency may accept a voluntary repayment in addition to the amount withheld from the grant. Recoupment shall not reduce the grant below \$1.00. The recoupment withheld from the grant shall continue every month until the overpayment is paid back in full. The amount recouped from the grant shall be 7% of the family allowance, unless a court orders a different amount.

2. Procedures for recoupment from former recipients. Former recipients shall be asked to voluntarily repay the overpayment. If these persons refuse to repay voluntarily, the agency shall refer them for legal action.

(d) **CASES WITH BOTH UNDERPAYMENTS AND OVERPAYMENTS.** When both an underpayment of assistance has been made to the 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.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; cr. (3) (d), Register, January, 1988, No. 385, eff. 2-1-88.

**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

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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 ineligible 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, \$75 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.

**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.

Register, March, 1990, No. 411

(2) If it is the spouse or only one parent who is in the home but not in the AFDC group, all net income but the average of the differences between the area I standards set by s. 49.19 (1) (a), Stats., for family sizes 3 and 2, 4 and 3, 5 and 4, and 6 and 5, is deemed as unearned income to the AFDC group. When both parents are in the home but not in the AFDC group, an amount which exceeds twice the average shall be deemed. Net income is determined under s. HSS 201.32.

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

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

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

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

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

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

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

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

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

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

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

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

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

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.