

Chapter HFS 253

CHILD SUPPORT COOPERATION FOR FOOD STAMPS

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Note: Chapter DWD 19 was renumbered ch. HFS 253 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats., Register January 2003 No. 565.

HFS 253.01 Authority and purpose. This chapter is adopted pursuant to s. 49.79, Stats., for the purpose of administering the requirement of cooperation with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, and providing or obtaining support for the child as a condition of eligibility for the food stamp program, unless a good cause exemption applies.

History: CR 02-040: cr. Register August 2002 No. 560, eff. 9-1-02; correction made under s. 13.93 (2m) (b) 7., Stats., Register January 2003 No. 565.

HFS 253.02 Definitions. (1) "Child support agency" means a county or tribal office, officer, board, department, or agency designated by the county board or elected tribal council to administer the child support, spousal support, and establishment of paternity program on behalf of the department pursuant to s. 59.53 (5), Stats., or a cooperative agreement with the department.

(2) "Custodial parent" has the meaning given in s. 49.141 (1) (b), Stats.

Note: Section 49.141 (1) (b), Stats., provides that "'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 paragraph, 'legal custody' has the meaning given in s. 767.001 (2) (a)."

(3) "Department" means the department of health and family services.

(4) "Domestic abuse" means the subjecting an individual or child to any of the following:

- (a) Physical acts that result in pain, illness, or injury.
- (b) Sexual abuse or sexual assault, including a caretaker relative of a dependent child (such as a guardian, custodian, or parent) being forced to engage in nonconsensual sexual acts or any sexual activity involving a dependent child.
- (c) Threats of, or attempts at, physical or sexual abuse.
- (d) Emotional or mental abuse.
- (e) Verbal abuse.
- (f) Deprivation or destruction of physical or economic resources.

- (g) Neglect or deprivation of medical care.
- (h) Forced isolation.
- (i) Stalking or harassment.

(5) "Food stamp household" has the meaning given in 7 CFR 273.1.

(6) "Food stamp program" or "food stamps" means the federal food stamp program under 7 USC 2011 to 2036.

(7) "Genetic test" has the meaning given in s. 767.001 (1m), Stats.

Note: Section 767.001 (1m), Stats. provides that "'Genetic test' means a test that examines genetic markers present on blood cells, skin cells, tissue cells, bodily fluid cells or cells of another body material for the purpose of determining the statistical probability of an alleged father's paternity."

(8) "Good cause" means the criteria set forth in s. HFS 253.05, which permit, without sanction, a custodial parent or other indi-

vidual exercising parental control, noncustodial parent, or alleged father in a food stamp household to fail to cooperate with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, and providing or obtaining support for a child of the individual.

(9) "Income maintenance agency" means a county or tribal agency under contract with the department to administer the food stamp program.

(10) "Individual exercising parental control" means an individual who lives with and exercises parental control over a child who is under the age of 18 and who has an absent parent.

(11) "Mental health professional" means an individual with experience and training in the field of mental health, and includes, but is not limited to, a psychiatrist, a psychologist, and a social worker certified or licensed to provide psychotherapy.

(12) "Noncustodial parent" has the meaning given in s. 49.141 (1) (h), Stats.

Note: Section 49.141 (1) (h), Stats., provides that "'Noncustodial parent' means, with respect to a dependent child, a parent who is not the custodial parent."

(13) "Parent" has the meaning given in s. 49.141 (1) (j), Stats.

Note: Section 49.141 (1) (j), Stats., provides that "'Parent' means any of the following:

- 1. A biological parent.
- 2. A person who has consented to the artificial insemination of his wife under s. 891.40.
- 3. A parent by adoption.
- 4. A man adjudged in a judicial proceeding to be the biological father of a child if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60.
- 5. A man who has signed and filed with the state registrar under s. 69.15(3)(b)3. a statement acknowledging paternity."

(14) "Wisconsin works" or "W-2" has the meaning given in s. 49.141 (1) (p), Stats.

