

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Total expense shall be computed using this formula:

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

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

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

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

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

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

(9) **CONTRACTUAL INCOME.** Income received on other than an hourly or piecework basis from employment under a contract which is renewable on an annual basis shall be averaged over a 12-month period. The person shall be considered compensated for an entire year even though predetermined non-work or vacation periods are involved or actual compensation is scheduled for payment during work periods only.

(10) **IN-KIND BENEFITS.** When in-kind benefits are regular, predictable, and received in return for a service or product delivered, these benefits shall be treated as earned income. When in-kind benefits do not meet all three of these criteria, they shall not be counted when determining eligibility and grants. The value of in-kind income shall be determined by the prevailing wage-rate in the community for the type of work the person is doing, but shall not be less than the minimum wage for that type of work.

(11) **ROOM AND BOARD PROFIT.** Room and board profit shall be treated as earned income. To determine room and board profit, the expenses of

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

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

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

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

(a) *Allocation.* 1. Where the parents are included in the AFDC group and the child in-common is determined ineligible, an amount up to the average of the differences between the area I standards set by s. 49.19 (11) (a), Stats., for family sizes 3 and 2, 4 and 3, 5 and 4, and 6 and 5, shall be allocated to the child to bring the child's income up to this amount. This income shall be deducted from the group's income before determining eligibility and amount of grant.

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

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

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

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

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

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

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

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

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

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

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

HSS 201.29 Eligibility date. (1) Except for maternity care cases the beginning eligibility date shall be the date of receipt of a signed and completed application or the date all eligibility requirements are met, whichever is later. The beginning eligibility date for maternity care cases shall be the first day of the month in which the medically verified seventh month of pregnancy begins, or the first day of the month of application, whichever is later.

(2) If required by the agency, a home visit shall be conducted prior to release of the check. This requirement does not affect the amount of the check.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; emerg. r. (2) (b), eff. 6-1-86; r. and recr. (2), Register, November, 1986, No. 371, eff. 12-1-86.

HSS 201.30 Determination of grant amount. (1) **ON-GOING PAYMENTS.** The AFDC grant shall be determined by subtracting the AFDC group's Register, March, 1990, No. 411

section does not apply to stepchildren, pregnant children, and three-generation cases covered by s. HSS 201.31.

(1) All nonexempt assets of legally responsible relatives shall be considered available to the AFDC group. Nonexempt assets are determined under s. HSS 201.32.

(2) If it is the spouse or only one parent who is in the home but not in the AFDC group, all net income but the average of the differences between the area I standards set by s. 49.19 (11) (a), Stats., for family sizes 3 and 2, 4 and 3, 5 and 4, and 6 and 5, is deemed as unearned income to the AFDC group. When both parents are in the home but not in the AFDC group, an amount which exceeds twice the average shall be deemed. Net income is determined under s. HSS 201.32.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The AFDC needs standard according to family size and composition of the household who are claimed as dependents on the sponsor's or sponsor's spouse's federal income tax return.

3. Dollars paid to persons not in the household who are also claimed as dependents on the federal income tax return.

4. Payments of alimony and child support on behalf of persons not in the household.

(c) When a person is a sponsor for more than one alien, the method of determining the amount of income and assets is not changed, but the amount deemed to each alien shall be equally divided by the number of sponsored aliens who are applying for assistance.

(3) CORRECTION OF OVERPAYMENTS. Unless the sponsor is without fault, the sponsor and the alien shall be jointly responsible for any overpayment made to the alien due to failure of the sponsor to provide correct information. Overpayments shall be recouped under s. HSS 201.30 (3).

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

HSS 201.35 Continuation of the grant. A basic eligibility requirement for AFDC is that the child be deprived of parental support. Eligibility ceases at the time deprivation ends unless the child is still in need and has been deprived as provided in this section.

(1) If the deprivation reason was institutionalization or incapacitation of a parent, the grant shall be continued in the same amount for 2 months following the end of the deprivation. If the deprivation reason was unemployment of the parent, the grant shall be continued until the first wages are received, but not beyond 60 days.

(2) Recipients whose incapacitation has ceased but who are participating in division of vocational rehabilitation training may continue to receive a grant beyond the 2-month income continuation period. If the recipient is continuing to acquire skills through training which was designed to reduce impairment, the grant may be continued until the training is completed or discontinued.

(3) To determine if the AFDC group is still in need when the deprivation has been based on the absence of the parent who was institutionalized, the income and assets of the returning parent shall be deemed according to s. HSS 201.33.

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

HSS 201.36 Transitional child care. (1) PURPOSE. This section implements s. 49.50 (6g), Stats., which provides that an individual whose AFDC case closes on or after March 31, 1990, due to an increase in earned income, an increase in hours of employment for AFDC-unemployed parent cases or loss of the earned income disregards under s. 49.19 (5) (a), Stats., may be eligible for a period of time for payment of child care costs necessary for the individual to accept or retain employment.

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