

CR 90-75

CERTIFICATE

STATE OF WISCONSIN)
)SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Patricia A. Goodrich, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to eligibility for payment of child care costs for former recipients of Aid to Families with Dependent Children (AFDC) who lost eligibility for AFDC for employment-related reasons were duly approved and adopted by this Department on October 15, 1990.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison this 15th day of October 1990.



Patricia A. Goodrich, Secretary
Department of Health and Social Services

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ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
AMENDING AND CREATING RULES

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To amend HSS 201.09(2)(a) and (3)(d), and to create HSS 201.36, relating to eligibility for payment of child care costs for former recipients of Aid to Families with Dependent Children (AFDC) who lost eligibility for AFDC due to an increase in earned income, an increase in hours of employment or loss of earned income disregards.

Analysis Provided by the Department of Health and Social Services

The Family Support Act (P.L. 100-485) amended Title IV-A of the Social Security Act, 42 USC 601 et. seq., to require states to provide for a period of eligibility for payment of child care expenses when an Aid to Families with Dependent Children (AFDC) recipient loses eligibility for AFDC 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.49.50(6g), Stats., as created by 1989 Wisconsin Act 31, beginning April 1, 1990, an AFDC recipient who loses eligibility for AFDC for any of these reasons but needs child care to accept or retain employment may be eligible for up to 12 months of transitional child care benefits. If an AFDC case will be closing for one of these reasons, the income maintenance agency will notify a recipient of possible eligibility for transitional child care. The former recipient must apply for those benefits through the county human or social services agency. If the family is determined eligible, the agency will issue a voucher, which the former recipient can take to any child care provider. The former recipient will be required to pay a copayment amount, based on family income, to the child care provider. Transitional child care benefits are only available to cover the cost of care for a child under age 13 except in certain circumstances when the cost of care of a child age 13 or older is covered.

The proposed rules identify who is eligible for transitional child care benefits, how application for these benefits must be made, and the role of the county human services or social services agency administering the transitional child care program in issuing these benefits. The rulemaking order also amends s. HSS 201.09(3)(d) to require redetermination of AFDC eligibility within 6 months of initial eligibility rather than within 3 months of initial eligibility so that the rule is not more stringent than s.49.19(5)(e), Stats.

The Department's authority to amend and create these rules is found in s.49.50(6g), Stats., as created by 1989 Wisconsin Act 31, and s.49.50(2), Stats. The rules interpret s.49.19(5)(e), Stats., and s.49.50(6g), Stats., as created by 1989 Wisconsin Act 31.

SECTION 1. HSS 201.09(2)(a) and (3)(d) are amended to read:

HSS 201.09(2)(a) Timely and adequate notice shall be sent to applicants and recipients to indicate that AFDC has been authorized or that it has been reduced, denied, terminated or changed to a protective or vendor payment or payment by means of electronic funds transfer under s.HSS 201.10(4) and, if it has been terminated, that the AFDC group may be eligible for transitional child care benefits under s. HSS 201.36. In this subsection, "timely" means in accordance with s.49.19(3), Stats. In this subsection, "adequate notice" means a written notice that contains a statement of the action taken, the reasons for and specific regulations supporting the action, and an explanation of the person's right to request a hearing and the circumstance under which aid will be continued if a hearing is requested. Aid shall be continued in all circumstances except where it is not required by federal regulation.

(3)(d) Within ~~90 days~~ 6 months from the date initial eligibility is determined and every 6 months thereafter.

SECTION 2. HSS 201.36 is created to read:

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.

(2) APPLICABILITY. This section applies to any person who loses eligibility for AFDC 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., and who needs child care to accept or retain employment.

(3) DEFINITIONS. In this section:

(a) "Eligibility period" means the 12 month period that begins with the first month of ineligibility for AFDC benefits.

(b) "Family" means the former AFDC group.

(c) "Transitional child care" means the program established under s.49.50(6g), Stats., which pays a portion of child care for a family for a period of time after that family loses eligibility for AFDC under any of certain circumstances related to being employed.

(4) WHO MAY BE ELIGIBLE. A family may be eligible for a period of 12 months beginning with the first month of ineligibility for AFDC for payment of child care expenses if all of the following conditions are met:

(a) Eligibility for AFDC ended because of increased earnings, increased hours of employment for AFDC-unemployed parent cases or loss of the earned income disregards under s.49.19(5)(a), Stats.;

(b) The family was eligible for AFDC in at least 3 of the last 6 months immediately preceding the month in which ineligibility begins;

(c) Child care is needed to permit a member of the family to accept or retain employment. Payment for child care is limited to those children who are:

1. Under age 13;

2. Age 13 or older and meets one or more of the following conditions as documented by the agency in the case record:

a. The child is physically or mentally incapable of caring for himself or herself, as verified by a physician or a psychologist; or

b. The child is under court supervision as verified by a social worker or the court record; and

(d) The family resides in Wisconsin.

