

## Chapter DWD 12

### WISCONSIN WORKS

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**Note:** Chapter DWD 12 was created as an emergency rule effective March 1, 1997.

**DWD 12.01 Authority and purpose.** This chapter is adopted pursuant to ss. 49.141 through 49.161, Stats., to provide rules for the administration of the Wisconsin works program.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97.

**DWD 12.02 Applicability.** This chapter applies to any private or public agency that administers the Wisconsin works program and to all applicants for and participants in the Wisconsin works program.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97.

**DWD 12.03 Definitions.** Unless otherwise provided, 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 s. 49.19, Stats.

(2) "Assessment" means the process under which the Wisconsin works agency evaluates each Wisconsin works participant's skills, prior work experience and employability.

(3) "CARES" means the department's automated client assistance for re-employment and economic support.

**Note:** The CARES system, using data provided by applicants, electronically determines eligibility for Wisconsin works, calculates community service jobs and transitional placement benefit amounts and electronically retains data in historical files.

(4) "Case management" means the family-centered and goal-oriented process for assessing the needs of a Wisconsin works group member and his or her family for employment, training and supportive services and assisting the Wisconsin works group member in obtaining services to achieve self-sufficiency.

(5) "Community rehabilitation program" means a program that provides directly or facilitates the provision of vocational rehabilitation to individuals with disabilities and that enables an individual with a disability to maximize opportunities for employment.

(6) "Community service job" or "CSJ" means a work component of Wisconsin works administered under s. 49.147 (4), Stats.

(7) "Component of Wisconsin works" means a trial job, community service job, transitional placement or unsubsidized employment.

(8) "Custodial parent" means, with respect to a dependent child, a parent who resides with that child and, if there has been a determination of legal custody with respect to the dependent child, has legal custody of that child. For the purposes of this subsection, "legal custody" has the meaning given in s. 767.001 (2) (a), Stats.

(9) "Department" means the Wisconsin department of workforce development.

(10) "Dependent child" means a person who resides with a parent and who is under the age of 18 or, if the person is a full-time student at a secondary school or a vocational or technical equivalent and is reasonably expected to complete the program before attaining the age of 19, is under the age of 19.

(11) "Domestic abuse" has the meaning given in s. 968.075 (1) or 813.12 (1) (am), Stats.

(12) "Employability plan" means a written agreement developed by a FEP in consultation with a participant that details a logical, sequential series of actions to move the participant from dependency to self-sufficiency. The "employability plan" includes the participant's goal, precise tasks required of both the W-2 agency and the participant, and supportive services needed by the participant.

(13) "Financial and employment planner" or "FEP" means a case manager employed by a Wisconsin works agency who determines eligibility, assists in the process of determining eligibility, or performs case management functions.

(14) "Food stamp program" means the assistance program under 7 USC 2011 to 2029.

(14m) "Formal assessment" means the process of making a determination that a condition exists, establishing the extent and severity of a condition, and, if appropriate, what alternative services or accommodations in jobs or work assignments might permit the recipient to engage in work, either immediately or after some other intervention. A "formal assessment" shall be completed by a qualified assessing agency or business.

(15) "Incapacitated" means having a medically-determined physical or mental impairment which has been verified by the department's division of vocational rehabilitation or other similar agency or business and which prevents the person from temporarily or permanently holding full-time unsubsidized employment or participating in a trial job or CSJ.

(16) "Job access loan" means a loan under s. 49.147 (6), Stats., to address an immediate and discrete financial crisis in order to obtain or continue employment.

(17) "Job center" means a site for employers to meet workforce needs and job seekers to obtain career planning, job placement and training.

(18) "Jobnet" means the department's computerized listing of jobs available by region and throughout Wisconsin which includes the employer requirements necessary for applicants to obtain these jobs.

(19) "JOBS" means the job opportunities and basic skills training program established under 42 USC 682 and s. 49.193, 1997 Stats., for the purpose of assisting AFDC recipients to develop marketable skills and obtain gainful employment.

(20) "Learnfare" means the program established under s. 49.26, Stats., which requires that all preteens living in a pilot county designated by the department and teenagers attend school.

(21) "Medical assistance" means the assistance program operated by the department of health and family services under ss. 49.43 to 49.497, Stats., and chs. HFS 101 to 108.

(22) "Migrant worker" has the meaning given in s. 103.90 (5), Stats.

(23) "Minor parent" means an individual who is under age 18 and is a custodial parent.

(24) "Minimum wage" means the state minimum hourly wage under ch. 104, Stats., or the federal minimum hourly wage under 29 USC 206 (a) (1), whichever is applicable.

(25) "Noncustodial parent" means, with respect to a dependent child, a parent who is not the custodial parent.

(26) "Nonmarital coparent" means, with respect to an individual and a dependent child, a parent who is not married to the individual, resides with the dependent child and is either an adjudicated parent or a parent who has signed and filed with the state registrar under s. 69.15 (3) (b) 3., Stats., a statement acknowledging paternity.

(27) "Parent" means either a biological parent, a person who has consented to the artificial insemination of his wife under s. 891.40, Stats., or a parent by adoption.

(28) "Participant" means an individual who participates in any component of the Wisconsin works program.

(29) "Poverty line" has the meaning prescribed under s. 49.001 (5), Stats.

(30) "Protective payment" means a money payment to a payee designated by the agency as the receiver of a participant's total or partial W-2 benefit.

(31) "Reasonable promptness" means 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.

(31h) "Screening" means a process of determining if an individual is at risk of a certain condition or barrier. A "screening" is intended to determine the likelihood that a person requires additional assessment to uncover a particular barrier. A "screening" does not result in a specific diagnosis.

(31m) "Second parent" has the same meaning given "other parent" in s. 49.15 (1), Stats.

**Note:** Sec. 49.15 (1), Stats. defines "other parent" as "a parent who is not a participant in a Wisconsin works employment position."

(32) "Strike" has the meaning provided in 29 USC 142(2).

(32m) "TANF" or "temporary assistance for needy families" means a federal block grant under 42 USC 601-619.

(33) "Transitional placement" means a work component of Wisconsin works administered under s. 49.147 (5), Stats.

(34) "Trial job" means a work component of Wisconsin works administered under s. 49.147 (3), Stats.

(35) "Unsubsidized employment" means employment for which the Wisconsin works agency provides no wage subsidy to the employer including self-employment and entrepreneurial activities.

(36) "Vendor payment" means a money payment made on behalf of a participant directly to a provider of goods or services.

(37) "Wisconsin works" or "W-2" means the assistance program for families with dependent children, administered under ss. 49.141 to 49.161, Stats.

(38) "Wisconsin works agency" or "W-2 agency" means a person, county agency, tribal governing body, or a private agency contracted under s. 49.143, Stats., by the department to administer the Wisconsin works program under ss. 49.141 to 49.161, Stats., and this chapter. If no contract is awarded under s. 49.143, Stats., "Wisconsin works agency" means the department.

(39) "Wisconsin works employment position" means a trial job, community service job or transitional placement.

(40) "Wisconsin works group" means an individual who is a custodial parent, all dependent children with respect to whom the individual is a custodial parent and all dependent children with respect to whom the individual's dependent child is a custodial parent. "Wisconsin works group" includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent. "Wisconsin works group" does not include any person who is receiving relief block grant benefits under s. 49.027 (3) (b), Stats.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; cr. (31m), Register, July, 2000, No. 535, eff. 8-1-00; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541; CR 02-050: am. (intro.), (11) and (19), r. and recr. (12) and (13), cr. (14m), (31h) and (32m) Register January 2003 No. 565, eff. 2-1-03; correction in (11) made under s. 13.93 (2m) (b) 7., Stats., Register January 2003 No. 565.

**DWD 12.04 Department responsibilities.** (1) GENERAL. The department shall maintain oversight responsibility for administration of the Wisconsin works program by contracted administrative agencies.

(2) GEOGRAPHICAL AREAS. The department shall determine the geographical area in which a Wisconsin works agency will administer the Wisconsin works program.

**Note:** An individual may contact the local W-2 agency or the local county or tribal department of human services or social services for assistance in determining which geographical area he or she resides in and the address and phone number of the W-2 agency in his or her geographical area.

(3) CONTRACT REQUIREMENTS. The department shall contract under s. 49.143, Stats., with providers to administer the Wisconsin works program in a geographical area. If a Wisconsin works agency does not meet the performance standards established by the department, the department may withhold any or all payment from the Wisconsin works agency or terminate the contract.

(4) REQUESTS FOR INFORMATION. The department may request from any Wisconsin works agency any information that the department determines appropriate and necessary for the overall administration of Wisconsin works. A Wisconsin works agency shall provide the department with the requested information through written reports, CARES reports and through other appropriate forms as prescribed by the department.

(5) INSPECTION OF RECORDS. The department may inspect at any time any Wisconsin works agency's records as the department determines is appropriate and necessary for the overall administration of Wisconsin works.

(6) CERTIFICATION AND TRAINING REQUIREMENTS. The department shall ensure that a financial and employment planner employed by a W-2 agency meets certification and training requirements established by the department and that appropriate training is provided by the W-2 agency.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97.

**DWD 12.05 W-2 agency responsibilities.** In administering the W-2 program, the W-2 agency shall do all of the following:

(1) Comply with ss. 49.141 to 49.161, Stats., applicable federal law, this chapter, and related program procedures.

(2) Make available all records necessary for the department's exercise of its supervisory functions under s. 49.35, Stats.

(3) Provide the department with requested information through written reports, CARES reports and through other appropriate forms as prescribed by the department.

(4) Establish a community steering committee in accordance with s. 49.143 (2) (a), Stats.

(5) Establish a children's services network in accordance with s. 49.143 (2) (b), Stats.

(6) Establish a referral relationship with other employment and training programs for participants to make use of varied edu-

cation and training opportunities available through job centers, such as pre-employment workshops, jobnet, and job clubs.

(7) Encourage employers to make training sites available on the business site for participants.

(8) Work with the department of commerce to coordinate the provision of training to participants in conjunction with employers eligible for the development zone program under subch. VI of ch. 560, Stats.

(9) Ensure that no W-2 employment position is operated so as to do any of the following:

(a) Have the effect of filling a vacancy created by an employer terminating a regular employee or otherwise reducing its work force for the purpose of hiring an individual into a W-2 employment position.

(b) Fill a position when any other person is on layoff or strike from the same or a substantially equivalent job within the same organizational unit.

(c) Fill a position when any other person is engaged in a labor dispute regarding the same or a substantially equivalent job within the same organizational unit.

(10) Refer individuals who have been determined eligible under s. 49.155 (1m), Stats., and s. DWD 12.26 for a child care subsidy to the county child care agency under s. 46.215, 46.22 or 46.23, Stats., for child care assistance.

(11) Refer all cases involving paternity and child support to the county child support agency.

(12) Provide, refer or facilitate transportation arrangements to enable participants to participate in W-2 activities. The W-2 agency shall limit any financial assistance granted to a W-2 participant to financial assistance for public transportation if a form of public transportation that meets the needs of the participant is available.

