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CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Patricia A. Goodrich, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to deductions from earned income under the Aid to Families with Dependent Children (AFDC), Relief to Needy Indian Persons (RNIP) and Medical Assistance (MA) programs were duly approved and adopted by this Department on February 7, 1990.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 7th day of February, 1990.

SEAL:

Patricia A. Goodrich by Stanley York
Patricia A. Goodrich, Secretary
Department of Health and Social Services

CR 49-164
2-6-90

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
AMENDING, REPEALING AND RECREATING AND CREATING RULES

To amend HSS 201.28(15)(intro.), 206.01(3)(o), 206.02(1), 208.07(2)(b), 209.02(2)(a)2 and 209.03(1)(d); to repeal and recreate HSS 103.07(3)(a) and (b), 201.28(15)(b), 201.32(2)(a), 206.03(2)(a) and 211.07(11); and to create HSS 201.28(6m) and 206.04(4m), relating to deductions made from earned income in determining benefits under the Aid to Families with Dependent Children (AFDC) program and the Relief to Needy Indian Persons (RNIP) program, and eligibility under the Medical Assistance (MA) program; the residual grant amount in the Work Supplementation Program; payment for child care under the Wisconsin Employment Opportunities Program; and participation in and payment for child care in the Community Work Experience Program.

Analysis Prepared by the Department of Health and Social Services

Part of the earned income of an applicant or recipient of Aid to Families with Dependent Children (AFDC) who is employed is disregarded by the county or tribal income maintenance agency when that agency determines the applicant's eligibility or the recipient's grant amount. Section 402 of the Family Support Act of 1988 (P.L. 100-485) amends the Social Security Act to increase the amounts to be disregarded for dependent care and work-related expenses and to change the order in which the three types of earned income disregards are subtracted from an applicant's or recipient's earned income. The Department through this rulemaking order is modifying its rules for AFDC, medical assistance eligibility, work supplementation, the Wisconsin employment opportunities program, community work experience and relief to needy Indian persons (RNIP) to accommodate these and related changes in federal and state statutes.

The amount deducted from earned income for work-related expenses is increased from \$75 to \$90 except in cases where income is deemed from a stepparent, an ineligible alien and, under certain circumstances, a minor parent in a three generation case, and the amount that can be deducted for child care expenses is increased from \$160 per month for each eligible child or incapacitated adult to \$175 per month for each eligible child age 2 or over or incapacitated adult and up to \$200 per month for each eligible child under age 2. The work-related expenses deduction is taken first, the \$30 and 1/3 deduction (or the \$30 and 1/6 deduction for those persons selected to receive the \$30 and 1/6 amount for 12 months under welfare reform waivers approved by the U.S. Department of Health and Human Services) is applied next, and the dependent care deduction is subtracted last. The change in the order of the deductions will benefit the applicant or recipient because the \$30 and 1/3 or \$30 and 1/6 deduction will be taken from a larger amount, resulting in a larger amount of income being disregarded. A distinction will no longer be made for child care purposes for those persons who are employed less than full time. Advance payments or refunds of the earned income tax credit will be disregarded as income.

This rulemaking order also amends the Department's rules for the Work Supplementation Program (WSP) to make clear that child care expenses will be included in determining the residual grant amount only if the recipient is responsible for payment of those child care costs. The order in addition amends the Department's rules for the Community Work Experience Program (CWEP) so that they are consistent with s.402(a)(19)(C)(iv) of the Social Security Act as amended by the Family Support Act (P.L. 100-485) which provides that an AFDC recipient is exempt from participation in the Job Opportunities and Basic Skills (JOBS) Training Program if he or she is employed 30 or more hours per week. This change will make the CWEP participation requirements consistent with the approved JOBS State Plan.