Note: Section 49.141 (1) (p), Stats., provides that "'Wisconsin works' means the assistance program for families with dependent children, administered under ss. 49.141 to 49.161."

History: CR 02-040: cr. Register August 2002 No. 560, eff. 9-1-02.

HFS 253.03 Cooperation as a condition of eligibility.

(1) COOPERATION REQUIREMENTS. (a) Unless the income maintenance agency determines that a good cause exemption applies, an individual with one of following relationships to a child who is under the age of 18 and who has an absent parent shall cooperate in good faith in the following ways as a condition of eligibility for the food stamp program in that month:

1. A custodial parent or other individual exercising parental shall cooperate with efforts directed at all of the following:

- a. Identifying and locating the absent parent of the child.
- b. Establishing paternity of a child of the custodial parent.
- c. Establishing or enforcing a support order.

d. Obtaining other payments or property to which that custodial parent, individual exercising parental control, or child may have rights.

2. An alleged father shall cooperate with efforts directed at establishing the paternity of the child.

3. A noncustodial mother shall cooperate with efforts directed at establishing the paternity of the child.

4. A noncustodial parent shall cooperate with efforts directed at providing or obtaining support for the child.

(b) If an individual is receiving W-2 or Medicaid and has already been determined to be cooperating with the child support agency or has been determined to have good cause for not cooperating, then the income maintenance agency shall determine the individual to be cooperating with requirements in par. (a) for food stamp purposes.

(c) A noncustodial parent who is obligated by court order to provide child support payments and is delinquent in that month shall be ineligible for food stamps unless any of the following applies:

1. The delinquency equals less than 3 months of the court-ordered support payments. This grace period is deemed good cause for nonsupport pursuant to 7 CFR 273.11 (q) (2) (iii).

2. A court or child support agency is allowing the individual to delay the child support payments.

3. The individual is complying with a payment plan approved by a court or child support agency.

(2) ACTS OF COOPERATION. (a) Acts of cooperation for an alleged father, noncustodial parent, custodial parent or other individual exercising parental control include any action that is relevant to achieve the purposes in sub. (1), including the following:

1. Providing verbal information, written information, or other evidence known to, possessed by, or reasonably obtainable by the individual subject to the cooperation requirements.

2. Appearing at hearings or other legal proceedings.

(b) In addition to the requirements in par. (a), acts of cooperation for a custodial parent or other individual exercising parental control, include the following:

1. Attending interviews and responding to written requests for information by the child support agency.

2. Paying court-ordered child support received directly from the noncustodial parent to the department or its designee.

3. Providing information or signing an affidavit declaring a lack of information, subject to penalty of false swearing pursuant to s. 946.32, Stats.

(c) In addition to the requirements in pars. (a) and (b), acts of cooperation for a custodial parent include submitting to genetic tests pursuant to judicial or administrative order.

(d) In addition to the requirements in par. (a), acts of cooperation for an alleged father include submitting to genetic tests pursuant to judicial order.

(e) In addition to the requirements in par. (a), acts of cooperation for a noncustodial parent include paying court-ordered child support to the department or its designee pursuant to s. 767.29, Stats.

(3) EXCLUSIONS. Acts of cooperation do not include the following:

(a) Involuntary participation in a polygraph examination. The results of a voluntary polygraph examination may be used only to impeach or substantiate other evidence and may not serve as conclusive evidence.

(b) A requirement to sign a voluntary statement of paternity under s. 69.15, Stats.

(c) Relinquishment of the right to request a genetic test under s. 49.225, 767.458, 767.48, or 767.62, Stats.

(d) A requirement to sign a stipulation for a child support, physical placement, or custody order.

(4) NONCOOPERATION. (a) The child support agency shall determine if an individual is not cooperating with the requirements in subs. (1) and (2).