(13) Recover any overpayment of W-2 wages or benefits as required under s. 49.161, Stats., and s. DWD 12.23.

(14) Investigate, or refer to the appropriate agency for investigation, suspected cases of fraud.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; am. (10), Register, January, 2001, No. 541, eff. 2-1-01; CR 02-050: am. (1) Register January 2003 No. 565, eff. 2-1-03.

**DWD 12.055 Grievance procedure for complaints of employment displacement.** (1) AGENCY DESIGNEE. Each W-2 agency shall designate staff responsible for receiving, investigating, and resolving complaints of violations of s. DWD 12.05 (9) or shall maintain an agreement with a department grantee or contractor in the same locality to receive, investigate, and resolve such complaints.

(2) NOTICE. Each W-2 work training provider or employer of a participant in a W-2 employment position shall inform its employees of the right to file a complaint under this section and provide information about how to obtain further information on the grievance procedure.

(3) FILING A COMPLAINT. (a) An employee, former employee, or employee's representative may file a written complaint with the W-2 agency or its designee that alleges facts that may constitute a violation of s. DWD 12.05 (9).

(b) The complaint shall be filed within one year from the date of the alleged violation.

(4) INVESTIGATION AND INFORMAL RESOLUTION. Upon receipt of a complaint alleging a violation of s. DWD 12.05 (9), the W-2 agency or its designee shall investigate the complaint and assist the parties in attempting to reach an informal resolution to the complaint.

(5) HEARING. (a) If an informal resolution under sub. (4) cannot be reached, the W-2 agency or its designee shall conduct a hearing within 30 calendar days from the date the complaint was filed.

(b) The W-2 agency or its designee shall issue a hearing decision to the parties within 60 calendar days from the date the complaint was filed.

(6) DEPARTMENT REVIEW. A party may file a request for a department review within 10 days of receiving an adverse decision from the W-2 agency or its designee or within 15 days from the date the decision was due if the parties did not receive a decision. The review shall be conducted by the administrator of the department's division of workforce solutions or a designee. The department's final decision shall be issued within 30 calendar days from the date the request for departmental review was filed.

**Note:** A request for departmental review may be filed with the Division of Workforce Solutions Administrator, Department of Workforce Development, 201 E. Washington Avenue, P.O. Box 7972, Madison, WI 53707.

(7) REMEDIES. A W-2 employer or work training provider who is found to have violated any of the nondisplacement provisions in s. DWD 12.05 (9) may be subject to the following penalties:

(a) Termination of existing W-2 or other work training agreements with the department or its contractors.

(b) Termination of grants from the department or its contractors and disqualification for future grants.

(c) Disqualification for future work training agreements with the department or its contractors.

(8) NONRETALIATION. No employer or W-2 work training provider may retaliate against an employee, employee's representative, or witness who initiates or participates in the grievance procedure under this section.

**History:** CR 04-082: cr. Register November 2004 No. 587, eff. 12-1-04.

#### DWD 12.06 Application for Wisconsin works.

(1) RIGHT TO APPLY. Any individual may apply for Wisconsin works. Application for Wisconsin works shall be made on a form prescribed by the department and available from a Wisconsin works agency.

(2) WHERE APPLICATION IS MADE. Application shall be made in the geographical area specified by the department under s. 49.143 (6), Stats., in which the individual lives.

(3) 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 any agency representative in accordance with s. 49.84, Stats. Two witnesses' signatures shall be required when the application is signed with a mark.

(4) DECISION DATE. (a) As soon as possible, but no later than 5 working days after the date the agency receives a signed application, completed to the best of the applicant's ability, the W-2 agency shall schedule and hold a personal interview with the applicant.

(b) The W-2 agency shall give the applicant 7 working days to provide requested verification.

(c) Following the interview and after verifying eligibility information, the W-2 agency shall with reasonable promptness make a decision as to the appropriate placement in a W-2 employment position.

(5) NONENTITLEMENT. Notwithstanding fulfillment of the eligibility requirements for any component of Wisconsin works, an individual is not entitled to services or benefits under Wisconsin works.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97.

**DWD 12.07 Access to information.** (1) Individuals inquiring about or applying for W-2 shall be given the following information by the W-2 agency in written form, and orally as appropriate: coverage, conditions of eligibility, scope of the program and related services available, and participants' rights and

responsibilities. Bulletins or pamphlets developed for this purpose shall be available at the W-2 agency.

(2) Individuals may examine program manuals and policy issuances which affect the public, including rules and regulations governing eligibility, participants' rights and responsibility and services offered. These documents may be examined at W-2 agency offices or the department's state or regional offices on regular work days during regular office hours.

(3) An individual or the individual's authorized representative may review the individual's entire case record to verify that the content accurately reflects statements and documentation of facts. The W-2 agency may not withhold any part of the record during preparation for a review of a W-2 agency decision under s. 49.152, Stats. When the request is not related to preparation for review of a W-2 agency decision under s. 49.152, Stats., the W-2 agency is not required to show the individual or the individual's authorized representative the entire record unless the reason for reviewing the record requires the full record.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97.

**DWD 12.08 Request for information.** (1) A Wisconsin works agency may request from any person any information that it determines appropriate and necessary for the administration of Wisconsin works. Any person in this state shall provide this information within 7 days after receiving a request under this subsection. The Wisconsin works agency may extend the 7-day time limit for an individual for whom compliance with that limit would be unduly burdensome, as determined by the agency. The Wisconsin works agency may disclose information obtained under this subsection only in the administration of Wisconsin works.

(2) The Wisconsin works agency shall keep all information that it receives regarding victims of domestic abuse strictly confidential, except to the extent needed to administer Wisconsin works.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97.

**DWD 12.09 Eligibility for Wisconsin works.** (1) GENERAL ELIGIBILITY. In order to be eligible for Wisconsin works employment positions and job access loans for any month, an individual shall meet the eligibility requirements under subs. (2) and (3).

(2) NONFINANCIAL ELIGIBILITY REQUIREMENTS. An individual is eligible for a Wisconsin works employment position and a job access loan in a month only if all of the following nonfinancial eligibility requirements are met:

(a) The individual is a custodial parent.

(b) The individual has attained the age of 18.

(c) The individual is a United States citizen, national of the United States, or qualified alien. An individual is a qualified alien if he or she is any of the following:

1. An alien lawfully admitted to the United States for permanent residence under the immigration and nationality act, 8 USC 1101 et seq.

2. An alien who is granted asylum under section 208 of the immigration and nationality act, 8 USC 1158.

3. A refugee who is admitted to the United States under section 207 of the immigration and nationality act, 8 USC 1157.

4. An alien who has been certified as a victim of trafficking under 22 USC 7105(b)(1)(E).

5. An alien who is paroled into the United States under section 212(d)(5) of the immigration and nationality act, 8 USC 1182(d)(5), for a period of at least one year.

6. An alien whose deportation is being withheld under section 243(h) of the immigration and nationality act, 8 USC 1253 as in effect March 31, 1997, or section 241(b)(3) of the act, 8 USC 1231(b)(3).

7. An alien who is granted status as a Cuban and Haitian entrant, as defined in section 501(e) of the refugee education assistance act of 1980, 8 USC 1522(note).

8. An American Indian born in Canada who is at least 50% American Indian by blood.

9. An American Indian born outside of the United States who is a member of a federally-recognized Indian tribe.

10. An alien who has been battered or whose child has been battered, who is no longer residing in the same household with the batterer, and who meets the requirements of 8 USC 1641(c).

11. An alien who is granted conditional entry pursuant to section 203(a)(7) of the immigration and nationality act, 8 USC 1153(a)(7), as in effect prior to April 1, 1980.

12. An alien who is admitted to the United States as an Amerasian immigrant, as described in section 584 of the foreign operations, export financing, and related programs appropriations act of 1988, 8 USC 1101(note).

13. An alien who is lawfully residing in the United States and is one of the following:

a. An armed forces veteran who received an honorable discharge that was not on account of alienage and who completed either 24 months of continuous active duty or the full period for which the individual was called, unless the individual received a hardship discharge under 10 USC 1173, early discharge under 10 USC 1171, or a discharge due to a disability incurred or aggravated in the line of duty.

b. On active duty in the armed forces of the United States, other than active duty for training.

c. The spouse of an individual described in subd. 13. a. or b., or the unremarried surviving spouse of an individual described in subd. 13. a. or b. if the marriage was for one year or more or the individuals had a child in common.

14. An alien who is lawfully residing in the United States and authorized to work by the immigration and naturalization service.

(d) The individual has residence in this state.

(e) 1. Subject to subd. 2. and ch. DWD 15, every parent in the individual's Wisconsin works group fully cooperates in good faith with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which that parent may be responsible unless the W-2 agency determines that the parent has good cause for failing to cooperate pursuant to ch. DWD 15.

2. An individual who is a member of a Wisconsin works group that fails 3 times without good cause to meet the requirements in ch. DWD 15 remains ineligible until all the members of the Wisconsin works group cooperate or for a period of 6 months, whichever is later.

(f) The individual furnishes the Wisconsin works agency with any relevant information that the Wisconsin works agency determines is necessary under s. DWD 12.08 within 7 working days after receiving a request for the information from the Wisconsin works agency. The Wisconsin works agency may extend the 7 working day time limit for an individual for whom compliance with that limit would be unduly burdensome, as determined by the agency.

(g) The individual has made a good faith effort, as determined by the Wisconsin works agency on a case-by-case basis, to obtain unsubsidized employment and has not refused any bona fide offer of employment within the 180 days immediately preceding application for a W-2 employment position.

(h) If the individual has applied for Wisconsin works within the 180 days immediately preceding the current application, the individual has cooperated with the efforts of a Wisconsin works agency to assist the individual in obtaining unsubsidized employment.

(i) The individual is not receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77, Stats.

(j) The individual is not receiving social security disability insurance under 42 USC 401 to 433.

(k) On the last day of the month, the individual is not participating in a strike.

(L) The individual applies for or provides a social security account number.

(m) The individual reports any change in circumstances that may affect his or her eligibility to the Wisconsin works agency within 10 days after the change.

(n) Beginning on the date on which the individual has attained the age of 18, the total number of months in which the individual, or any other adult member of the Wisconsin works group, has actively participated in the JOBS program, has participated in a Wisconsin works employment position, or has participated in any TANF-funded program in this state or any other state and has received TANF cash assistance while in that program does not exceed 60 months. The months need not be consecutive. For purposes of determining the number of monthly benefit payments permitted under s. 49.145 (2) (n), Stats., and this section, a JOBS program participant or W-2 participant shall be considered to have received a monthly benefit in a month in which, as a result of a sanction under the JOBS program or s. DWD 12.18 (1) (b) or (c) or 12.21, a reduced monthly AFDC or W-2 benefit or no monthly AFDC or W-2 benefit is paid. Participation in the job opportunities and basic skills program under s. 49.193, 1997 Stats., on or after October 1, 1996, counts toward the 60-month limit. A Wisconsin works agency may extend the time limit only if the Wisconsin works agency determines that unusual circumstances exist that warrant an extension of the participation period. The department may review, approve or overturn a W-2 agency's decision related to an extension of the 60-month limit. In this paragraph, "unusual circumstances" means any of the following:

1. A W-2 participant is unable to work because of personal disability or incapacitation, or is needed as determined by the agency to remain at home to care for a member of the W-2 group whose incapacity is so severe that without in-home care provided by the W-2 participant, the incapacitated W-2 group member's health and well-being would be significantly affected.

