

Clearinghouse Rule 21-052

**State of Wisconsin
Department of Children and Families**

Self-Employment Policies for the Child Care Subsidy Program

Chapter DCF 201

The Wisconsin Department of Children and Families proposes to create ss. DCF 201.036 (3m) and 201.039 (8m), relating to self-employment policies for the child care subsidy program.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 49.155 (1m) (d) and 227.11 (2) (a), Stats.

Statutes interpreted: Section 49.155, Stats.

Related statutes and rules: DCF 202, 250, 251, and 252

Explanation of Agency Authority

The department administers the child care subsidy program under s. 49.155, Stats. Section 49.155 (1m) (d), Stats., authorizes the department to establish additional eligibility criteria by rule.

Section 227.11 (2) (a), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Summary of the Rule

The proposed rule incorporates department policies into rule regarding the eligibility of and authorizations for parents who are self-employed and are applying for or receiving a subsidy for child care expenses.

Eligibility

Section 49.155 (1m) (c), Stats., provides that when calculating farm and self-employment income for determining financial eligibility for the child care subsidy program, the department or county department or agency shall include the sum of net earnings reported to the Internal Revenue Service and depreciation expenses, personal business and entertainment expenses, personal transportation costs, purchases of capital equipment and payments on the principal of loans.

The proposed rule requires that a parent whose approved activity is self-employment file personal and business taxes with the Internal Revenue Service if the parent's income from the previous year included income from self-employment. This provision applies regardless of the amount of the parent's net business income. The parent is required to submit copies of the parent's most recent personal and business tax returns when the parent submits an initial request

for assistance and at each annual eligibility redetermination. Prior to the date that the parent is required to file a business tax return, the parent is required to submit business income and expenses on a department form. The child care administrative agency may require additional verification if the tax returns or the business income and expense information on the department form appears to be falsified or is questionable.

A parent's self-employment will be considered a hobby and not an approved activity if the parent does not have an annual net business income of at least \$400 when the parent's business is considered to be an ongoing business or after 24 months of self-employment.

Authorizations

New business. The proposed rule provides that a child care administrative agency shall consider a parent's self-employment to be a new business for the 24 months following the date that the parent began the business. A parent may switch to a different type of self-employment during the 24-month period for the initial business, but the subsequent business will be treated as a new business only until the end of the 24-month period for the initial business.

A child care administrative agency may consider a parent's self-employment to be a new business until the parent's next eligibility redetermination following the end of the 24-month period may consider a parent's switch to a new type of self-employment to be a new business during this time.

While a parent's self-employment is considered a new business, the agency may authorize payment for the number of hours of child care that the parent states is needed, up to a maximum of 50 hours per week. After the 24-month period ends or after the parent's next eligibility redetermination after the 24-month period ends, the agency shall determine the maximum number of hours of child care that may be authorized for a parent who begins a new type of self-employment in the same manner as an ongoing business.

Ongoing business. If a parent's self-employment is not a new business, the child care administrative agency shall determine the maximum number of hours of child care that may be authorized for the parent per week by dividing the parent's average monthly gross earnings from self-employment by the higher of the minimum wage under state or federal law and dividing that amount by 4.3 weeks. The agency will then assess the assistance group's child care needs to determine the number of hours of subsidized child care to authorize for the parent.

Summary of Factual Data and Analytical Methodologies

The proposed rule incorporates existing department policies.

Summary of Related Federal Law

Filing an income tax return is required if net annual earnings from self-employment are \$400 or more.

Comparison to Adjacent States

Minnesota

To be eligible for child care assistance for self-employment, a parent must work for at least an average of 20 hours per week (10 hours if a full-time student) with a gross income of at least the minimum wage. If the parent meets this minimum activity requirement, the number of hours of subsidized child care that is authorized is the lesser of the following:

- The parent's annual gross earned income from the self-employment activity, divided by 52 weeks, and then divided by the applicable minimum wage.
- The actual hours the parent spends in the self-employment activity.

Iowa

The number of hours of subsidized child care authorized for a self-employed parent is based on a statement from the parent on the number of hours needed, unless the agency has a reason to question the parent's statement.

Illinois

The numbers of hours authorized cannot exceed the parent's income divided by the state minimum hourly wage.

Michigan

Child care assistance is approved based on a parent's completion of a form with self-employment income and expenses.

