

## Chapter HSS 103

## ELIGIBILITY FOR MEDICAL ASSISTANCE

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Note: Chapter HSS 103 as it existed on February 28, 1986, was repealed and a new chapter HSS 103 was created effective March 1, 1986.

**HSS 103.01 Introduction.** (1) **PERSONS ELIGIBLE.** Eligibility for medical assistance (MA) shall be determined pursuant to ss. 49.46 (1) and 49.47 (4), Stats., and this chapter, except that MA shall be provided without eligibility determination to persons receiving AFDC or SSI.

(2) **SINGULAR ENROLLMENT.** No person may be certified eligible in more than one MA case.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.02 Divestment.** (1) **PURPOSE.** This section implements s. 49.45 (17), Stats., which makes an applicant for or recipient of MA ineligible when the applicant or recipient disposes of a resource at less than fair market value within 2 years before or at any time after his or her most recent application for MA or any review of eligibility for MA. Section 49.45 (17) (d), Stats., is specifically concerned with an applicant for or recipient of MA who resides as an inpatient in a skilled nursing facility (SNF), intermediate care facility (ICF) or inpatient psychiatric facility and who has disposed of homestead property at any time during or after the 2-year period prior to the date of the most recent application or any review of eligibility.

(2) **DIVESTMENT OF NON-HOMESTEAD PROPERTY.** (a) *Amount of divestment.* For any person who disposed of a resource, except a homestead or other exempt resource, at less than fair market value within 2 years before or at any time after his or her most recent application for MA, or any review of eligibility, the agency shall determine the amount of the divestment in the following manner:

1. If the compensation received is less than net market value, the difference between the compensation received and the net market value is the divested amount and shall be considered an asset.

2. If the divested amount plus other nonexempt assets are equal to or less than the appropriate assets limit, the divestment shall not be considered a bar to eligibility.

3. If the divested amount plus the other nonexempt assets are greater than the appropriate assets limit, the excess over this limit shall be the amount of divestment to be expended for maintenance needs and medical care.

(b) *Divestment as a barrier to eligibility.* 1. Divestment by any person within 2 years before or at any time after his or her most recent application for MA or any review of eligibility shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving MA. Divestment bars eligibility for MA except as provided in subs. 2 and 3 and par. (c).

2. To rebut the presumption that divestment was made in contemplation of seeking aid, the applicant shall furnish convincing evidence to establish that the transaction was exclusively for some other purpose. For example, the applicant may rebut the presumption that the divestment was done in contemplation of receiving aid by showing by convincing evidence that at the time of divesting the applicant had provided for future maintenance needs and medical care.

3. Divestment shall only be considered a barrier to eligibility when the net market value of all the resources disposed of exceeds the medically needy asset levels in s. 49.47 (4) (b) 3, Stats.

4. Division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payments is not divestment.

(c) *Removing divestment as a barrier to eligibility.* 1. Divestment is no longer a barrier to MA eligibility for persons who are determined to have divested non-homestead property:

a. If the divested amount is \$12,000 or less, when the sum of the divestment has been expended for maintenance needs and medical care of the applicant or recipient or when 2 years have elapsed since the date of divestment, whichever occurs first; or,

b. If the divested amount exceeds \$12,000, when the entire sum of the divestment has been expended for maintenance needs and medical care of the applicant or recipient.

2. The amount expended for maintenance needs and medical care of the applicant or recipient shall be calculated monthly, as follows:

a. For a non-institutionalized person, the expended amount is the medical care expenses for the person plus the appropriate medically needy income limit for either AFDC or SSI, depending upon which program the person would be eligible for under MA, were it not for the divestment; and

b. For a person institutionalized in a SNF, ICF or inpatient psychiatric facility, the expended amount is the total cost of the institutional care.