2. A W-2 participant has significant limitations to employment such as any of the following:

a. Low achievement ability, learning disability or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment, but are not sufficient to meet the criteria for eligibility for supplemental security income under 42 USC 1381 to 1383c or social security disability insurance under 42 USC 401 to 433.

b. Family problems of such severity that they prevent the W-2 participant from obtaining or retaining unsubsidized employment.

3. The W-2 participant has made all appropriate efforts to find work and is unable to find employment because local labor market conditions preclude a reasonable job opportunity. In this subdivision, "reasonable job opportunity" means a job that pays minimum wage, and conforms to all applicable federal and state laws.

(o) No other individual in the W-2 group is a participant in a W-2 employment position. This paragraph does not apply to an individual applying for a job access loan.

(p) The individual cooperates in providing information needed to verify enrollment information or good cause for the Learnfare program under s. 49.26, Stats., and s. DWD 12.25.

(q) The individual cooperates in the requirement to search for unsubsidized employment throughout his or her participation in a W-2 employment position.

(r) The individual cooperates in applying for other public assistance programs or resources that the FEP believes may be available to the individual.

(s) The individual cooperates with providing eligibility information under this chapter for other members of the W-2 group.

**(3) FINANCIAL ELIGIBILITY REQUIREMENTS.** An individual is eligible for a W-2 employment position and a job access loan only if all of the following financial eligibility requirements are met:

(a) *Resource limitations.* The individual is a member of a W-2 group whose assets do not exceed \$2,500 in combined equity value. In determining the combined equity value of assets, the W-2 agency shall exclude the equity value of vehicles up to a total equity value of \$10,000, and one home that serves as the home-stead for the W-2 group. When an individual is a sponsored alien pursuant to 8 USC 1183a, the sponsor's resources shall be attributed to the sponsored alien as provided under 8 USC 1631. In this paragraph, "equity value of vehicles" 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) *Income limitations.* 1. The individual is a member of a W-2 group whose gross income is at or below 115% of the poverty line. In this subdivision, "gross income" does not include any payments or benefits made under any federal law that specifically exempts such payments or benefits from being considered in determining eligibility for any federal means-tested program.

2. Except as provided in subd. 1., in calculating gross income, the W-2 agency shall include all of the following:

a. All earned and unearned income of the individual except any federal earned income credit received under section 32 of the Internal Revenue Code as defined in s. 71.01 (6), Stats., any state earned income credit received under s. 71.07 (9e), Stats., any federal earned income credit payment made by an employer under section 3507 of the internal revenue code, any student financial aid received under any federal or state program, any scholarship used for tuition and books, and any W-2 employment position wages or benefits under s. 49.148, Stats. In determining the earned and unearned income of the individual, the Wisconsin works agency may not include income earned by a dependent child of the individual.

c. The income of a nonmarital coparent or of the individual's spouse, if the spouse resides in the same home as the dependent child.

d. When the individual is a sponsored alien pursuant to 8 USC 1183a, the income of the sponsor and his or her spouse as provided under 8 USC 1631.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; r. and recr. (2) (d), am. (2) (n) (intro.) and (3) (b) 2. a., r. (3) (b) 2. b., Register, January, 2001, No. 541, eff. 2-1-01; CR 02-050: r. and recr. (2) (c) and (e) 1., am. (2) (e) 2., (n) (intro.), and (3) (b) 2. a. Register January 2003 No. 565, eff. 2-1-03.

**DWD 12.10 Temporary absence. (1) DENIAL OF ASSISTANCE FOR A DEPENDENT CHILD WHO IS ABSENT FROM THE HOME FOR A SIGNIFICANT PERIOD.** A dependent child may be absent from the custodial parent's home but still be considered under the care of the custodial parent if the following conditions are met:

(a) The dependent child will not be or has not been continuously absent for more than 3 months and the child is expected to return to the custodial parent's home.

(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.

(c) The custodial parent continues to exercise responsibility for the care and control of the child. A dependent child who is receiving kinship care under s. 48.57 (3m), Stats., is not considered under the care and control of the custodial parent.

**(2) DENIAL OF ASSISTANCE FOR CUSTODIAL PARENT WHO FAILS TO NOTIFY THE W-2 AGENCY OF ABSENCE OF CHILD.** A custodial par-

ent of a dependent child who fails to notify the Wisconsin works agency of the absence of the dependent child from the home for the period specified in sub. (1) (a), by the end of the 5-day period that begins with the date that it becomes clear to the custodial parent that the dependent child will be absent for such period so specified or provided for, is not eligible for W-2.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97.

**DWD 12.11 Verification. (1)** The W-2 agency shall verify that an individual meets nonfinancial and financial eligibility criteria under s. DWD 12.09 (2) and (3) prior to placing an individual in a W-2 employment position, nonfinancial and financial eligibility criteria under s. 49.155 (1m), Stats., and s. DWD 12.26 prior to providing a child care subsidy or other appropriate eligibility criteria prior to providing any other W-2 benefit or service.

**(2)** If the individual does not have the power to produce verification, or requires assistance to do so, the W-2 agency shall proceed immediately to seek the verification.

**(3)** No eligibility shall exist when an individual has the power to produce required verification as determined by the W-2 agency but refuses or fails to do so.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; am. (1), Register, January, 2001, No. 541, eff. 2-1-01.

**DWD 12.12 Eligibility date.** The eligibility date for a W-2 employment position wage or benefit payment is the date the applicant has met all W-2 eligibility requirements and has begun participating in a W-2 employment position.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97.

**DWD 12.13 Review of eligibility.** A W-2 agency shall periodically review an individual's eligibility. A W-2 employment position participant remains eligible under s. DWD 12.09 (3) until the W-2 group's assets or income is expected to exceed the asset or income limits under s. DWD 12.09 (3) for at least 2 consecutive months.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; am. Register, January, 2001, No. 541, eff. 2-1-01.

**DWD 12.14 Employer criteria. (1)** The W-2 agency shall ensure that an employer providing a Wisconsin works employment position meets criteria as specified under subs. (2) to (3) in order to employ a participant in a W-2 employment position. An employer that does not meet the criteria established under this section is ineligible to receive any subsidy for any position provided to a participant.

**(2) TRIAL JOB.** A trial job employer shall agree to do all of the following:

(a) Pay the participant the amount established by contract but not less than minimum wage for every hour actually worked.

(b) Make a good faith effort to retain the participant as a permanent unsubsidized employee after the wage subsidy is terminated.

(c) Provide worker's compensation. If the trial job employer is required to provide worker's compensation insurance for its unsubsidized employees, the trial job employer shall provide the same level of coverage for the trial job participants.

(d) Inform the participant of his or her possible eligibility for federal and state earned income credit and process a participant's request for advance payments of federal earned income credit under section 3507 of the internal revenue code.

(e) Provide the same education and training opportunities as that provided to similar, unsubsidized employees of the employer and consider providing or arranging for additional education and training opportunities as appropriate.

(f) Comply with the grievance procedure in s. DWD 12.055 for regular employees of the worksite to resolve complaints of employment displacement by a W-2 participant under s. DWD 12.05 (9).

**(3) COMMUNITY SERVICE JOB AND TRANSITIONAL PLACEMENT EMPLOYERS.** A CSJ or transitional placement employer shall agree to do all of the following:

(a) Provide a structured work environment which includes close supervision and a willingness to mentor and coach CSJ and transitional placement employees to succeed in the workplace.

(b) Provide a position which replicates actual conditions of work and provides responsibilities and expectations similar to unsubsidized employees of the employer considering the participant's barriers to unsubsidized employment including need for child care or transportation or level of ability.

(c) Cooperate with the W-2 agency by providing verification of the participant's hours of participation and missed hours.

(d) Comply with the grievance procedure in s. DWD 12.055 for regular employees of the worksite to resolve complaints of employment displacement by a W-2 participant under s. DWD 12.05 (9).

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; CR 04-082: am. (2) (f) and (3) (d) Register November 2004 No. 587, eff. 12-1-04.

**DWD 12.15 Case management. (1) INITIAL ASSESSMENT.** The W-2 agency shall make an initial assessment of the skills, prior work experience, and employability of each applicant prior to placement in a W-2 employment position.

**(2) EMPLOYABILITY PLAN.** The FEP shall, in consultation with the W-2 participant, develop a written employability plan for a W-2 participant which includes the participant's W-2 employment position placement, required activities under s. DWD 12.16, and an identified unsubsidized employment goal. As part of employability planning, the W-2 agency shall administer a functional screening developed by the department. One of the purposes of the screening shall be to determine whether a formal assessment is necessary. The development of the employability plan shall take into consideration any screening or formal assessment results. A W-2 participant may refuse to participate in the functional screening without sanction. Participation in the functional screening may not be a condition of eligibility for a W-2 participant. Nothing in this subsection may be construed to limit the ability of a W-2 agency to require a W-2 participant to comply with ss. DWD 12.08 and 12.09 or required activities under s. DWD 12.16.

**(3) DOMESTIC ABUSE. (a) Domestic abuse definition.** For purposes of this section, "domestic abuse" means any of the following acts that affect the individual and are engaged in by a spouse or former spouse, an adult with whom the individual has or had a dating relationship, an adult with whom the person has a child in common, an adult or minor family member, or an adult or minor with whom the person resides or formerly resided:

1. Physical acts that result in pain, illness, or injury.

2. Sexual abuse or sexual assault.

3. Threats of, or attempts at, physical or sexual abuse.

4. Emotional or mental abuse.

5. Verbal abuse.

6. Deprivation or destruction of physical or economic resources.

7. Neglect or deprivation of medical care.

8. Forced isolation.

9. Stalking or harassment.

**(b) Screening.** 1. As part of the initial employability planning process, the W-2 agency shall administer a screening to assess the potential that the individual is or has been a victim of domestic abuse or is at risk of further domestic abuse, unless the applicant has voluntarily disclosed the information pursuant to subd. 3.

2. If a W-2 participant was not screened during his or her initial employability planning process, a W-2 agency shall administer a screening to assess the potential that an individual is or has been a victim of domestic abuse or is at risk of further domestic abuse at the participant's next review or at the time of the partici-

pan't's next change of employment placement, whichever is sooner.

3. A W-2 agency shall allow an individual to voluntarily and confidentially disclose that he or she is or has been a victim of domestic abuse or is at risk of further domestic abuse.

4. A W-2 agency may also administer a domestic abuse screening to a W-2 participant at any time that the participant requests it or if the agency worker has reason to believe that the participant may need domestic abuse services.

5. A W-2 agency employee shall attend the department's 12-hour training on domestic abuse pursuant to s. DWD 17.03 (3) or 17.04 (2) prior to administering a domestic abuse screening under subs. 1., 2., or 4.

