



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-043

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

Section 49.145 (3), Stats., provides that in order to be financially eligible for a Wisconsin Works (W-2) employment position or a job access loan, the person’s gross income must be at or below 115% of the federal poverty line. All earned and unearned income of the individual, with a few exceptions, is counted. No exception is made for income derived from federal employment. Eligibility is reviewed periodically, and a person remains eligible until the W-2 group’s assets or income is expected to exceed the asset or income limit for at least two consecutive months.

Section 49.155 (1m) (c), Stats., relating to W-2 child care subsidies, requires the gross income to be at or below 185% of the poverty line for a family the size of the individual’s family (or, for an individual who is already receiving a child care subsidy under this section, the gross income of the individual’s family must be at or below 200% of the poverty line for a family the size of the individual’s family). Income described in s. 49.145 (3) (b) 1. and 3., Stats., must be included in this calculation.

In addition to satisfying these criteria, the Department of Children and Families may, under ss. 49.145 (1) and 49.155 (1m) (d), Stats., establish other eligibility criteria by rule.

The department’s intention to exclude earnings derived from employment with the U.S. Census Bureau appears to conflict with these statutory provisions. The statutes do not exempt income earned from federal employment.

While the department arguably may justify the promulgation of the rule as an exercise of its authority to establish additional eligibility criteria, it should be mindful that this authority should not be used to negate the statutory income limits. For example, taken to an extreme, could the department use its additional criteria authority to disregard the first \$50,000 of family income received from whatever source? To date, it appears that the department has used this authority sparingly; for example, see ss. DCF 101.09 (3) (b) 2. d. and 101.26 (2).

If the department continues with the promulgation process, it should, in its report to the Legislature, fully explain the statutory authority for the rule.