(3) **DIVESTMENT OF HOMESTEAD PROPERTY.** (a) *Applicability.* Divestment by any person of his or her homestead property is a barrier to eligibility only if he or she is a resident of an SNF, ICF or inpatient psychiatric facility.

(b) *Amount of divestment.* A person who is a resident of an SNF, ICF or inpatient psychiatric facility who disposed of his or her homestead for less than fair market value on or after July 2, 1983, but within 2 years before or at any time after his or her most recent application for MA or

any review of his or her eligibility for MA, shall have the amount of divestment determined in the same manner as in sub. (2) (a).

(c) *Divestment as a barrier to eligibility.* 1. Divestment of a homestead by any person residing as an inpatient in an SNF, ICF or inpatient psychiatric facility within 2 years prior to the date of his or her most recent application for MA or any review of his or her eligibility for MA, shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving MA. Divestment bars eligibility for MA except as provided in subs. 2 and 3 and par. (d).

2. To rebut the presumption that divestment was made in contemplation of receiving aid, the applicant shall furnish convincing evidence to establish that the transaction was exclusively for some other purpose. For example, the applicant may rebut the presumption that the divestment was done in contemplation of receiving aid by showing by convincing evidence that, at the time of divesting, the applicant had provided for his or her future maintenance needs and medical care.

3. Divestment shall only be considered a barrier to eligibility when the net market value of all the resources disposed of exceeds the medically needy asset levels in s. 49.47 (4) (b)3, Stats.

4. Divestment does not occur in cases of division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payments.

(d) *Removing divestment as a barrier to eligibility.* 1. Divestment of a homestead is no longer a barrier to eligibility for institutionalized persons:

a. If the amount of divestment to be expended for maintenance needs and medical care is less than the average MA expenditures for 24 months of care in an SNF, when the entire amount of the divestment is expended for this care, or 2 years has elapsed since the date of the divestment, whichever occurs first; or

b. If the amount of divestment to be expended for maintenance needs and medical care is greater than the average MA expenditure for 24 months of care in an SNF, when the entire amount of the divestment has been expended.

2. Expended amounts shall be determined, as long as the person is institutionalized, by using the average monthly MA expenditure, statewide, for care provided in an SNF.

3. An individual who is an inpatient in a SNF, ICF or inpatient psychiatric facility who has been determined to have divested a homestead, may be found eligible if:

a. It is shown to the satisfaction of the department that the individual can reasonably be expected to be discharged from the medical institution and return to that homestead;

b. The title to the homestead was transferred to the individual's spouse or child who is under age 21 or is blind or totally and permanently disabled according to a determination made by the department's bureau of social security disability insurance;

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c. It is shown to the satisfaction of the department that the individual intended to dispose of the homestead either at fair market value or for other valuable consideration; or

d. It is determined by the department that the denial of eligibility would work undue hardship on the individual.

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**HSS 103.03 Non-financial conditions for eligibility.** In order to be eligible for MA, a person shall meet both non-financial conditions for eligibility in this section and financial conditions for eligibility under s. HSS 103.04. The non-financial conditions for eligibility are:

(1) **AFDC-RELATEDNESS OR SSI-RELATEDNESS.** (a) *Requirement.* To be non-financially eligible for MA, applicants shall be AFDC-related or SSI-related.

(b) *AFDC-related persons.* In this subsection, "AFDC-related" means a person who meets one of the following conditions:

1. The person is pregnant and meets the conditions specified in ss. 49.46 (1) (a)1m and 49.47 (4) (a)2, Stats.;

2. The person is a dependent child as defined in s. 49.19 (1) (a), Stats.;

3. The person is a caretaker relative as defined in s. 49.19 (4) (d) and (dm) (intro.), Stats.; or

4. The person is a foster child under 19 years of age living in a foster home licensed under s. 48.62, Stats., or is a child in a subsidized adoption placement under s. 48.975, Stats.