Effect on Small Businesses

The rule will affect small businesses operated by parents who receive a subsidy for child care expenses incurred while the parents operate their businesses. The effect will be minimal.

Analysis Used to Determine Effect on Small Businesses

The primary effect of the rule is to incorporate existing department policy into rule.

Agency Contact

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Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Elaine Pridgen, Department of Children and Families, 201 W. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or dcfpublichearing@wisconsin.gov. The comment deadline is July 21, 2021.

SECTION 1. DCF 201.036 (3m) is created to read:

DCF 201.036 (3m) SELF-EMPLOYMENT (a) *Requirement to file taxes.* Regardless of the amount of a parent's net income, a parent whose approved activity is self-employment shall file personal and business taxes with the internal revenue service if the parent's gross income from the previous year included income from self-employment.

(b) *Income information to agency.* Except as provided in par. (c) 1., a parent is eligible for the child care subsidy program when the parent's approved activity is self-employment only if the parent submits copies of the parent's most recent personal and business tax returns to the child care administrative agency with the parent's initial request for assistance and at each annual eligibility redetermination.

(c) *Self-employment income reports.* 1. Prior to a parent filing a business tax return, the parent shall submit documentation of the parent's business income and expenses to the child care administrative agency on a form prescribed by the department at the times specified in par. (b). This subdivision only applies prior to the parent's first deadline for filing a business tax return under par. (a), including any extension granted by the internal revenue service.

2. If a parent alleges that the business tax return required under par. (b) is not representative of the parent's more recent business income and expenses, the parent may submit documentation of business income and expenses subsequent to the information in the tax return on a form prescribed by the department, in addition to the tax returns required under par. (b). The child care administrative agency shall review the documentation and use the more recent information for eligibility and authorizations if it determines there has been a significant change in the parent's business income and expenses.

Note: Form F-001007, *Self-Employment Income Report*, is available on the Department of Health Services website at <https://www.dhs.wisconsin.gov/forms/f0/f00107.pdf>.

(d) *Additional verification.* 1. A child care administrative agency may require a parent to provide additional verification of the parent's business income and expenses within 7 days if the agency believes the documentation provided under par. (b) or (c) is questionable or may be falsified.

2. The child care administrative agency shall determine that the parent's self-employment is not an approved activity if the parent does not submit the additional verification requested by the agency within 7 days or the information provided by the parent does not resolve the agency's questions.

(e) *Income threshold for ongoing business.* A child care administrative agency shall determine that a parent's self-employment is a hobby and not an approved activity if the parent does not have an annual net business income of at least \$400 when the maximum numbers of hours in the parent's authorization is determined under s. DCF 201.039 (8m) (b).

SECTION 2. DCF 201.039 (8m) is created to read:

DCF 201.039 (8m) AUTHORIZATIONS FOR A PARENT WHO IS SELF-EMPLOYED. (a) *New business.* 1. For purposes of this subsection, a child care administrative agency shall consider a parent's self-employment to be a new business for the 24 months following the date that the parent began the business, except as provided in subd. 4. The child care administrative agency may consider a parent's self-employment to be a new business until the parent's next eligibility redetermination following the end of this 24-month period.

2. Notwithstanding subd. 1., if a parent switches to a different type of self-employment during the time period specified in subd. 1., the child care administrative agency shall consider

the parent's subsequent type of self-employment to be a new business only until the end of the time period for the initial business.

3. While a parent's self-employment is a new business for purposes of this subsection, the child care administrative agency may authorize payment for the number of hours of child care that the parent states is needed, up to a maximum of 50 hours per week.

4. After the end of the time period specified in subd. 1., the child care administrative agency shall determine the maximum number of hours of child care that may be authorized for a parent who begins a new type of self-employment under par. (b).

(b) *Ongoing business.* 1. If a parent's self-employment is not considered a new business under par. (a), the child care administrative agency shall determine the maximum number of hours of child care that may be authorized for the parent per week as follows:

a. Calculate the parent's average monthly gross income from self-employment based on the parent's annual gross business income as reported to the internal revenue service.

b. Divide the parent's average monthly gross income from self-employment by the higher of the minimum wage under state or federal law and divide that amount by 4.3 weeks.

2. After determining the maximum number of the hours that may be authorized, the child care administrative agency shall assess the assistance group's child care needs under sub. (1).

SECTION 3. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.