(b) The child support agency may determine that a custodial parent or other individual exercising parental control is not cooperating if the individual does any of the following without adequate reason:

1. Misses two consecutive agency appointments.

2. Misses one agency appointment and fails to respond to a written communication within a 90-day period.

3. Fails to appear for a hearing or other legal proceeding.

(c) In addition to par. (b), the child support agency may determine that a custodial parent is not cooperating if the individual fails to appear for a genetic test.

(d) The child support agency may determine that a noncustodial parent or alleged father is not cooperating if the individual is the subject of a warrant relating to paternity or support, including a civil warrant for contempt of court pursuant to ch. 785, Stats., or an arrest warrant pursuant to s. 818.02 (5) or (6), Stats., excluding a warrant issued for failure to effect service of process.

(e) The child support agency may determine that a noncustodial parent is not cooperating if the individual is the subject of a criminal warrant for failure to support pursuant to s. 948.22, Stats.

(f) In addition to pars. (d) and (e), the child support agency may determine that a noncustodial parent is not cooperating if the noncustodial parent fails to pay court-ordered child support so that the delinquency balance is three months or more of the court-ordered payment amount, unless the court or child support agency is allowing the parent to delay payments or the parent is in compliance with a payment plan approved by the child support agency or court.

(5) ADEQUATE REASON. (a) Adequate reason for failure to respond to a written communication or failure to attend an appointment, hearing, or genetic test by a custodial parent or other individual exercising parental control includes any of the following:

1. Personal or family illness or injury.

2. Family crisis.

3. Breakdown in transportation arrangements.

4. Inclement weather that causes a general breakdown in travel.

5. Failure to receive a hearing notice, appointment notice, or written request for information due to a demonstrable mail problem, address change, or extended time away from home.

6. Other reasonable circumstances as determined by the child support agency or the department.

(b) The child support agency may request evidence verifying adequate reason if there are repeated instances of failure to respond based on reasons in par. (a).

(6) AFFIDAVIT ATTESTING TO FULL COOPERATION. If a custodial parent or other individual exercising parental control has signed an affidavit attesting to full cooperation and there is no substantial independent evidence or verifiable information that suggests that the custodial parent or individual is not cooperating, the child support agency shall conclude that an alleged failure to cooperate was, in fact, a case of cooperation.

(7) NONCOOPERATION NOTIFICATION. If a child support agency makes a determination of noncooperation under sub. (4), the child support agency shall promptly notify the individual and the income maintenance agency of its decision and the basis for the decision. The notice to the individual shall be in writing. The income maintenance agency shall apply sanctions pursuant to s. HFS 253.09 upon receipt of the noncooperation notification from the child support agency.

(8) REMEDYING NONCOOPERATION. An individual who wants to restore cooperative status after being determined noncooperative shall demonstrate cooperation by performing the act of cooperation in sub. (2) that the individual failed to perform and that became the basis of the noncooperation finding. The child support agency shall provide the individual who has been found noncooperative with the opportunity to resume cooperation within 30 days of contacting the child support agency to express an intent to cooperate. When a rescheduled court hearing cannot occur within 30 days, the child support agency shall either lift the noncooperation determination upon contact from the individual or make it possible for the individual to perform some other required activity within 30 days of the contact.

HFS 253.04 Cooperation and good cause notice.

(1) The income maintenance agency shall issue a notice describing the cooperation requirements and the right to good cause as an exception to the cooperation requirements to all applicants and recipients of food stamps. The notice shall be provided to applicants when they apply for food stamps and to recipients when a child is added to the food stamp household, when a parent leaves the food stamp household, at reapplication for continued benefits, and if a participant discloses to his or her income maintenance worker circumstances that may meet the good cause criteria in s. HFS 253.05.

(2) The notice shall include all of the following information:

(a) The potential benefits the child may derive from establishing paternity and securing support.

(b) Child support cooperation is a condition of eligibility for food stamps.

(c) A failure to cooperate is allowed when the income maintenance agency determines that one of the good cause criteria apply.

(d) The good cause criteria in s. HFS 253.05.