(c) *SSI-related persons.* In this subsection, "SSI-related person" means a person who meets one of the following conditions:

1. The person is age 65 or over; or

2. The person is blind or disabled.

d. *Verification of blindness or disability.* Except as provided under par. (e), the blindness or disability claimed under par. (c)2 shall be verified in one of the following ways:

1. By presentation of a current old age and survivors disability insurance (OASDI) disability award notice;

2. By presentation of a current medicare card indicating blindness or disability; or

3. By receipt of a disability determination made by the department's bureau of social security disability insurance, along with current medical reports.

(e) *Presumption of disability in an emergency.* 1. Under emergency circumstances, a person may be presumed disabled for purposes of demonstrating SSI-relatedness and be eligible for MA without the verification required under par. (d).

2. When an emergency need for MA exists, the department shall make a preliminary disability determination within 7 days of the date a completed disability determination form is received.

3. An emergency need for MA shall exist when the applicant is:

a. A patient in a hospital;

b. Seriously impaired and the attending physician states the applicant will be unable to work or return to normal functioning for at least 12 months;

c. In need of long-term care and the nursing home will not admit the applicant until MA benefits are in effect; or

d. Unable to return home from a nursing home unless in-home service or equipment is available and this cannot be obtained without MA benefits.

Note: Copies of the disability determination form may be obtained from the county or tribal income maintenance agency.

(2) **CITIZENSHIP.** U.S. citizenship shall be a requirement for eligibility for MA, except that an alien lawfully admitted for permanent residence may be eligible, including an alien lawfully present in the United States as a result of s. 203(a)7 (8 USC 1153), 207(c) (8 USC 1157), 208 (8 USC 1158) or 212(d)5 (8 USC 1182) of the immigration and nationality act or an alien otherwise permanently residing in the United States under color of law within the meaning of 42 CFR 435.402.

(3) **WISCONSIN RESIDENCE.** (a) *Definitions.* In this subsection:

1. "Incapable of indicating intent" means:

a. The individual's IQ is 49 or less, or the individual has a mental age of 7 or less, based on tests acceptable to the department;

b. The individual is found legally incompetent under guardianship statutes; or

c. Medical documentation or other documentation acceptable to the department supports a finding that the individual is incapable of indicating intent.

2. "Intent to reside" means that a person intends that Wisconsin is the person's place of residence and that the person intends to maintain the residence indefinitely.

3. "Physical presence" means living in Wisconsin.

(b) *Physical presence and intention.* An eligible person shall be a Wisconsin resident, as determined under 42 CFR 435.403. Residence shall be based on physical presence, except as provided in an interstate agreement, and on the person's stated intent to maintain Wisconsin residence indefinitely, except as otherwise provided in pars. (c) to (g).

(c) *Migrant farm workers.* A migrant farm worker who is living in Wisconsin and who entered with a job commitment or to seek employment shall be considered a resident so long as there is no medical assistance being received from another state. In this paragraph, "migrant farm worker" means any person whose primary employment in Wisconsin is in the agricultural field or cannery work, is authorized to work in the United States, who is not immediate family by blood or marriage of the employer, and routinely leaves an established place of residence to travel to another locality to accept seasonal or temporary employment. Mem-

bers of the migrant farm worker's family who live with the worker in Wisconsin shall also be considered Wisconsin residents.

(d) *Non-institutionalized persons.* The residence of a person under age 21 shall be determined in accordance with the rules governing residence under the AFDC program except that non-institutionalized persons under age 21 whose MA eligibility is based on blindness or disability are residents if they are physically present in Wisconsin.

(e) *Institutionalized persons.* 1. For any institutionalized person who is under age 21, or who is age 21 or older and became incapable of indicating intent before age 21, the state of residence is that of:

a. The parents or the legal guardian, if one has been appointed, and parental rights have terminated at the time of placement in an institution; or

b. The parent applying for MA on behalf of the applicant if the parent resides in another state and there is no appointed legal guardian.