The Department's authority to amend, repeal and recreate and create these rules is found in ss.49.046(4)(a), 49.45(10) and 49.50(2), (7)(am), (7g)(e) and (7m)(k), Stats. The rules interpret ss.49.046(2)(d), 49.45(2)(a)3, 49.46(1), and 49.50(7), (7g) and (7m), Stats., and s.49.19(5)(a), Stats., as amended by 1989 Wisconsin Act 31.

SECTION 1. HSS 103.07(3)(a) and (b) are repealed and recreated to read:

HSS 103.07(3)(a) Work-related deduction. If an individual is employed, \$90 shall be deducted from the individual's earned income when determining MA eligibility.

(b) Dependent care deductions. When employment cannot be maintained without dependent care for a child or incapacitated adult in the MA or fiscal test group, the following deductions shall be applied:

1. The actual cost of care but not more than \$175 each month for each dependent child age 2 or over or incapacitated adult; and
2. The actual cost of care but not more than \$200 each month for each dependent child under age 2.

SECTION 2. HSS 201.28(6m) is created to read:

HSS 201.28(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.

SECTION 3. HSS 201.28(15)(intro.) is amended to read:

HSS 201.28(15)(intro.) The following deductions from income shall be made ~~from income~~ in the order shown :

SECTION 4. HSS 201.28(15)(b) is repealed and recreated to read:

HSS 201.28(15)(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 1/3, or \$30 plus 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 1/3 deduction for 4 consecutive months and, since then, has not been off AFDC for 4 consecutive months, or has received the \$30 plus 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 1/3 deduction for 4 consecutive months or for 12 consecutive months if receiving the \$30 plus 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 no more than \$175 each month for each dependent child age 2 or over or incapacitated adult or \$200 each month for each dependent child under age 2.

SECTION 5. HSS 201.32(2)(a) is repealed and recreated to read:

HSS 201.32(2)(a) If a person is employed, \$75 shall be deducted from earned income.

SECTION 6. HSS 206.01(3)(o) is amended to read:

HSS 206.01(3)(o) "WEJT" means a work experience and job training ~~pilet~~ program under s.49.50(7j), Stats., and ch. HSS 210.

SECTION 7. HSS 206.02(1) is amended to read:

HSS 206.02 ESTABLISHMENT OF WORK SUPPLEMENTATION PROGRAMS. (1) The department or its designated representative, which may be a WEJT administrative agency in a WEJT county or the income maintenance agency in a non-WEJT county, shall select an agency to administer the work supplementation program in each county ~~up to the number of counties permitted under s.49.50(7g)(a), Stats.~~ participating in the program. Preference shall be given to establishing the WSP program in WEJT ~~pilet~~ counties. An income maintenance agency may be designated as the administrative agency.

SECTION 8. HSS 206.03(2)(a) is repealed and recreated to read:

HSS 206.03(2)(a) From the monthly gross earnings of the WSP job, the income maintenance agency shall subtract in the order shown:

1. Allowable work-related expenses of \$90, as provided in s.49.19(5)(a)2, Stats.;

2. The \$30 and 1/3 disregard, as provided in s.49.19(5)(a)4, Stats., or the \$30 and 1/6 disregard, as provided in s.49.19(5)(am), Stats.; and

3. Dependent care costs up to \$175 each month for each child age 2 or over or incapacitated adult, and up to \$200 each month for each child under age 2, as provided in s.49.19(5)(a)4s, Stats., if not paid by the WSP agency under s. HSS 206.04(4m)(b);

SECTION 9. HSS 206.04(4m) is created to read:

HSS 206.04(4m) Ensure that child care, if needed, is available so that the individual is able to participate in a WSP job. The WSP agency shall assist the individual in arranging payment for child care expenses as follows:

(a) The child care provider chosen by the participant may be one who is not required to be licensed by the department or certified by the county;

(b) Actual child care expenses up to the maximum reimbursement rates under s. HSS 55.74 shall be paid to the provider after a bill has been submitted to the WSP agency when the individual is participating in a WSP job; and

(c) WSP payment of child care expenses may not duplicate payment received from any other source for the same purpose or after child care expenses are budgeted to calculate the residual grant under s. HSS 206.03(2)(a).