(c) *Information and referral.* 1. If a W-2 agency identifies an individual as a past or present victim of domestic abuse or determines that the individual is at risk of domestic abuse or if the individual identifies himself or herself as a past or present victim of domestic abuse or as an individual who is at risk of further abuse, the W-2 agency shall provide the individual with information on community-based domestic abuse services.

2. The evidence that is sufficient to establish that an individual is or has been a victim of domestic abuse or is at risk of further domestic abuse shall be a positive identification on the department-provided screening instrument or a voluntary disclosure of the information by the participant.

3. The information that a W-2 agency gives to an individual on community-based domestic abuse services shall be:

- a. Provided orally and in writing.
- b. Current and updated as necessary.
- c. Culturally appropriate for the individual participant.

d. Provided in languages other than English as appropriate in accordance with the W-2 contract requirements under s. 49.143 (2), Stats.

4. The information that a W-2 agency provides to an individual on community-based domestic abuse services shall include information on local providers of the following domestic abuse services:

- a. Law enforcement for immediate protection.
- b. Shelters or programs for battered individuals.
- c. Sexual assault provider services.
- d. Medical services and counseling.
- e. Sexual assault nurse examiners services.
- f. Domestic abuse and sexual assault hotlines.
- g. Legal counseling and advocacy.
- h. Mental health care.
- i. Counseling.
- j. Support groups.

5. If the individual elects to receive counseling or supportive services, the W-2 agency shall provide appropriate community-based referrals to the individual.

(d) *Voluntary participation.* A W-2 participant may refuse to be screened for domestic abuse or may refuse information on or referrals to community-based domestic abuse services without sanction. Participation in the domestic abuse screening and information and referral process may not be a condition of eligibility for a W-2 participant.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; CR 02-050: am. (2), cr. (3) Register January 2003 No. 565, eff. 2-1-03; **correction in (3) (b) 5. made under s. 13.93 (2m) (b) 7., Stats., Register November 2006 No. 611.**

**DWD 12.16 Work programs. (1) UNSUBSIDIZED EMPLOYMENT.** (a) *Job search, orientation and training activities.* 1. An individual who applies for a Wisconsin works employment position may be required by the Wisconsin works agency to search for unsubsidized employment during the period that his or her application is being processed as a condition of eligibility.

2. A satisfactory search effort for unsubsidized employment may include but is not limited to the following elements: participating in job orientation under subd. 3., making contacts with employers, submitting job applications to employers, participating in job interviews with employers, and conducting any other search activities specified in the participant's employability plan. The FEP shall determine whether a participant's search effort for unsubsidized employment is satisfactory on a case-by-case basis. The FEP may deny eligibility for placement in a W-2 employment position for an applicant who fails to complete required unsubsidized employment search activities or an applicant who fails to accept a bona fide offer of employment without good cause under s. DWD 12.20.

3. A Wisconsin works agency may require an applicant for a Wisconsin works employment position to participate in job orientation during the period that his or her application is being processed as a condition of eligibility. In this subdivision, "job orientation" means activities designed to help applicants prepare for work by learning general workplace expectations, work behavior and attitudes necessary to successfully compete in the labor market, help an applicant build self-esteem and increase an applicant's self-confidence.

4. A Wisconsin works agency may require a participant in a Wisconsin works employment position to engage in training activities permitted as part of the participant's placement under sub. (2), (3) or (4) and included in the W-2 participant's employability plan.

(b) *Job search assistance.* A Wisconsin works agency shall assist a participant in his or her search for unsubsidized employment. In determining an appropriate placement for a participant, a Wisconsin works agency shall give priority to placement in unsubsidized employment over placements under subs. (2) to (4).

(2) **TRIAL JOBS.** (a) In determining an appropriate placement for a participant, a Wisconsin works agency shall give priority to placement in a trial job over a placement in a community service job or transitional placement under subs. (3) and (4).

(b) 1. A Wisconsin works agency shall pay a wage subsidy to an employer that employs a participant in a trial job and agrees to make a good faith effort to retain the participant as a permanent unsubsidized employee after the wage subsidy is terminated.

2. The wage subsidy for full-time employment of a participant may not exceed the amount provided under s. 49.147 (3) (a), Stats. For less than full-time employment of a participant during a month, the wage subsidy may not exceed a dollar amount determined by multiplying the amount provided under s. 49.147 (3) (a), Stats., for full-time employment of a participant by a fraction, the numerator of which is the number of hours worked by the participant in the month and the denominator of which is the number of hours which would be required for full-time employment in that month.

(c) *Education or training activities.* A trial job includes education and training activities, as prescribed by the employer as an integral part of work performed in the trial job employment.

(d) *Worker's compensation.* The employer shall provide the participant with worker's compensation coverage as provided under s. DWD 12.14 (2) (c).

(e) *Time-limited participation.* 1. A W-2 participant may participate in a trial job for a maximum of 3 months, with an opportunity for a 3-month extension under circumstances determined by the Wisconsin works agency. A participant may participate in more than one trial job, but may not exceed a total of 24 months of participation under this subsection. The months need not be consecutive.

2. The department, or the Wisconsin works agency with the approval of the department, may grant an extension of the 24-month limit on a case-by-case basis if the participant has made all appropriate efforts to find unsubsidized employment and has been unable to find unsubsidized employment because local

labor market conditions preclude a reasonable job opportunity for that participant, as determined by a Wisconsin works agency and approved by the department.

**(3) COMMUNITY SERVICE JOB.** (a) In determining an appropriate placement for a participant, a Wisconsin works agency shall give placement in a community service job priority over a transitional placement under sub. (4). After each 6 months of an individual's participation under this subsection and at the conclusion of each assignment under this subsection, a Wisconsin works agency shall reassess the individual's employability.

(b) *Education or training activities.* A CSJ participant may be required to participate in education and training activities assigned as part of an employability plan developed by the Wisconsin works agency. Permissible education and training activities shall include only the following:

1. A course of study meeting the standards established under s. 115.29 (4), Stats., for the granting of a declaration of equivalency of high school graduation.
2. Technical college courses.
3. Educational courses that provide an employment skill.
4. English as a 2nd language courses that the Wisconsin works agency determines would facilitate an individual's efforts to obtain employment.
5. Adult basic education courses that the Wisconsin works agency determines would facilitate an individual's efforts to obtain employment.
6. Employer-sponsored training.

(c) *Required hours.* 1. Except as provided in par. (d), a Wisconsin works agency may require a participant placed in a community service job program to work not more than 30 hours per week in a community service job. Except as provided in subd. 2., a Wisconsin works agency may require a participant placed in the community service job program to participate in education or training activities under par. (b) for not more than 10 hours per week.

2. A W-2 agency may aggregate education and training activities hours in combination with work activities to allow participants access to approved training programs which may require more than 10 hours per week within the first months of participation in a CSJ. The FEP shall modify the participant's employability plan to reflect the aggregated education and training activities hours. Failure to participate in the aggregated education and training activities hours without good cause as determined by the FEP may result in application of a sanction under s. DWD 12.18 (1) (b).

(d) *Motivational training.* A Wisconsin works agency may require a CSJ participant, during the first 2 weeks of participation under this subsection, to participate in an assessment and motivational training program identified by the community steering committee under s. 49.143 (2) (a) 10., Stats. The Wisconsin works agency may require not more than 40 hours of participation per week under this paragraph in lieu of the participation requirement under par. (c).

(e) *Time-limited participation.* 1. An individual may participate in a community service job for a maximum of 6 months, with an opportunity for a 3-month extension under circumstances approved by the department. An individual may participate in more than one community service job, but may not exceed a total of 24 months of participation under this subsection. The months need not be consecutive.

2. The department, or the Wisconsin works agency with the approval of the department, may grant an extension to the 24-month limit on a case-by-case basis if the Wisconsin works agency determines that the individual has made all appropriate efforts to find and accept unsubsidized employment and has been unable to find unsubsidized employment because local labor market conditions preclude a reasonable employment opportunity in unsubsidized employment for that participant, as determined by

a Wisconsin works agency and approved by the department, and if the Wisconsin works agency determines, and the department agrees, that no trial job opportunities are available in the specified local labor market.

(f) *Worker's compensation.* A participant under this subsection is an employee of the Wisconsin works agency for purposes of worker's compensation coverage, except to the extent that the person for whom the participant is performing work provides worker's compensation coverage.

**(4) TRANSITIONAL PLACEMENT.** (a) *Additional eligibility criteria.* An individual is eligible to participate in a transitional placement under this subsection if, in addition to meeting the eligibility requirements under s. DWD 12.09 (2) and (3), the W-2 agency determines that any of the following conditions are met with respect to the individual:

1. The individual is incapable of performing a trial job or community service job.
2. On the basis of an independent assessment by the division of vocational rehabilitation or similar agency or business, that the individual has been incapacitated, or will be incapacitated, for a period of at least 60 days.

3. The individual is needed in the home because of the illness or incapacity of another member of the Wisconsin works group.

(b) *Assignment to activities.* 1. The Wisconsin works agency shall assign a transitional placement participant to work activities such as a community rehabilitation program, work experience and training activities similar to those included under s. DWD 12.16 (3) or a volunteer activity.

2. A Wisconsin works agency may require a participant under this subsection to participate in any of the following:

- a. An alcohol and other drug abuse evaluation, assessment and treatment program.
- b. Mental health activities. In this subparagraph, "mental health activities" means activities prescribed by an appropriate mental health care professional such as a psychiatrist including evaluation by a health professional such as a physician, therapy and medication management.
- c. Counseling or physical rehabilitation activities.
- d. Other activities that the Wisconsin works agency determines are consistent with the capabilities of the individual.

(c) *Time-limited participation.* An individual may participate in a transitional placement for a maximum of 24 months. The months need not be consecutive. This period may be extended on a case-by-case basis by the department or by the Wisconsin works agency with the approval of the department if the participant has made all appropriate efforts to find unsubsidized employment by participating in all assigned activities and significant barriers prevent advancement to a higher W-2 employment position or unsubsidized employment.

(d) *Education or training activities.* 1. The Wisconsin works agency may require a transitional placement participant to participate in education and training activities assigned as part of an employability plan developed by the Wisconsin works agency.

2. Permissible education and training shall include only the following:

- a. A course of study meeting the standards established under s. 115.29 (4), Stats., for the granting of a declaration of equivalency of high school graduation.
- b. Technical college courses.
- c. Educational courses that provide an employment skill.
- d. English as a 2nd language courses that the Wisconsin works agency determines would facilitate an individual's efforts to obtain employment.
- e. Adult basic education courses that the Wisconsin works agency determines would facilitate an individual's efforts to obtain employment.



## f. Employer-sponsored training.

(e) *Required hours.* 1. Except as provided in par. (f), a Wisconsin works agency may require a participant placed in a transitional placement to engage in activities under par. (b) 1. for up to 28 hours per week. Except as provided in subd. 2., in addition to the 28 hours, a Wisconsin works agency may require a participant placed in a transitional placement to participate in education or training activities under par. (d) for not more than 12 hours per week.