2. Institutionalized persons over age 21 are Wisconsin residents when they are physically present with the intent to reside in Wisconsin except that persons who become incapable of indicating intent at or after age 21 are residents of the state in which they are physically present.

(f) *Out-of-state institutional placements.* When a state arranges for a person to be placed in an institution located in another state, the state making the placement is the state of residence irrespective of the person's indicated intent or ability to indicate intent.

(g) *Establishment of residence.* Once established, residence is retained until superseded by a new place of residence.

(4) **FURNISHING OF A SOCIAL SECURITY NUMBER.** All individuals for whom MA benefits are requested, including all children except preadoptive infants residing in foster homes awaiting adoption, shall have a social security number and shall furnish the number to the agency. If an applicant does not have a social security number, application for the number shall be made by or on behalf of the applicant to the federal social security administration. If there is a refusal to furnish a number or apply for a number, the person for whom there is a refusal is not eligible for MA. The department may not deny or delay services to an otherwise eligible applicant pending issuance or verification of the individual's social security number.

(5) **ASSIGNMENT OF MEDICAL SUPPORT.** The parent or caretaker relative of a dependent child enumerated in s. 49.19 (1) (a), Stats., shall be deemed to have assigned all rights to medical support to the state as provided in s. 49.45 (19) (a), Stats. If there is a refusal to make the assignment, the person who refuses is not eligible for MA.

(6) **NOT A PERSON DETAINED BY LEGAL PROCESS.** A person detained by legal process is not eligible for MA benefits. For purposes of this subsection, "detained by legal process" means incarcerated because of law violation or alleged law violation, which includes misdemeanors, felonies, and delinquent acts. A person who returns to the court after observation, is found not guilty of a law violation by reason of mental deficiency and is subsequently committed to a mental institution shall not be considered detained by legal process.

(7) **NOT A PERSON RESIDING IN A CERTIFIED PSYCHIATRIC FACILITY.** A person 22 to 64 years of age who resides in a certified psychiatric facility is not eligible for MA benefits.

(8) **NOT AN INELIGIBLE CARETAKER RELATIVE.** A caretaker relative enumerated in s. 49.19 (1) (a), Stats., with whom a dependent child as defined in s. 49.19 (1) (a), Stats., is living when the income and resources of the MA group or fiscal test group exceed the limitations of ss. 49.19 and 49.177, Stats., or title XVI of the social security act of 1935, as amended, is not eligible unless the caretaker relative is SSI-related in accordance with sub. (1) (c), or is a woman who is medically verified to be pregnant.

(9) **NOT A STRIKER.** A person on strike is not eligible. When the striker is a caretaker relative, all members of the MA group shall be ineligible. In this subsection, "striker" means anyone who on the last day of the month is involved in a strike or a concerted effort with other employees to stop work including a stoppage of work due to the expiration of a collective bargaining agreement, or any concerted slowdown or other concerted interruption of operations by employees.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.04 Asset and income limits.** The nonexempt assets and budgetable income of the MA group or, when applicable, the fiscal test group, shall be compared to the following asset and income limits established in this section to determine the eligibility of the MA group:

(1) **CATEGORICALLY NEEDY.** (a) The MA group or fiscal test group shall first be tested against the categorically needy standard. Persons who meet the non-financial eligibility conditions and who meet the income and asset standards specified in this subsection shall be determined eligible as categorically needy in accordance with s. 49.46 (1) (e), Stats., and shall receive MA benefits in accordance with s. 49.46 (2), Stats., and chs. HSS 101 to 108.

(b) The AFDC-related categorically needy income standard for MA applicants shall be the appropriate AFDC assistance standard as specified in s. 49.19 (11) (a) 1, Stats., except that persons who are ineligible to receive AFDC solely because of the application of s. 49.19 (11) (a) 6, Stats., which specifies that payments that are not whole dollar amounts shall be rounded down to the nearest whole dollar, shall receive MA as categorically needy. The AFDC-related categorically needy asset standard shall be the same as that set out in s. 49.19 (4), Stats.