(5) ELIGIBILITY DETERMINATION. (a) The agency shall send a notice as provided under s. HSS 201.09(2)(a) to an individual who loses eligibility for AFDC 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., regarding possible eligibility for transitional child care benefits.

(b) If the family wishes to apply for transitional child care benefits, application shall be made to the agency on a form developed by the department. The agency shall determine eligibility for transitional child care benefits within 30 days after receiving the application and shall send a notice of decision to the family as provided in s. HSS 201.09(2)(a). The notice of decision shall include information regarding the applicant's right to a fair hearing, which shall be governed by procedures under s. PW-PA 20.18 [ch. HSS 225] except that application for a fair hearing shall be made within 45 days after the effective date of the action being appealed, and information

regarding the applicant's right to apply for day care funds under s.46.98(4)(d), Stats., and s. HSS 55.75 if determined ineligible for transitional child care benefits.

(c) If the family is determined eligible for transitional child care benefits, the agency shall issue a voucher monthly to the family to cover child care costs minus the copayment amount determined under sub.(7)(a)2. The voucher amount may not exceed the maximum rate set by the county and approved by the department under s.46.98(4)(d), Stats., and s. HSS 55.72(2) and (7).

(6) ELIGIBILITY PERIOD. Transitional child care benefits are available for the 12 month period beginning with the month in which the family was first ineligible for AFDC. The family may apply for transitional child care benefits at any time within that 12 month period. The period of eligibility for transitional child care benefits shall begin on the first day of the month of application if child care is necessary. If the family applies after the first month of AFDC ineligibility and requests retroactive transitional child care benefits, the agency shall pay benefits retroactive to the first month of AFDC ineligibility if the agency determines that eligibility for transitional child care existed.

(7) CONTINUING ELIGIBILITY. (a) To maintain eligibility for transitional child care benefits, the family shall:

1. Need child care to permit a family member to accept or retain employment;

2. Pay a copayment amount to the child care provider. This amount shall be determined by the agency based on the family's ability to pay as determined under s.46.98(4)(b), Stats., and s. HSS 55.77. The family may appeal the copayment amount in accordance with the procedures under s. PW-PA 20.18 [ch. HSS 225] except that application for a fair hearing shall be made within 45 days after the family is notified of the copayment amount. Eligibility for initial or continuing transitional child care benefits shall exist if the family pays the copayment amount determined by the agency pending the fair hearing decision. If the family prevails in the fair hearing, the agency shall reimburse the family for the overpayments; and

3. Report changes in circumstances as required under s. HSS 201.07 which may affect eligibility for transitional child care benefits.

(b) Eligibility for transitional child care benefits shall end if the caretaker relative:

1. Fails to cooperate with the local child support agency as provided in s. HSS 201.18(2);

2. Quits a job without good cause as provided in s. HSS 201.14(3)(d).

(c) If the caretaker relative leaves a job for good cause and finds another job, the family may be eligible for the remaining portion of the 12 month eligibility period if the family meets the requirements in sub. (4).

(d) If the caretaker relative leaves employment without good cause as provided in s.HSS 201.14(3)(d), reestablishes eligibility for AFDC and subsequently eligibility for AFDC ends for a reason under sub. (4)(a), the family may be eligible for a full 12 month period of transitional child care benefits if the family meets the eligibility requirements in sub. (4).

(8) TERMINATION OF ELIGIBILITY. (a) Eligibility for transitional child care benefits ends when:

1. The caretaker relative leaves employment without good cause as provided in s.HSS 201.14(3)(d). The family is not eligible for any remaining portion of the 12 month eligibility period;

2. The family fails to meet a condition under sub. (4) or (7); or

3. The eligibility period ends.

(b) The agency shall send a notice which meets the requirements under s. HSS 201.09(2)(a) to a family when the period of eligibility for transitional child care benefits ends. The notice shall include information regarding the family's right to appeal the decision as provided in s. PW-PA 20.18 [ch. HSS 225], except that application for a fair hearing shall be made within 45 days after the effective date of the action being appealed, and information about applying for day care funds under s.46.98(4)(d), Stats., and s. HSS 55.75 if determined ineligible for transitional child care benefits.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s.227.22(2), Stats.

Wisconsin Department of
Health and Social Services

Dated: October 15, 1990

By: Patricia A. Goodrich
Patricia A. Goodrich
Secretary

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