2. A W-2 agency may aggregate education and training activities hours in combination with work activities to allow participants access to approved training programs which may require more than 12 hours per week within the first months of participation in a transitional placement. The FEP shall modify the participant's employability plan to reflect the aggregated education and training activities hours. Failure to participate in the aggregated education and training activities hours without good cause, as determined by the FEP, may result in application of a sanction under s. DWD 12.18 (1) (c).

(f) *Motivational training.* A Wisconsin works agency may require a participant, during the first 2 weeks of participation under this subsection, to participate in an assessment and motivational training program identified by the community steering committee under s. 49.143 (2) (a) 10., Stats. The Wisconsin works agency may require not more than 40 hours of participation per week under this paragraph in lieu of the participation requirement under par. (e).

(g) *Worker's compensation.* A participant under this subsection is an employee of the Wisconsin works agency for purposes of worker's compensation coverage, except to the extent that the person for whom the participant is performing work provides worker's compensation coverage.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; CR 02-050: cr. (3) (b) 6. and (4) (d) 2. f., am. (4) (c) Register January 2003 No. 565, eff. 2-1-03.

**DWD 12.17 Job access loan. (1) ELIGIBILITY CRITERIA.**

An individual is eligible to receive a job access loan if, in addition to meeting the eligibility requirements under s. DWD 12.09 (2) and (3), all of the following conditions are met with respect to the individual:

(a) The individual needs the loan to address an immediate and discrete financial crisis. The crisis may not be the result of the individual's failure to accept a bona fide offer of employment or the individual's termination of a job without good cause.

(b) The individual needs the loan to obtain or continue employment. Fulfillment of this requirement includes a loan that is needed to repair or purchase a vehicle that is needed to obtain or continue employment.

(c) The individual is not in default with respect to the repayment of any previous job access loan or repayment of any grant or wage overpayments under s. DWD 12.16.

(d) The individual is not a migrant worker.

**(2) TERMS.** (a) 1. W-2 agencies shall issue a job access loan to an eligible individual in an amount not less than \$25 and not more than \$1600 in any 12-month period.

2. The maximum allowable amount for all loans and the maximum allowable outstanding balance for each individual receiving a job access loan shall be \$1600.

(b) The Wisconsin works agency shall establish and maintain procedures that will expedite eligibility determinations and make emergency payments within 24 to 96 hours of loan approval, when necessary.

(c) The loan applicant shall present to the Wisconsin works agency for approval a repayment plan for each loan which incorporates the maximum level of cash repayment and the shortest repayment period that the Wisconsin works agency determines feasible.

(d) 1. a. The participant may repay a job access loan in cash or through a combination of cash and volunteer in-kind community work approved by the W-2 agency valued at the higher of the state or federal minimum wage rate. At least 25 percent of the loan amount shall be repaid in cash. Participants whose repayment plan includes volunteer work shall find the volunteer opportunity, obtain prior authorization from the Wisconsin works agency and arrange and pay for any needed child care.

b. The W-2 agency shall determine a minimum monthly repayment amount for each loan. Repayment plans may be renegotiated by the agency if there is a significant change of circumstances of the borrower.

2. The participant shall repay a job access loan within a 12-month period except that the repayment period may be extended to a maximum of 24 months if the participant requests an extension and the W-2 agency determines that it is appropriate.

3. The Wisconsin works agency shall provide monthly notices to clients of payments received and the outstanding balance.

**(3) MINOR CUSTODIAL PARENTS.** An individual who would be eligible for a job access loan under sub. (1), except that the individual has not attained the age of 18, is eligible under this subsection if the individual meets the following requirements:

(a) The individual is in one of the following supervised, alternative living arrangements:

1. Kinship care under s. 48.57 (3m), Stats.

2. Foster home as defined under s. 48.02 (6), Stats.

3. Group home as defined under s. 48.02 (7), Stats.

4. An adult supervised independent living arrangement approved by the W-2 agency. In this subdivision, "adult-supervised independent living arrangement" means a setting approved by the W-2 agency in which a minor custodial parent is supervised by an on-site house parent.

(b) The individual has graduated from high school or has met the standards established by the department of public instruction for the granting of a declaration of equivalency of high school graduation under s. 115.29 (4), Stats.

(c) The individual will be 18 years old within 2 months after applying for the job access loan.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; am. (1) (b), Register, January, 2001, No. 541, eff. 2-1-01; CR 06-044: am. (2) (a) 1., Register November 2006 No. 611, eff. 12-1-06.

**DWD 12.18 W-2 employment position wages and benefits. (1) BENEFIT LEVELS FOR PARTICIPANTS IN EMPLOYMENT POSITIONS.** A participant in a Wisconsin works employment position shall receive the following wages or benefits:

(a) *Trial jobs.* For a participant in a trial job, the amount established in the contract between the Wisconsin works agency and the trial job employer, but not less than minimum wage for every hour actually worked in the trial job, not to exceed 40 hours per week paid by the employer. Hours spent participating in education and training activities under s. DWD 12.16 (2) (c) shall be included in determining the number of hours actually worked.

(b) *Community service jobs.* For a participant in a community service job, a monthly grant in the amount provided under s. 49.148 (1) (b), Stats. For every hour that the participant misses work or education or training activities without good cause including any activity under s. DWD 12.16 (3) (c) 2., the Wisconsin works agency shall reduce the grant amount by the amount provided under s. 49.148 (1) (b), Stats. Good cause shall be determined by the financial and employment planner as provided under s. DWD 12.20.

(c) *Transitional placements.* For a participant in a transitional placement, a monthly grant in the amount provided under s. 49.148 (1) (c), Stats. For every hour that the participant fails to participate in any required activity without good cause, including any activity under s. DWD 12.16 (4) (b) 2., the Wisconsin works

agency shall reduce the grant amount by the amount provided under s. 49.148 (1) (c), Stats. Good cause shall be determined by the financial and employment planner as provided under s. DWD 12.20.

**(2) CUSTODIAL PARENT OF INFANT.** (a) A custodial parent of a child who is 12 weeks old or less and who meets the eligibility requirements under s. DWD 12.09 (2) and (3) may receive a monthly grant in the amount provided under s. 49.148 (1m), Stats. A Wisconsin works agency may not require a participant under this subsection to participate in a trial job, CSJ or transitional placement. Receipt of a grant under this subsection does not constitute participation in a Wisconsin works employment position for purposes of the 60-month time limit under s. DWD 12.09 (2) (n) and time limits for participation in a particular W-2 employment position under s. DWD 12.16 (2) (e), (3) (e) or (4) (c), if the child is born to the participant not more than 10 months after the date that the participant was first determined to be eligible for AFDC or for a Wisconsin works employment position.

(b) Receipt of a grant under this subsection constitutes participation in a Wisconsin works employment position for purposes of the 60-month time limit under s. DWD 12.09 (2) (n) and time limits for participation in a particular W-2 employment position under s. DWD 12.16 (2) (e), (3) (e) or (4) (c), if the child is born to the participant more than 10 months after the date that the participant was first determined to be eligible for AFDC or for a Wisconsin works employment position unless the child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), Stats., in which the mother did not indicate a freely given agreement to have sexual intercourse or of incest in violation of s. 944.06 or 948.06, Stats., and that incest or sexual assault has been reported to a physician and to law enforcement authorities.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97.

**DWD 12.19 Payment procedures. (1) DESIGNATION OF PAYEE.** CSJ or transitional placement benefits shall be made payable as appropriate to:

(a) The participant.

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

(c) Guardian or conservator of the participant.

**(2) PROTECTIVE AND VENDOR PAYMENTS.** (a) If continued mismanagement of funds is a threat to the health and safety of the child as determined by the FEP, all or part of the CSJ or transitional placement benefit may be a protective payment or part of the CSJ or W-2 T benefit may be a direct payment and part a protective or vendor payment or both. The W-2 agency shall investigate reports of mismanagement before instituting protective or vendor payments.

(b) The W-2 agency shall document in the case record the reason for the authorization of protective or vendor payment and shall show the name of the eligible participant, the name of the protective or vendor payee, and the amount and form of payment authorized.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97.

**DWD 12.20 Determination of good cause.** The FEP shall determine if a W-2 employment participant had good cause for not complying with the W-2 participation requirements. In making such a determination the FEP may require that the W-2 employment position participant provide written documentation that good cause existed. No good cause shall exist unless the participant provides timely notification of the good cause reason to the FEP. Good cause for failing to comply with the W-2 participation requirements shall be any of the following circumstances:

**(1)** A required court appearance which shall include a required court appearance for a victim of domestic abuse.

**(2)** Child care under s. 49.155, Stats., and s. DWD 12.26 was necessary for the W-2 participant to participate in W-2 required activities under s. DWD 12.16 or accept employment, child care was unavailable and the W-2 agency was unable to provide or refer for alternate child care arrangements.

**(3)** Other circumstances beyond the control of the participant but only as determined by the FEP.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; am. (2), Register, January, 2001, No. 541, eff. 2-1-01.

**DWD 12.21 Sanctions. (1) REFUSAL TO PARTICIPATE.** (a) A participant who refuses without good cause to participate 3 times in any Wisconsin works employment position component is ineligible to participate in that component. A participant is also ineligible to participate in that Wisconsin works employment position component if the second parent in the Wisconsin works group is subject to the work requirement under s. DWD 12.27 and refuses 3 times to participate as required. A participant whom the Wisconsin works agency has determined is ineligible under this section for a particular Wisconsin works employment position component may be eligible to participate in any other Wisconsin works employment position component in which the participant has not refused to participate 3 times.

(b) A participant or a second parent who is subject to the work requirement under s. DWD 12.27 refuses to participate in a Wisconsin works employment position component if the participant or the second parent who is subject to the work requirement under s. DWD 12.27 does any of the following:

1. Expresses verbally or in writing to a Wisconsin works agency that he or she refuses to participate.

2. Fails to appear for an interview with a prospective employer or, if the participant is in a Wisconsin works transitional placement, fails to appear for an assigned activity, including an activity under s. DWD 12.16 (4) (b) 2., without good cause under s. DWD 12.20, as determined by the Wisconsin works agency.

3. Voluntarily leaves appropriate employment or training without good cause under s. DWD 12.20, as determined by the Wisconsin works agency.

4. Loses employment as a result of being discharged for cause.

5. Refuses to accept a bona fide offer of employment.

6. Demonstrates through other behavior or action, as determined by the FEP, that he or she refuses to participate in a Wisconsin works employment position.

**(2) INTENTIONAL PROGRAM VIOLATIONS.** If a court finds or it is determined after an administrative hearing that an individual who is a member of a Wisconsin works group applying for or receiving benefits under ss. 49.141 to 49.161, Stats., for the purpose of establishing or maintaining eligibility for those benefits or for the purpose of increasing the value of those benefits, has intentionally violated, on 3 separate occasions, any provision in ss. 49.141 to 49.161, Stats., or this chapter, the Wisconsin works agency may permanently deny benefits under ss. 49.141 to 49.161, Stats., to the individual.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; am. (1) (a) and (b) (intro.), Register, July, 2000, No. 535, eff. 8-1-00.