SECTION 10. HSS 208.07(2)(b) is amended to read:

HSS 208.07(2)(b) Actual child care expenses up to the maximum ~~child care deduction permitted by the AFDC program if unregulated child care is used or up to the maximum~~ reimbursement rates under s. HSS 55.74 ~~if child care licensed under s.48.65, Stats., certified under s.48.651, Stats., or established under s.120.13(14), Stats., is used,~~ shall be paid to the provider after a bill has been submitted to the WEOP agency when the registrant is participating in an approved WEOP activity; and

SECTION 11. HSS 209.02(2)(a)2 is amended to read:

HSS 209.02(2)(a)2. Payment for child care, including child care during the time a participant travels to and from a CWEP assignment, shall be in the amounts determined by the department to be reasonable, necessary and cost-effective but not in excess of the maximum reimbursement rates under s. HSS 55.74, ~~if child care licensed under s.48.65, Stats.,~~

certified under s.48.651, Stats., or established under s.120.13(14), Stats., is used, or \$120 for each child if the recipient is participating less than 30 hours a week nor more than \$160 if the recipient is participating 30 hours or more a week if unregulated child care is used;

SECTION 12. HSS 209.03(1)(d) is amended to read:

HSS 209.03(1)(d) The recipient is currently employed for at least 80 hours a month 30 hours per week in a job expected to last a minimum of 30 days and his or her hourly earnings are at least equal to the legally established minimum wage for the type of job held, except that when the job held does not have an established minimum wage a recipient currently working at least 80 hours a month 30 hours per week in a job expected to last a minimum of 30 days shall be exempted from CWEP regardless of wage level;

SECTION 13. HSS 211.07(11) is repealed and recreated to read:

HSS 211.07(11) DEDUCTIONS FROM INCOME. (a) For support payments. If there is a court order requiring a person in the RNIP group to pay support to a person who is not in the RNIP group, the agency shall consider this income unavailable to the RNIP group and shall deduct it from the group's income before determining eligibility and the amount of the grant.

(b) For employment. The agency shall make the following deductions from earned income in the order shown based on the person's employment:

1. Allowable work-related expenses of \$90, as provided in s.49.19(5)(a)2, Stats.;

2. An amount equal to \$30 plus 1/3 of the earned income not already disregarded under subd. 1, unless one of the following conditions applies:

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

b. In the last 12 months the person has been excluded from the RNIP group for the sole purpose of avoiding the \$30 plus 1/3 deduction for 4 consecutive months; and

3. When employment cannot be maintained without dependent care for a child or incapacitated adult in the RNIP group, dependent care costs up to \$175 a month per child age 2 or over or incapacitated adult, and up to \$200 a month per child under age 2, as provided in s.49.19(5)(a)4s, Stats.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s.227.22(2), Stats.

Wisconsin Department of Health
and Social Services

Dated: February 7, 1990

By: Patricia A. Goodrich by
Patricia A. Goodrich
Secretary 

SEAL:



State of Wisconsin \

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

Tommy G. Thompson
Governor

Patricia A. Goodrich
Secretary

Mailing Address:
Post Office Box 7850
Madison, WI 53707

February 8, 1990

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FEB 8 1990

Revisor of Statutes
Bureau

Mr. Bruce E. Munson
Revisor of Statutes
7th Floor - 30 on the Square
Madison, WI 53702

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 103, 201, 206, 208, 209 and 211, administrative rules relating to deductions from earned income under the Aid to Families with Dependent Children (AFDC), Relief to Needy Indian Persons (RNIP) and Medical Assistance (MA) programs.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rules concern county administration of a federal-state public assistance program. They do not directly affect small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Patricia A. Goodrich by *Stanley York*
Patricia A. Goodrich
Secretary

Enclosure