(e) A good cause claim form is available from the income maintenance agency upon request. The good cause claim form provides additional details on the process for claiming good cause as an exception to the cooperation requirement.

(f) The good cause claim form may be submitted to the income maintenance agency at any time.

(3) At the child support agency's initial meeting with the custodial parent or individual exercising parental control, the agency shall ask the parent or other individual if a good cause notice has been received. If the custodial parent or individual exercising parental control has not received a good cause notice, the child support agency shall provide one. A custodial parent or individual exercising parental control who expresses intent to file a good cause claim shall be referred to the income maintenance agency. If the custodial parent or individual exercising parental control informs the child support agency of an intent to file a good cause claim, the child support agency shall cease further action for a minimum of 15 days to allow the custodial parent or individual exercising parental control to file a good cause claim with the income maintenance agency.

Note: A copy of the good cause notice may be obtained by contacting the Department of Health and Family Services, Division of Health Care Financing, P.O. Box 309, Madison, WI 53701-0309.

History: CR 02-040: cr. Register August 2002 No. 560, eff. 9-1-02.

HFS 253.05 Good cause criteria. An alleged father, parent, or individual exercising parental control is eligible for an exemption from the cooperation requirements in s. HFS 253.03 when the income maintenance agency determines that any of the following criteria applies:

(1) Cooperation is reasonably anticipated to result in physical or emotional harm to the child, including threats of child kidnapping or domestic abuse.

(2) Cooperation is reasonably anticipated to result in either physical or emotional harm to the individual subject to the cooperation requirements, including domestic abuse.

(3) Cooperating with the child support agency would make it more difficult for the individual to escape domestic abuse or unfairly penalize the individual who is or has been victimized by such abuse, or the individual who is at risk of further domestic abuse.

(4) The child was conceived as a result of incest or sexual assault.

(5) The parent is considering whether to terminate parental rights and sought the assistance of a public or licensed private social services agency not more than 3 months ago.

(6) A petition for the adoption of the child has been filed with a court, except this does not apply as a good cause exemption from the responsibility to make payments under an existing court order.

(7) A noncustodial parent's delinquency equaled less than 3 months of the court-ordered support payments during the previous month.

(8) Any other good cause criteria used in the W-2 program, as provided in ch. DWD 15.

History: CR 02-040: cr. Register August 2002 No. 560, eff. 9-1-02.

HFS 253.06 Good cause claim. (1) CLAIM FORM.

The income maintenance agency shall provide a good cause claim form to any applicant or recipient of food stamps on request. The claim form shall describe the good cause criteria and appropriate documentation to corroborate a good cause claim.

(2) **FILING A CLAIM.** An applicant or recipient may file a good cause claim with the income maintenance agency at any time. The applicant or recipient shall specify the circumstances that the applicant or recipient believes provide sufficient good cause for not cooperating and shall indicate whether the applicant or recipient requests that the child support agency proceed without his or her cooperation if good cause is granted, if that is possible. The applicant or recipient shall swear or affirm under penalty of false swearing pursuant to s. 946.32, Stats., that the statements in the claim are true and shall sign the claim form in the presence of an income maintenance agency worker or a notary public. Upon receipt of the good cause claim, the income maintenance agency shall notify the child support agency within 2 days that no further action may be taken until it is determined whether good cause exists.

(3) **SUBMITTING CORROBORATIVE EVIDENCE.** The income maintenance agency shall encourage the applicant or recipient to submit as many types of evidence as possible. The income maintenance agency worker shall advise the applicant or recipient that if assistance is needed in obtaining evidence, the worker will assist him or her. The applicant or recipient may submit corroborative evidence to the income maintenance agency within 20 days from the day the claim was signed. An income maintenance worker may, with supervisory approval, determine that more time is needed due to difficulty in obtaining corroborative evidence. If the good cause claim is based on domestic abuse and no corroborative evidence is currently available, the income maintenance agency may permit the applicant or recipient to submit evidence to the income maintenance agency within 60 days from the date the claim was signed.