**DWD 12.22 Review of agency decisions. (1) PETITION FOR REVIEW.** Any individual whose application for Wisconsin works under s. 49.147 (1) to (5), Stats., and s. DWD 12.06 is not acted upon by the Wisconsin works agency with reasonable promptness after the filing of the application, or is denied in whole or in part, whose benefit is modified or canceled, or who believes that the benefit was calculated incorrectly, may petition the Wisconsin works agency for a review of such action. Review is unavailable if the action by the Wisconsin works agency occurred more than 45 days prior to submission of the petition for review.

**(2) REVIEW.** (a) Upon a timely petition under sub. (1), the Wisconsin works agency shall give the applicant or participant rea-

sonable notice and opportunity for a review. The Wisconsin works agency shall render its decision as soon as possible after the review and shall send a certified copy of its decision to the applicant or participant. The Wisconsin works agency shall deny a petition for a review or shall refuse to grant relief if the petitioner does any of the following:

1. Withdraws the petition in writing.
2. Abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by representative at a scheduled review without good cause under s. DWD 12.20.

(b) The department may review a decision of a Wisconsin works agency under par. (a) if any of the following occurs:

1. Within 15 days of receiving the decision of the Wisconsin works agency, the applicant or participant petitions the department for a review of that decision.
2. The Wisconsin works agency requests the department to review the decision of the Wisconsin works agency.

(c) The department shall review a Wisconsin work's agency decision to deny an application based solely on the determination of financial ineligibility if any of the following occurs:

1. Within 15 days after receiving the decision of the Wisconsin works agency, the applicant petitions the department for a review of the decision.
2. The Wisconsin works agency requests the department to review the decision of the Wisconsin works agency.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; CR 02-050: r. (3) Register January 2003 No. 565, eff. 2-1-03.

**DWD 12.23 Recovery of overpayments. (1) DEFINITIONS.** In this section:

(a) "Administrative error" means an error committed by an agency or the department in determining benefits given under s. 49.148, 49.155, 49.157, or 49.19, Stats., that results in an overpayment.

(b) "Client error" means an error caused by an individual who is a member of a W-2 or AFDC group reporting incorrect information or failing to report information due to misunderstanding or mistake that results in an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats.

(c) "Complies with the payment schedule" as used in s. 49.195 (3m) (h), Stats., means the debtor submits each payment due on an overpayment so that it is received by the department by the due date every month over the life of the debt.

(d) "Debtor" means a liable person who received an overpayment of benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., and has not repaid it in full.

(e) "Disposable earnings" means that part of the earnings of any debtor after the deduction from those earnings of any amounts required by law to be withheld, any life, health, dental or similar type of insurance premiums, union dues, any amount necessary to comply with a court order to contribute to the support of minor children, and any levy, wage assignment, or garnishment executed prior to the date of a levy under this section.

(f) "Intentional program violation" means an individual who is a member of a W-2 or AFDC group intentionally made a false or misleading statement or misrepresented, concealed, or withheld facts that resulted in an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats. An intentional program violation may be determined based on an administrative hearing, a court finding, a signed waiver of an administrative hearing for an alleged intentional program violation, or a consent agreement in lieu of prosecution based on the same facts or events as the intentional program violation.

(g) "Overpayment" or "debt" means any benefit or payment received under s. 49.148, 49.155, 49.157, or 49.19, Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable

statutes and rules, regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation.

(h) "Recoupment" means the process of repayment of an overpayment by the department withholding a portion of a W-2 participant's grant under s. 49.148, Stats.

(2) OVERPAYMENT DETERMINATION AND NOTICE. (a) A county, tribal governing body, W-2 agency, or the department shall determine whether an overpayment has been made under s. 49.148, 49.155, 49.157, or 49.19, Stats., and if so, the amount of the overpayment.

(b) The county, tribal governing body, W-2 agency, or department shall send notice of the overpayment at the address of a debtor as it appears on the records of the department. Documentation that a county, tribal governing body, W-2 agency, or the department properly mailed the notice to the address of the debtor as it appears on the records of the department and that it was not returned as undeliverable shall be prima facie evidence that notice was delivered and received.

(c) The notice shall include the reason for the overpayment, the time period in which the overpayment occurred, the amount of the overpayment, and notice of the right to appeal the overpayment determination.

(d) The department shall give the debtor an opportunity for review following the procedure specified under s. 49.152 (2), Stats., if the debtor received the overpayment under s. 49.148 or 49.157, Stats., or for a hearing under ch. 227, Stats., if the debtor received an overpayment under s. 49.155 or 49.19, Stats.

(3) LIABILITY. (a) Liability shall extend to any parent, non-marital coparent, or stepparent whose family receives benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., during the period that he or she is an adult member of the same household, but his or her liability is limited to such period. For the purpose of determining liability for an overpayment of a child care subsidy under s. 49.155, Stats., "parent" has the meaning given in s. 49.155 (1) (c), Stats.

(b) Liability for repayment of an overpayment shall be joint and several.

(c) Liability for overpayments caused by administrative error shall be limited to one year prior to the date that the agency or department discovers the error for overpayments determined on or after August 1, 2005.

(4) SIMULTANEOUS COLLECTION. A county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time.

(5) RECOUPMENT FROM CURRENT W-2 PARTICIPANTS. (a) *Administrative error and client error.* 1. If any overpayment of benefits paid under s. DWD 12.18 (1) (b) or (c) is due to administrative error or client error, the W-2 agency or the department shall recoup the overpayment from a debtor who continues to receive benefits under s. DWD 12.18 (1) (b) or (c) by reducing the amount of the benefits amount by no more than 10%.

2. The debtor may make a voluntary repayment in addition to the amount withheld from the benefit under subd. 1.

3. The county, tribal governing body, or W-2 agency shall ask a debtor who has received an overpayment to voluntarily repay the overpayment. If the debtor fails to pay voluntarily, the county, tribal governing body, or W-2 agency shall refer the debt to the department for further collection efforts.

(b) *Overpayments caused by intentional program violations.* If an overpayment of benefits under s. DWD 12.18 (1) (a), (b), or (c), is the result of an intentional violation of ss. 49.141 to 49.161, Stats., or this chapter, the W-2 agency or the department shall recoup the overpayment from the debtor by deducting an amount from the debtor's benefits received under s. DWD 12.18 (1) (a),

(b), or (c) until the overpayment is recovered. The amount to be deducted each month may not exceed the following:

1. For intentional program violations resulting in an overpayment that is less than \$300, the amount to be deducted may not exceed 10% of the monthly benefit payment.

2. For intentional program violations resulting in an overpayment that is at least \$300 but less than \$1,000, the amount to be deducted may not exceed \$75.

3. For intentional program violations resulting in an overpayment that is at least \$1,000 but less than \$2,500, the amount to be deducted may not exceed \$100.

4. For intentional program violations resulting in an overpayment that is \$2,500 or more, the amount to be deducted may not exceed \$200.

**(6) TRIAL JOB OVERPAYMENTS.** The W-2 agency shall recover any overpayment of benefits paid under s. DWD 12.18 (1) (a) from the debtor. The W-2 agency may not recover more than the amount that the W-2 agency or the department paid in wage subsidies for the debtor while the debtor was ineligible to participate under s. DWD 12.16 (2). The W-2 agency shall ask a former participant in a trial job who received overpayments to voluntarily repay the overpayment. If a former participant does not voluntarily repay the overpayment, the W-2 agency shall refer the debt to the department for further collection action.

**(7) EFFECT OF RESTITUTION PAYMENTS.** A debtor's payments to the department as part of a restitution agreement under s. 973.20, Stats., arising out of the facts or events that are the basis for the overpayment owed to the department shall be applied to the liability owed to the department, but a debtor's completion of probation or fulfillment of the restitution agreement shall not limit or impair the ability of the department to collect any remaining balance on the debt.

**(8) DELINQUENCY.** A debt shall be considered delinquent if the department does not receive a debtor's payment by the due date 3 times over the life of the debt. A delinquent debt may be subject to warrant and execution under s. 49.195 (3m), Stats.; levy under s. 49.195 (3n), Stats.; setoff against a refund under ss. 49.85 and 71.93, Stats.; and other authorized collection methods. The department may recover a delinquent debt by more than one means of collection at the same time. A delinquent debt retains delinquent status regardless of any future payment on the debt.

**Note:** The limitation on using warrant and execution and levy only when a debtor has not complied with the payment schedule 3 times is not required by statute. Because the department is limiting the use of warrant and execution and levy to debtors who have not complied with a payment schedule, the withdrawal of a warrant when the debtor does comply with the payment schedule under s. 49.195 (3m) (h), Stats., will not occur.

**(9) WARRANT AND EXECUTION UNDER SECTION 49.195 (3m), STATS. (a) Creation of lien.** 1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending and the time for requesting a review has expired, the department may issue a warrant directed to the clerk of circuit court of any county.

2. The clerk of circuit court shall enter in the judgment and lien docket the name of the debtor named in the warrant, the amount for which the warrant is issued, and the date on which the clerk entered the information.

3. The department shall pay the fees required under s. 814.61 (5), Stats., for entering the warrant and shall collect the fees from the debtor named in the warrant when satisfaction or release is presented for entry.

4. A warrant issued under subd. 2. shall be considered in all respects a final judgment constituting a perfected lien upon the debtor's right, title, and interest in all real and personal property located in the county in which the warrant is entered.

5. The department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., when a warrant has been issued. The debtor may request a hearing under ch. 227,

Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The department may not withdraw a warrant based on a request for hearing.

**(b) Execution of the warrant.** 1. After the warrant is issued and no review or appeal rights under par. (a) 4. are pending and the time for requesting a review has expired, the department may file an execution with the clerk of circuit court for filing with the sheriff of the county, commanding the sheriff to execute the warrant and sell sufficient real and personal property of the debtor to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue of the warrant within 90 days after receipt of the warrant. The execution may not command the sheriff to levy upon or sell any property that is exempt from execution under ss. 815.18 (3) and 815.20, Stats.

2. The department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before property is seized. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The department may not cease enforcement or seizure based on a request for hearing.

3. The department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before seized property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. If a hearing is requested, the department shall notify the sheriff that seized property may not be sold before the hearing decision is issued or the hearing request is withdrawn.

**(c) Satisfaction of the warrant.** When the amount set forth in the warrant and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the person named in the warrant.

**(10) LEVY UNDER SECTION 49.195 (3N), STATS. (a) Definition.** In this subsection, "personal property" means all tangible and intangible property and rights to such property that is not real estate, including compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise; periodic payments received pursuant to a pension or retirement program; rents; proceeds of insurance; contract payments; stock and bonds; and accounts in financial institutions.

**(b) Notice prior to levy.** 1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending and the time for requesting a review has expired, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.

2. The department shall make the demand for payment and give notice to the debtor at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance, at the address of the debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including interest and penalties, and the name of the debtor who is liable for the debt.

