

payments pending a fair hearing when the fair hearing decision subsequently finds against the recipient, and overpayments resulting from continuation of the grant because of the necessary 10 day notice. The agency shall recover the overpayment from the AFDC group which was overpaid, or from any AFDC group of which a member of the overpaid group has subsequently become a member.

1. Procedures for recoupment from current recipients. A recipient may make a voluntary repayment. Otherwise recoupment shall be obtained by reduction of the grant. If the recipient is willing to repay more in a month, the agency may accept a voluntary repayment in addition to the amount withheld from the grant. Recoupment shall not reduce the grant below \$1.00. The recoupment withheld from the grant shall continue every month until the overpayment is paid back in full. The amount recouped from the grant shall be 7% of the family allowance, unless a court orders a different amount.

2. Procedures for recoupment from former recipients. Former recipients shall be asked to voluntarily repay the overpayment. If these persons refuse to repay voluntarily, the agency shall refer them for legal action.

(d) **CASES WITH BOTH UNDERPAYMENTS AND OVERPAYMENTS.** When both an underpayment of assistance has been made to the AFDC group and an overpayment of assistance has been made to the same AFDC group, the agency shall offset one payment against the other in correcting the payments. An overpayment shall be offset only in a month in which a supplemental benefit payment is issued to correct an underpayment.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; cr. (3) (d), Register, January, 1988, No. 385, eff. 2-1-88.

HSS 201.31 Financial eligibility in children-only cases. Children with no legally responsible relative in the home, stepchildren, and pregnant children may be eligible even though the primary person, the primary person's spouse and the children for whom they are both legally responsible are not eligible.

(1) **NONLEGALLY RESPONSIBLE RELATIVE CASE.** When children with no legally responsible relative in the home are the only ones in the AFDC group, no income or assets may be considered available from the nonlegally responsible caretakers. Only the children's own income and assets shall be used in testing their eligibility and determining the amount of their grant. An exception to this occurs when the legal parent separates from the stepparent caretaker, in which case stepparent deeming rules shall apply until the marriage is terminated.

(2) **STEPCHILDREN CASE.** To determine the financial eligibility of a stepchild, the income, assets, and needs of ineligible family members shall be considered. Specific amounts of income and assets shall be protected for the ineligible persons. If assets exceed the protected amount, the excess shall be available to legal dependents. If income exceeds the protected amount, the excess shall be available to legal dependents and stepchildren.

(a) The assets considered available to the child from the parent who is legally responsible for the child shall be the dollar amount of the ineligible family members' nonexempt assets above \$1,000 or the dollar

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amount of the legal parent's nonexempt assets, whichever figure is less. The nonexempt assets are determined according to s. HSS 201.32. The total amount of assets available to the child, including the child's own, shall be tested against \$1,000. If the assets exceed \$1,000, the child shall be ineligible. If the assets are less than \$1,000, the child shall pass the assets test.

(b) If both caretakers in the home have stepchildren in the AFDC group, the children shall be separated into subgroups according to their legal parent and each subgroup shall be tested separately against \$1,000. The nonexempt assets are determined according to s. HSS 201.32.

(c) The income considered available to the children in the AFDC group shall be the dollar amount of the ineligible parent's and ineligible stepparent's net income above the assistance standard appropriate for the number of ineligible family members. The net income shall be determined according to s. HSS 201.32. The grant amount shall be the difference between the income available to the children, including the children's own income, and the family allowance appropriate for them.

(3) MIXTURE OF STEPCHILDREN AND NONLEGALLY RESPONSIBLE RELATIVE CASES. When the caretaker is a nonlegally responsible relative of a child the procedures in sub. (1) apply. In determining the eligibility of such children in a stepparent case, each child for whom the caretakers have no legal responsibility shall be treated individually as a subgroup for both the assets test and the income test. If both caretakers in the home have stepchildren in the AFDC group, the stepchildren shall be separated into 2 subgroups according to their legal parent for the assets test but shall be together in one subgroup for the income test.

(a) Each subgroup's assets shall be measured against \$1,000. If the assets exceed \$1,000, the subgroup shall not be eligible; if the assets are \$1,000, or less, the subgroup shall pass the asset test.