(4) **TYPES OF CORROBORATIVE EVIDENCE.** A good cause claim may be corroborated with any of the following types of evidence:

(a) Court, medical, criminal, child protective services, social services, psychological, school, or law enforcement records regarding domestic violence or physical or emotional harm to the applicant, recipient, or child.

(b) Medical records or written statements from a mental health professional that pertain to the emotional health history, present emotional health status, or prognosis of the applicant, recipient, or child.

(c) Birth certificates, medical records, or law enforcement records that indicate that the child may have been conceived as a result of incest or sexual assault.

(d) Court documents or other records that indicate that a petition for the adoption of the child has been filed with a court.

(e) A written statement from a public or private social services agency that the applicant or recipient is being assisted by the agency in deciding whether to terminate parental rights.

(f) Written and signed statements from others with knowledge of the circumstances on which the good cause claim is based, including, but not limited to, statements from neighbors, friends, family, or clergy.

(g) An identification by the W-2 screening process under s. DWD 12.15 as an individual or parent of a child who is or has been a victim of domestic abuse or is at risk of further domestic abuse and the alleged perpetrator is the other parent.

(h) Any other supporting or corroborative evidence.

Note: A copy of the good cause claim form may be obtained by contacting the Department of Health and Family Services, Division of Health Care Financing, P.O. Box 309, Madison, WI 53701-0309.

History: CR 02-040: cr. Register August 2002 No. 560, eff. 9-1-02.

HFS 253.07 Approving or continuing benefits. If an applicant or recipient is cooperating with the income maintenance agency in furnishing evidence and information to be used in determining the good cause claim and other eligibility criteria are met, food stamp benefits shall not be denied, delayed, reduced, or discontinued pending the determination of a good cause claim.

History: CR 02-040: cr. Register August 2002 No. 560, eff. 9-1-02.

HFS 253.08 Good cause determination. (1) EVALUATING A GOOD CAUSE CLAIM. (a) The income maintenance agency shall require an applicant or recipient who requests a good cause exemption to submit at least one document of corroborative evidence and the applicant's or recipient's statement specifying the circumstances that the applicant or recipient believes provide sufficient good cause for not cooperating. If an applicant or recipient does not submit sufficient evidence to substantiate the good cause claim, the income maintenance agency shall notify the individual that additional evidence is required and shall outline the types of evidence that may be used as provided in s. HFS 253.06 (4). The income maintenance agency shall make a reasonable effort to obtain specific documents or information that the individual is having difficulty obtaining.

(b) The income maintenance agency shall investigate any good cause claim based on anticipated harm, including when the claim is credible without corroborative evidence and when corroborative evidence is not available. Good cause shall be found when the applicant's or recipient's statement and the investigation satisfy the income maintenance agency that good cause exists.

(c) The income maintenance agency may investigate any good cause claim when the applicant or recipient's statement and corroborative evidence do not provide sufficient information to make a determination. The applicant or recipient shall cooperate with the investigation by the income maintenance agency. The income maintenance agency may contact the child support agency in the course of the investigation, but may not contact the individual alleged to have committed acts that are the basis of a good cause claim based on criteria in s. HFS 253.05 (1) to (4).

(2) RECOMMENDATION OF THE CHILD SUPPORT AGENCY. The child support agency shall be given the opportunity to review and comment on the findings of the income maintenance agency prior to the final determination on good cause by the income maintenance agency. The income maintenance agency shall consider any recommendations from the child support agency.

(3) DETERMINATION DEADLINE. The income maintenance agency shall determine if good cause exists within 45 days from the date the claim was signed, unless an extension to submit evidence was granted to the applicant or recipient who is claiming good cause or more time is necessary for the income maintenance agency to obtain evidence. If the income maintenance agency allowed up to 60 days to submit evidence for a claim of domestic abuse, the agency shall determine if good cause exists within 85 days from the date the claim was signed.