3. The debtor's refusal or failure to accept or receive the notice does not prevent the department from making the levy.

4. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy.

(c) *Service of levy and review when property levied.* 1. The department may collect the debt and the expenses of the levy by levy upon any personal property belonging to the debtor.

2. The department shall serve the levy upon the debtor and any 3<sup>rd</sup> party in possession of or obligated with respect to property or rights to property that is subject to levy by personal service or by any type of mail service that requires a signature of acceptance as provided in s. 49.195 (3n) (m), Stats. The debtor or 3<sup>rd</sup> party's failure to accept or receive service of the levy does not invalidate the levy.

3. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The levy is not stayed pending an appeal where property is secured through the levy.

(d) *Third-party response.* 1. Within 20 days from the service of the levy upon a 3<sup>rd</sup> party, the 3<sup>rd</sup> party shall file an answer with the department stating whether the 3<sup>rd</sup> party is in possession of or obligated with respect to property or rights to property of the debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation.

2. Any person in possession of or obligated with respect to personal property or rights to personal property that is subject to levy and upon which a levy has been made shall, upon demand of the department, surrender the personal property or rights or discharge the obligation to the department, except that part of the personal property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

(e) *Appeal rights before surrendered property is sold.* If levied personal property that has been surrendered to the department is not a liquid asset in the form of cash, check, or an equivalent that can be applied to the debt without a sale of the asset, the department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before surrendered property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. If a hearing is requested, surrendered property may not be sold before the hearing decision is issued or the hearing request is withdrawn.

(f) *Exemption rights.* 1. The debtor is entitled to an exemption from levy of the greater of the following:

a. A subsistence allowance of 75% of the debtor's disposable earnings then due and owing.

b. An amount equal to 30 times the federal minimum hourly wage for each full week of the debtor's pay period.

c. An amount equal to 60 times the federal minimum hourly wage for a two-week pay period.

d. An amount equal to 130 times the federal minimum hourly wage for a monthly pay period.

2. The first \$1,000 of an account in a depository institution is exempt from any levy to recover a benefit overpayment.

(g) *Proceeds.* 1. The department shall apply all money obtained under this subsection first against the expenses of the proceedings and then against the liability for which the levy was made and any other liability owed to the department by the debtor.

2. Whenever the value of any personal property that has been levied upon under this subsection is not sufficient to satisfy the claim of the department, the department may levy upon any additional personal property of the debtor until the debt and expenses of the levy are fully paid.

3. The department may refund or credit any amount left after the applications under subd. 1., upon submission of a claim for

that amount and satisfactory proof of the claim, to the person entitled to that amount.

(11) **WARRANT AND EXECUTION, LEVY, AND TAX INTERCEPT APPEAL ISSUES.** Any appeal based on a notice in subs. (9) and (10) or a notice of intent to certify a debt for set-off against a state tax refund under s. 49.85, Stats., shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor.

(12) **THRESHOLD FOR WARRANT AND EXECUTION AND LEVY.** The minimum amount that must be due before collection proceedings under subs. (9) and (10) may be commenced is \$300.

(13) **WAIVER.** The department may waive recovery of an overpayment under this section if the department has made reasonable efforts to recover the overpayment from the debtor and determines it is no longer cost effective to continue overpayment recovery efforts.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97; CR 04-123: r. and recr. Register July 2005 No. 595, eff. 8-1-05.

#### **DWD 12.24 Noncustodial, minor and other custodial parents.** (1) **NONCUSTODIAL PARENTS.** An individual who would be eligible for W-2 under s. 49.145, Stats., and this chapter

except that the individual is the noncustodial parent of a dependent child, is eligible for services provided by the W-2 agency if the dependent child's custodial parent is a participant and if the individual is subject to a child support order. The Wisconsin works agency may provide job search assistance and case management designed to enable eligible noncustodial parents to obtain and retain employment.

(2) **MINOR CUSTODIAL PARENTS.** A custodial parent who is under the age of 18 is eligible, regardless of that individual's or that individual's parent's income or assets, to meet with a financial and employment planner. The financial and employment planner may provide the individual with information regarding Wisconsin works eligibility, available child care services, employment and financial planning, family planning services, community resources, eligibility for food stamps and other food and nutrition programs.

(3) **OTHER CUSTODIAL PARENTS.** A custodial parent in a Wisconsin works group in which the other custodial parent is a participant in a Wisconsin works employment position is eligible for employment training and job search assistance services provided by the Wisconsin works agency.

(4) **PREGNANT WOMEN.** A pregnant woman whose pregnancy is medically verified who would be eligible under s. 49.145, Stats., and this chapter except that she is not a custodial parent of a dependent child, is eligible for employment training and job search assistance services provided by the Wisconsin works agency.

**History:** Cr. Register, October, 1997, No. 502, eff. 11-1-97.

#### **DWD 12.25 Learnfare.** (1) **AUTHORITY AND PURPOSE.**

This section is adopted under the authority of ss. 49.26 (1) (gm) 2. and (h) 1. and 103.005 (1), Stats., to provide rules for the administration of learnfare, a program that requires that all children ages 6 to 17 whose custodial parent is a participant in a W-2 employment position, 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 meet the school attendance requirements and that minor parents, dropouts, returning dropouts and habitual truants participate in case management to meet Wisconsin works participation requirements.

(2) **APPLICABILITY.** This section applies to:

(a) All school districts and all W-2 agencies.

(b) All children ages 6 to 17 included in a W-2 group who are parents or who are residing with a natural or adoptive parent and all W-2 groups which include a child who is a parent or who is residing with a natural or adoptive parent.

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

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

(b) "Child" means a person who is 6 to 17 years old.

(c) "Dropout" means a child who has ceased to attend school, has not graduated from high school or received a high school equivalency diploma and does not have an acceptable excuse under s. 118.15 (1) (b) to (d) or (3), Stats.

(d) "Enrolled" means a child is officially registered to attend school.

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

(f) "Habitual truant" has the meaning given in s. 118.16 (1) (a), Stats.

**Note:** "Habitual truant" is defined in s. 118.16 (1) (a), Stats., as "a pupil who is absent from school without an acceptable excuse under sub. (4) and s. 118.15 for part or all of 5 or more days on which school is held during a school semester."

(g) "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.

(h) "Learnfare" means the program established under s. 49.26, Stats., and this section.

(i) "Learnfare case management" means intervention for the purpose of assessing family needs, incorporating a plan to maintain school enrollment and further school attendance into the learnfare case management plan and assisting in the implementation of the plan for the purpose of maintaining school enrollment and furthering regular school attendance and career preparation by the child.

(j) "Minor parent" means a child who is the parent of a dependent child.

(k) "Returning dropout" means a child who was a dropout and reenrolled in school in the same semester in which the child dropped out of school or the immediately succeeding semester.

(L) "School" has the meaning prescribed in s. 49.26 (1) (a) 2., Stats.

(m) "School attendance officer" has the meaning prescribed in s. 118.16 (1) (b), Stats.

(n) "School attendance requirement" means the child is enrolled in school or was enrolled in the immediately preceding semester.

(o) "School district" means the territorial unit for school administration as specified in s. 115.01 (3), Stats. and includes a nonresident school district approved under s. 118.51, Stats.

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

**(4) PARTICIPATION IN LEARNFARE.** (a) A child shall meet the school attendance requirement except that a child 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 child who is required to participate in learnfare under this section shall be considered to have failed to have met the school attendance requirement if the child is not enrolled in school or was not enrolled in the immediately preceding semester.

(c) The child or the W-2 participant shall cooperate in providing information needed to verify enrollment information or exemption reasons under sub. (7). If neither the child nor the W-2 participant cooperates, the W-2 participant shall be ineligible for a W-2 employment position.

(d) Minor parents, dropouts, returning dropouts, and habitual truants shall participate in case management under sub. (8).

(e) The dropout or the W-2 participant shall notify the agency of the dropout's nonattendance at school in compliance with s. DWD 12.09 (2) (m).

**(5) AGENCY RESPONSIBILITIES.** (a) The W-2 agency shall review enrollment and attendance information at all initial eligibility determinations and at all reviews under s. DWD 12.16 (2) to (4).

(b) The W-2 agency shall inform the W-2 employment position participant that the signature of the participant on the W-2 application constitutes permission for the release of school enrollment and attendance information by the school district.

(c) The W-2 agency shall request information from the school attendance officer in the child's school district about the child's enrollment and attendance in the school district's current or most recently completed semester of attendance.

(d) The W-2 agency shall use the enrollment and attendance information provided by a school to verify enrollment and attendance for a child.

(e) The W-2 agency shall review a child's claim that he or she is exempt under sub. (7) from the school attendance requirement, determine if a child is required to participate in case management under sub. (8), and review a child's claim that he or she has a good cause reason under sub. (10) for not participating in case management.

(f) The W-2 agency shall administer child care, including applying the appropriate child care co-payment under s. 49.155 (5), Stats., and transportation funds under s. 49.26 (1) (e), Stats. Payment for the cost of transportation to and from the child care provider shall be in the amount equal to the cost of transportation by the most appropriate means as determined by the department or the W-2 agency.

(g) If the child or W-2 participant does not have the power to produce verification of enrollment or good cause for not participating in case management, or requires assistance to do so, the W-2 agency shall proceed immediately to seek the verification.

**Note:** See DWD 12.11, relating to verification.

**(6) SCHOOL DISTRICT RESPONSIBILITIES.** (a) The school attendance officer shall provide information to the agency about the enrollment and attendance of a child who is enrolled in the 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 enrollment and attendance records of a pupil shall be met in the case of a child in a W-2 group by the signature of the parent, guardian, caretaker or pupil on the W-2 application for initial eligibility or eligibility redetermination.

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

**(7) EXEMPTION REASONS.** (a) A child who is required to meet the school attendance requirement to meet the learnfare participation requirements under s. 49.26, Stats., shall comply except when exempt which shall be demonstrated by any of the following circumstances:

1. The minor parent is the caretaker of a child who is less than 45 days old.

2. The minor parent is the caretaker of a child who is 45 to 89 days old and the minor parent has a physician's excuse or, child care for the minor parent's child is required but there is no available on-site day care at the school and the school has no home instruction program.

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

4. Child care services for the minor parent's child are necessary for the minor parent 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 of the pupil's home.

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

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

7. The child 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 child has been formally expelled.

8. The child is unable to attend school because he or she was expelled under s. 120.13 (1), Stats., and another school is not available for one of the following reasons:

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

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

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

9. The child failed to enroll in school for one or more of the reasons in this subdivision:

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

b. Temporary incarceration.

c. The child is on the waiting list for a children-at-risk program under s. 118.153, Stats., and a children-at-risk program that is appropriate for the child is not available.

d. Any other circumstance beyond the control of the child.

(b) Additional exemption reasons may be defined by the department through the review of agency decision process under s. DWD 12.22.

**(8) LEARNFARE CASE MANAGEMENT.** (a) When a child fails to meet the school attendance requirements or when a child is determined to be a minor parent, dropout, returning dropout, or habitual truant, the W-2 agency shall require the child to participate in case management.

