

is found not guilty of a law violation by reason of mental deficiency and is subsequently committed to a mental institution shall not be considered detained by legal process.

(7) **NOT A PERSON RESIDING IN AN INSTITUTION FOR MENTAL DISEASES.** A person 21 to 64 years of age who resides in an institution for mental diseases (IMD) is not eligible for MA benefits, unless the person is 21 years of age, was a resident of the IMD immediately prior to turning 21 and has been continuously a resident of the IMD since then. An IMD resident 21 to 64 years of age may be eligible for MA benefits while on conditional release or convalescent leave from the IMD.

(8) **NOT AN INELIGIBLE CARETAKER RELATIVE.** A caretaker relative enumerated in s. 49.19 (1) (a), Stats., with whom a dependent child as defined in s. 49.19 (1) (a), Stats., is living when the income and resources of the MA group or fiscal test group exceed the limitations of ss. 49.19 and 49.177, Stats., or title XVI of the social security act of 1935, as amended, is not eligible unless the caretaker relative is SSI-related in accordance with sub. (1) (c), or is a woman who is medically verified to be pregnant.

(9) **NOT A STRIKER.** A person on strike is not eligible. When the striker is a caretaker relative, all members of the MA group shall be ineligible. In this subsection, "striker" means anyone who on the last day of the month is involved in a strike or a concerted effort with other employees to stop work including a stoppage of work due to the expiration of a collective bargaining agreement, or any concerted slowdown or other concerted interruption of operations by employees.

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**HSS 103.04 Asset and income limits.** The nonexempt assets and budgetable income of the MA group or, when applicable, the fiscal test group, shall be compared to the following asset and income limits established in this section to determine the eligibility of the MA group:

(1) **CATEGORICALLY NEEDY.** (a) The MA group or fiscal test group shall first be tested against the categorically needy standard. Persons who meet the non-financial eligibility conditions and who meet the income and asset standards specified in this subsection shall be determined eligible as categorically needy in accordance with s. 49.46 (1) (e), Stats., and shall receive MA benefits in accordance with s. 49.46 (2), Stats., and chs. HSS 101 to 108.

(b) The AFDC-related categorically needy income standard for MA applicants shall be the appropriate AFDC assistance standard as specified in s. 49.19 (11) (a) 1, Stats., except that persons who are ineligible to receive AFDC solely because of the application of s. 49.19 (11) (a) 6, Stats., which specifies that payments that are not whole dollar amounts shall be rounded down to the nearest whole dollar, shall receive MA as categorically needy. The AFDC-related categorically needy asset standard shall be the same as that set out in s. 49.19 (4), Stats.

(c) The SSI-related categorically needy income standard shall be the maximum SSI payment including state supplement that a single person or a couple, as appropriate, could receive in Wisconsin under s. 49.177, Stats., or federal title XVI of the social security act of 1935, as amended.

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The SSI-related categorically needy asset standard shall be the same as specified in s. 1613 of title XVI of the social security act of 1935, as amended.

(2) **MEDICALLY NEEDED.** If the MA group or fiscal test group is not eligible as categorically needy, the medically needy standard shall be applied. Persons who meet non-financial conditions for eligibility and meet the income and assets criteria set forth in s. 49.47 (4) (b) and (c), Stats., and this chapter, except for AFDC-related adult caretakers who are not blind, disabled or age 65 or older, shall be determined medically needy and shall receive MA benefits in accordance with s. 49.47 (6), Stats., and chs. HSS 101 through 108.

(3) **EXCESS INCOME CASES.** (a) In this subsection, "spend-down period" means the period during which excess income may be expended or obligations to expend excess income may be incurred for the purpose of obtaining MA eligibility, as described under s. HSS 103.08 (2) (a).

(b) When an SSI-related or AFDC-related fiscal test group is found ineligible as medically needy and excess income is the only reason, the group may expend or incur obligations to expend the excess income above the appropriate medically needy income limit pursuant to s. 49.47 (4) (c) 2 and 3, Stats., and this chapter. If after incurred medical expenses are deducted, the remaining income is equal to or less than the income limit, the MA group shall be determined medically needy and shall receive MA benefits in accordance with s. 49.47 (6), Stats., and chs. HSS 101 to 108 for the balance of the spend-down period.

(c) Health insurance premiums actually incurred or paid, plus any medical service recognized by state law received by a member of the MA or fiscal test group shall be counted toward fulfilling the excess income expenditure or incurrence requirement when the service is prescribed or provided by a medical practitioner who is licensed by Wisconsin or another state and if either or both of the following conditions are met:

1. The service is received during the spend-down period; or

2. The expense was incurred prior to the spend-down period and a fiscal test group member is still legally responsible for the debt and is consistently making payments, in which case the payments made during the spend-down period shall be counted.

(d) No medical costs that are incurred and are to be paid or have been paid by a person other than the applicant or members of the fiscal test group may be counted toward fulfilling the excess income expenditure or incurrence requirement. No expense for which a third party is liable, including but not limited to medicare, private health insurance, or a court-ordered medical support obligation, may be used to meet the expenditure of excess income requirement.

(4) **SPECIAL FINANCIAL STANDARDS FOR INSTITUTIONALIZED PERSONS.** The categorically needy and medically needy asset standards shall be the same for institutionalized persons as for non-institutionalized persons. The eligibility standards against which an institutionalized person's income is tested shall be the following:

(a) *Categorically needy standard.* The categorically needy standard for an institutionalized person shall be an amount equal to 3 times the fed-

eral share of the SSI payment for one person living in that person's own home.

(b) *Medically needy standard.* An institutionalized person shall be determined medically needy in accordance with requirements under 42 CFR 435.1007.

(5) IRREGULAR CASES. (a) *Mixture of AFDC and SSI-relatedness.* When there is a mixture in an MA group of AFDC-relatedness and SSI-relatedness, AFDC-related financial eligibility procedures shall be used

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