(4) IF GOOD CAUSE DOES NOT EXIST. If the income maintenance agency determines that the applicant or recipient does not have good cause for failing to cooperate with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, and providing or obtaining support for the child, the income maintenance agency shall notify the child support agency that it may proceed with child support services and require the cooperation of the applicant or recipient.

(a) The income maintenance agency shall immediately notify the applicant or recipient of the determination and the right to a review of the agency decision pursuant to s. HFS 253.10.

(b) The child support agency shall not proceed with child support services for 10 days from the date of the notice to the applicant or recipient to allow the applicant or recipient the opportunity to withdraw the application or request the case be closed, exclude allowable individuals from the food stamp household, or request a review of the agency decision pursuant to s. HFS 253.10.

(c) If the applicant or recipient requests a review of the agency decision, the income maintenance agency shall instruct the child support agency to suspend child support services during the review process.

(5) IF GOOD CAUSE DOES EXIST. (a) If the income maintenance agency determines that the applicant or recipient does have good cause for failing to cooperate with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, or providing or obtaining support for the child, the income maintenance agency shall:

1. Direct the child support agency to suspend all further case activities if the applicant or recipient did not request the child support agency to proceed without his or her cooperation.

2. Notify the child support agency that it shall proceed with child support services without the cooperation of the applicant or recipient if the applicant or recipient did request that the child support agency proceed without his or her cooperation. If good cause was granted for criteria in s. HFS 253.05 (1) to (4), the child support agency shall send a notice to the individual alleged to have committed the acts that are the basis of the good cause claim that states that the agency is proceeding without the cooperation of the applicant or recipient.

3. Notify the applicant or recipient of the determination and the basis for the determination in writing.

(b) If the income maintenance agency determines that an alleged father or noncustodial parent is granted a good cause exemption, a child support agency's determination of noncooperation under s. HFS 253.03 (4) (c) or (d) may not constitute a refusal to cooperate pursuant to 7 CFR 273.11(p)(2).

History: CR 02-040: cr. Register August 2002 No. 560, eff. 9-1-02.

HFS 253.09 Sanction for refusal to cooperate. (1) A member of a food stamp household who is required to cooperate with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, or providing or obtaining support for the child and refuses to cooperate without good cause shall be ineligible to participate in the food stamp program. Other individuals in that food stamp household who are cooperating or who do not have cooperation requirements are eligible to receive food stamps.

(2) A woman who is pregnant or a custodial parent with a child who is under 60 days old is exempt from sanction for failing to cooperate with requirements in s. HFS 253.03 for any child.

(3) A minor parent is exempt from sanction for failing to cooperate with requirements in s. HFS 253.03.

History: CR 02-040: cr. Register August 2002 No. 560, eff. 9-1-02.

HFS 253.10 Review of agency decisions. (1) A food stamp applicant or recipient who is denied eligibility based on a determination that the individual has refused to cooperate or is denied a good cause exemption from the child support cooperation requirement may request a departmental review.

(2) A food stamp applicant or recipient who is denied eligibility based on a determination of noncooperation by the child support agency is encouraged, but not required, to file an administrative complaint with the child support agency to attempt to resolve the matter upon agreement of all parties.

(3) The child support agency shall be given reasonable notice and may participate in any hearing resulting from a good cause investigation or good cause determination.

History: CR 02-040: cr. Register August 2002 No. 560, eff. 9-1-02.

HFS 253.11 Review of good cause exemptions. The income maintenance agency shall review good cause exemptions that are based on circumstances subject to change at each redetermination of eligibility and report any change in good cause status to the child support agency. If the income maintenance agency determines that good cause for noncooperation no longer exists,

the recipient shall be allowed 10 days before cooperation requirements are imposed to request that the case be closed, exclude allowable individuals from the food stamp household, or request a review of the agency decision.

History: CR 02-040: cr. Register August 2002 No. 560, eff. 9-1-02.