(b) Upon referral or identification of a child for whom case management is required, the W-2 agency shall schedule an initial appointment with the child and the child's parent to conduct an assessment and complete a learnfare case management plan. The W-2 agency shall schedule the appointment at a time when the appointment will not interfere with the child's school schedule or the parent's work schedule. The W-2 agency shall send written notice of the appointment to the child and the child's parent at least 7 working days before the appointment date. The notice shall clearly state that if the child and the child's parent are unable to attend, the child or the child's parent shall contact the W-2 agency before the scheduled appointment date to reschedule the appointment.

(c) If the child and the child's parent fail to attend or reschedule the initial appointment, the W-2 agency shall send a second and last written notice. This notice shall ask the child or the child's parent to contact the W-2 agency within 5 working days and shall state that if the child or the child's parent does not contact the W-2 agency within 5 working days a financial penalty will be imposed.

(d) Case management requirements include the following:

1. The child and the child's parent shall participate in the assessment and the development of the learnfare case management plan and the parent shall sign the completed plan.

2. If the child is a dropout, the child or the child's parent shall provide verification of the child's return to school and attendance within 7 working days of the date that a school is available.

3. The child and the child's parent shall attend meetings scheduled by the W-2 agency. The W-2 agency shall schedule the meetings times when the meetings will not interfere with the parent's work schedule. The W-2 agency shall send written notice of a meeting to the child and the child's parent at least 7 working days before the scheduled meeting date. The notice shall clearly state that if the child and the child's parent are unable to attend, the child or the child's parent shall contact the W-2 agency before the scheduled meeting date to reschedule the meeting. If the child and the child's parent fail to attend or reschedule the meeting, the W-2 agency shall send a second and last written notice. This notice shall ask the child or the child's parent to contact the W-2 agency within 5 working days and shall state that if the child or the child's parent does not contact the W-2 agency within 5 working days a financial penalty will be imposed.

4. If the W-2 agency determines that the child needs special services, the W-2 agency shall make the special services available at a time that does not interfere with the parent's work schedule. If the parent's participation is required, the parent shall participate along with the child in the special services activities.

5. The child or the child's parent, or both, shall engage in activities identified by the W-2 agency in the learnfare case management plan as necessary to maintain school enrollment or improve school attendance.

**(9) CRITERIA FOR APPLYING A FINANCIAL PENALTY.** (a) 1. Except as provided under subd. 2., a child who fails to meet the school attendance requirement under sub. (4) without an exemption reason under sub. (7), or who fails to participate in case management under sub. (8) without good cause under sub. (10) and continues to fail to meet the school attendance requirement, may have a financial penalty imposed under sub. (11).

2. No financial penalty may be imposed under any of the following circumstances:

a. The agency has not made case management available to a child who has failed to meet the school attendance requirement under sub. (4) or who is required to participate in case management under sub. (8).

b. The child or his or her parent is unable to comply with the learnfare case management plan because a service identified is not available and no appropriate alternative service as determined by the W-2 agency is available.

(b) The W-2 group of a child who fails to meet the school attendance requirement under sub. (4) without an exemption reason under sub. (7), or who fails to participate in case management under sub. (8) without good cause under sub. (10) and continues to fail to meet the school attendance requirement, may have a financial penalty imposed under sub. (11) as long as he or she continues to do so or until an exemption reason under sub. (7) or a good cause reason under sub. (10) is verified.

**(10) GOOD CAUSE FOR NOT PARTICIPATING IN CASE MANAGEMENT.** (a) The W-2 agency shall determine if a child or the child's parent had good cause for failing to participate in learnfare case management. In making such a determination, the W-2 agency may require the child or the child's parent to provide written documentation that good cause existed. If the child or the child's parent does not have the power to produce documentation of good cause, or requires assistance to do so, the W-2 agency shall proceed immediately to seek the documentation.

(b) Good cause for failing to participate in learnfare case management shall be any of the following circumstances:

1. Child care is needed for the child to participate in case management, but child care is not available.

2. Transportation is needed to and from child care for the minor parent's child, but neither public nor private transportation is available.

3. Court-required appearance, including required court appearances for a victim of domestic abuse, or temporary incarceration.

4. Observance of a religious holiday.
5. Death of a relative.
6. Family emergency.
7. Illness, injury, or incapacity of the child or a family member living with the child. In this subdivision, “family member” means a spouse, child or parent.
8. Medical or dental appointment for the minor parent or the minor parent’s child.
9. Breakdown in transportation.
10. A review decision under s. 49.152, Stats., identifies circumstances that justify good cause.
11. Other circumstances beyond the control of the child or the child’s parent, but only as determined by the W–2 agency.

**(11) APPLYING FINANCIAL PENALTIES.** (a) *Notice.* Upon determining that a financial penalty is proper under sub. (9), the W–2 agency shall send written notice to the W–2 participant which specifies all of the following:

1. That the CSJ or transitional benefit will be reduced or that a financial penalty will be imposed on a trial job participant, in the amount of \$50 per month per penalty not to exceed \$150 per W–2 group per month, because the child has failed to meet the school attendance requirement or the child has failed to participate in learnfare case management and continues to fail to meet the school attendance requirement.

2. The child to whom the financial penalty applies.

3. How the W–2 participant can contact the school district for information regarding the children at risk program under s. 118.153, Stats.

4. The child’s or W–2 participant’s right to request a review under par. (b), and that if a review is requested within 10 days of the date of the notice, the penalty will not be imposed until after the fact finding review decision.

(b) *Review of agency decision.* The child or W–2 participant may request a review of an agency decision in accordance with s. 49.26, Stats., and s. DWD 12.22 on the W–2 agency’s determination that a financial penalty is proper under sub. (9) If a review is requested within 10 days of the date of the notice of financial penalty, the penalty shall not be imposed until after the fact finding review decision, unless the participant withdraws the petition in writing or abandons the petition.

(c) *Effective period of financial penalty.* A financial penalty shall be imposed each payment month until the child meets the school attendance requirement or participates in case management or an exemption reason under sub. (4) or a good cause reason under sub. (10) is verified.

**History:** Cr. Register, October, 1997, No. 502, eff. 11–1–97; emerg. am. eff. 1–2–98; am. (1), (2) (b), (3)(a), (4) (a), (5) (a), (b), (d) and (f), (6) (a) and (b), (7) (a) (intro.) and 1. to 7., 8. (intro.), a. and c., 9. (intro.) a. and b., and (b), (9) (a) 2. (intro.), a. and b.; renum. (3) (b) to (f), (g), (j), (k), (L) and (n) to (3) (c), (e) to (h), (i), (L), (m), (o) and (p) and am., (3) (c), (e), (f) and (h), (4) (b) (intro.) to be (4) (b) and am., (3) (b) and (c) to (f) to be (3) (c) and (e) to (h) and am. (3) (c), (e), (f) and (h), (4) (f) to be (4) (c) and am., (4) (g) to be (4) (e) and am. (5) (c) 1. to be (5) (c) and am. (7) (a) 9. i. to be (7) (a) 9.d. and am., (10) (a), (b), (d) to be (11), (a), (b) and (c), r. (3) (i) and (m), (4) (b) 1. and 2., and (c) to (e), (5) (c) 2., (7) (a) 9. c. to h., (9) (a) 2.c., and (10) (c), (e) and (f); r. and recr. (8), (9) (a) 1. and (b), cr. (3) (b), (d), (j), (k) and (n), (4) (d), (5) (g), (7) (a) 9. c. and (10); Register, October, 1998, No. 514, eff. 11–1–98.

**DWD 12.26 Child care. (1)** In two–parent families, both parents shall meet the eligibility criteria of s. 49.155 (1m), Stats., unless the agency that determines child care eligibility verifies that one parent has a disability or health condition that makes that parent unable to participate in activities under s. 49.155 (1m) (a), Stats., and is unable to provide the child care necessary for the other parent to participate in activities under s. 49.155 (1m) (a), Stats.

**(2)** Foster care payments received pursuant to s. 46.261, Stats., and kinship care payments received pursuant to s. 48.57 (3m) or (3n), Stats., shall not be considered as family income in

determining financial eligibility for child care subsidies under s. 49.155 (1m) (c), Stats.

**History:** Cr. Register, October, 1997, No. 502, eff. 11–1–97; r. and recr. Register, January, 2001, No. 541, eff. 2–1–01.

**DWD 12.27 Two–parent families. (1) REQUIREMENTS FOR THE SECOND PARENT.** If a participant in a Wisconsin works employment position resides with the second parent of a dependent child with respect to whom the participant is a custodial parent, the second parent shall participate in prescribed work activities under sub. (3) if the Wisconsin works group receives federally–funded child care assistance on behalf of the dependent child. The W–2 agency shall inform the second parent all of the following:

(a) The second parent’s participation in W–2 employment and training activities has no effect on the Wisconsin works group’s benefit amount.

(b) The second parent’s refusal to participate in W–2 employment and training activities will result in sanction for the Wisconsin works group pursuant to s. DWD 12.21.

**(2) EXCEPTIONS.** The second parent is not required to participate in employment and training activities if any of the following conditions are met:

(a) The family is not receiving federally–funded child care assistance for a dependent child of the W–2 participant and the second parent.

(b) The second parent is a disabled parent who receives federal or state disability payments or other benefits based on equivalent disability status. Federal or state disability payments include supplemental security income, social security disability insurance, veteran’s disability benefits, and worker’s compensation.

(c) The second parent is caring for a severely disabled dependent child who has a physical, emotional, or mental impairment that is characterized by the need for individually planned and coordinated care, treatment, vocational rehabilitation, or other services and which has resulted or is likely to result in a substantial limitation on the ability to function in at least 3 of the following areas:

1. Self–care.
2. Receptive and expressive language.
3. Learning.
4. Mobility.
5. Self–direction.
6. Capacity for independent living.
7. Economic self–sufficiency.

**(3) PRESCRIBED WORK ACTIVITIES.** The second parent shall participate in any of the following activities for at least the difference between 55 hours and the number of hours the parent in the W–2 employment position participates in any of the following activities:

(a) Unsubsidized employment as defined in s. 49.147 (1) (c), Stats.

(b) Employment subsidized by a source other than Wisconsin works.

(c) Work experience other than a community service job.

(d) On–the–job training funded by a source other than W–2.

(e) A community service job as defined in s. 49.147 (4), Stats.

**(4) OPTIONAL PARTICIPATION.** If the Wisconsin works group is not receiving federally–funded child care assistance for a custodial child of a W–2 participant and second parent, the W–2 agency may offer the second parent the opportunity to participate in work activities. The W–2 agency shall inform the second parent all of the following:

(a) The second parent’s participation in W–2 employment and training activities has no effect on the Wisconsin works group’s benefit amount.



(b) The second parent's nonparticipation in W-2 employment and training activities will not result in sanction for the Wisconsin works group.

**(5) EMPLOYABILITY PLAN.** If the second parent participates in W-2 employment or training activities, the W-2 agency shall create an employability plan for the second parent.

**History:** Cr. Register, July, 2000, No. 535, eff. 8-1-00.