(c) The SSI-related categorically needy income standard shall be the maximum SSI payment including state supplement that a single person or a couple, as appropriate, could receive in Wisconsin under s. 49.177, Stats., or federal title XVI of the social security act of 1935, as amended. The SSI-related categorically needy asset standard shall be the same as specified in s. 1613 of title XVI of the social security act of 1935, as amended.

(2) **MEDICALLY NEEDY.** If the MA group or fiscal test group is not eligible as categorically needy, the medically needy standard shall be applied. Persons who meet non-financial conditions for eligibility and meet the income and assets criteria set forth in s. 49.47 (4) (b) and (c), Stats., and this chapter, except for AFDC-related adult caretakers who are not blind, disabled or age 65 or older, shall be determined medically needy

and shall receive MA benefits in accordance with s. 49.47 (6), Stats., and chs. HSS 101 through 108.

(3) **EXCESS INCOME CASES.** (a) In this subsection, "spend-down period" means the period during which excess income may be expended or obligations to expend excess income may be incurred for the purpose of obtaining MA eligibility, as described under s. HSS 103.08 (2) (a).

(b) When an SSI-related or AFDC-related fiscal test group is found ineligible as medically needy and excess income is the only reason, the group may expend or incur obligations to expend the excess income above the appropriate medically needy income limit pursuant to s. 49.47 (4) (c) 2 and 3, Stats., and this chapter. If after incurred medical expenses are deducted, the remaining income is equal to or less than the income limit, the MA group shall be determined medically needy and shall receive MA benefits in accordance with s. 49.47 (6), Stats., and chs. HSS 101 to 108 for the balance of the spend-down period.

(c) Health insurance premiums actually incurred or paid, plus any medical service recognized by state law received by a member of the MA or fiscal test group shall be counted toward fulfilling the excess income expenditure or incurrence requirement when the service is prescribed or provided by a medical practitioner who is licensed by Wisconsin or another state and if either or both of the following conditions are met:

1. The service is received during the spend-down period; or

2. The expense was incurred prior to the spend-down period and a fiscal test group member is still legally responsible for the debt and is consistently making payments, in which case the payments made during the spend-down period shall be counted.

(d) No medical costs that are incurred and are to be paid or have been paid by a person other than the applicant or members of the fiscal test group may be counted toward fulfilling the excess income expenditure or incurrence requirement. No expense for which a third party is liable, including but not limited to medicare, private health insurance, or a court-ordered medical support obligation, may be used to meet the expenditure of excess income requirement.

(4) **SPECIAL FINANCIAL STANDARDS FOR INSTITUTIONALIZED PERSONS.** The categorically needy and medically needy asset standards shall be the same for institutionalized persons as for non-institutionalized persons. The eligibility standards against which an institutionalized person's income is tested shall be the following:

(a) *Categorically needy standard.* The categorically needy standard for an institutionalized person shall be an amount equal to 3 times the federal share of the SSI payment for one person living in that person's own home.

(b) *Medically needy standard.* An institutionalized person shall be determined medically needy in accordance with requirements under 42 CFR 435.1007.

(5) **IRREGULAR CASES.** (a) *Mixture of AFDC and SSI-relatedness.* When there is a mixture in an MA group of AFDC-relatedness and SSI-relatedness, AFDC-related financial eligibility procedures shall be used

the proposed action and the circumstances under which MA is continued if a fair hearing is requested.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 103.10 Redetermination of eligibility.** The agency shall give the recipient timely advance notice of the date on which the recipient's eligibility will be redetermined. This notice shall be in writing and mailed to the recipient at least 15 calendar days but no more than 30 calendar days before the redetermination date. The requirement for timely advance notice of eligibility redetermination does not apply to spend-down cases in which the period of certification is less than 60 days.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.