(b) For the income test, an individual-test amount shall be determined by dividing the appropriate family allowance by the total number of children in the subgroups. The individual-test amount shall be multiplied by the number of stepchildren to determine the stepchildren's test amount. If the stepchildren's combined income, including any made available from the parents, exceeds the stepchildren's test amount, the stepchildren shall not be eligible.

(c) If the income of any child for whom the caretakers have no legal responsibility exceeds the individual test amount, that child shall not be eligible.

(d) The grant for the eligible children shall be the difference between their income and a family allowance for the number of eligible children.

(4) PREGNANT CHILD CASE. If a pregnant child is not deprived under s. HSS 201.14 her financial eligibility is determined as follows:

(a) In determining assets available from her ineligible parents, the ineligible family members' nonexempt assets above \$1,000 or the parents' nonexempt assets, whichever is less, shall be considered available to the pregnant child. The nonexempt assets shall be determined under s. HSS 201.32. If this amount plus the pregnant child's own assets exceeds \$1,000, the pregnant child shall not be eligible.

(b) In determining how much income is available from her ineligible parents, the amount of the appropriate assistant standard for the ineligible family members shall be protected as follows: The amount of the net income above the standard or the parents' income, whichever is less, shall be considered available to the pregnant child. The net income shall be determined under s. HSS 201.32. The child's own net income shall be added to the income made available from the parents and the total shall be subtracted from the family allowance appropriate for the pregnant child. If there is a deficit, the amount of the deficit shall be the amount of the AFDC grant. If there is no deficit, the pregnant child shall not be eligible.

(5) **THREE-GENERATION CASE.** A three-generation case has the following characteristics: All 3 generations are living in the home, the second generation is a never-married minor parent, and there is a third generation child who has not been voluntarily excluded. If the three-generations taken together are financially ineligible, the financial eligibility of the third generation shall be tested by itself. To test the financial eligibility of the third generation, it is necessary to determine how much of the minor parent's income and assets are available to the third-generation child.

(a) The amount of assets considered available to the third generation shall be the combined amount of the first and second generations' nonexempt assets above \$1,000 or the minor parent's nonexempt assets, whichever is less. The non-exempt assets shall be determined according to s. HSS 201.32. The third generation's nonexempt assets shall be added to those considered available from the minor parent. If the result is greater than \$1,000, the case shall not be eligible.

(b) The income considered available to the third generation shall be the combined first and second generations' net income above the assistance standard or the minor parent's net income, whichever is less. The net income shall be determined under s. HSS 201.32. The third generation's net income shall be added to that made available from the minor parent and subtracted from the appropriate family allowance. If there is a deficit, the amount of the deficit shall be the amount of the AFDC grant. If there is no deficit, the case shall not be eligible.

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

HSS 201.32 Determining nonexempt assets and net income of persons not in the AFDC group. When an ineligible person who resides in the home has a legally responsible relationship to an AFDC group member, the ineligible person's non-exempt assets and net income shall be determined as follows:

(1) The following assets are exempt:

(a) Homestead property;

(b) Household effects; and

(c) Up to \$1,500 of equity value for one motor vehicle if there is one ineligible caretaker. If there are 2 ineligible caretakers, up to \$750 of equity value for one motor vehicle for each ineligible caretaker.

(2) To determine net income the following deductions shall be made:

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(a) Deductions from earned income as specified in s. HSS 201.28 (15) (b) 1.

(b) Deductions from earned income as specified in s. HSS 201.28 (15) (b) 2; however, this deduction shall not be allowed if any person in the AFDC group has already received a deduction for the same dependent.

(c) Payments for education or training shall be exempt as specified in s. HSS 201.28 (1) (a).

(d) Court-ordered support actually paid for a person outside the home shall be deducted from the income.

(3) Net income of persons not in the AFDC group shall be considered unearned income when used in determining the financial eligibility of any person in the AFDC group.

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

HSS 201.33 Income and assets of legally responsible relatives. This section applies where a person living in the home is not in the AFDC group but is the spouse or parent of someone who is in the AFDC group. This 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);

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(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.

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(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.