Chapter HSS 103

ELIGIBILITY

Note: Chapter HSS 103 as it existed on February 28, 1986, was repealed and a new chapter HSS 103 was created effective March 1, 1986.

HSS 103.01 Introduction. (1) PERSONS ELIGIBLE. (a) Eligibility for medical assistance (MA) shall be determined pursuant to ss. 49.455, 49.46 (1) and 49.47 (4), Stats., and this chapter, except that MA shall be provided without eligibility determination to persons receiving AFDC or SSI.

(b) Presumptive eligibility for pregnant women shall be determined under s. 49.465, Stats., and this chapter.

(2) SINGULAR ENROLLMENT. No person may be certified eligible in more than one MA case.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; renum. (1) to be (1) (a) and cr. (1) (b), Register, February, 1988, No. 386, eff. 3-1-88; am. (1) (a), Register, March, 1993, No. 447, eff. 4-1-93.

HSS 103.03 Non-financial conditions for eligibility. In order to be eligible for MA, a person shall meet both non-financial conditions for eligibility in this section and financial conditions for eligibility under s. HSS 103.04. The non-financial conditions for eligibility are:

(1) AFDC-RELATEDNESS OR SSI-RELATEDNESS. (a) *Requirement.* To be non-financially eligible for MA, applicants shall be AFDC-related or SSI-related.

(b) *AFDC-related persons.* In this subsection, "AFDC-related" means a person who meets one of the following conditions:

1. The person is pregnant and meets the conditions specified in s. 49.46 (1) (a) 1m or 9, 49.465 or 49.47 (4) (a) 2 or (am) 1, Stats.;

2. The person is a dependent child as defined in s. 49.19 (1) (a), Stats., or is a child who meets the conditions specified in s. 49.46 (1) (a) 10 or 49.47 (4) (a) 1 or (am) 2, Stats.;

3. The person is a caretaker relative as defined in s. 49.19 (4) (d) and (dm) (intro.), Stats.; or

4. The person is a foster child under 19 years of age living in a foster home licensed under s. 48.62, Stats., or a group home licensed under s. 48.625, Stats., or is a child in an adoption assistance placement under s. 48.975, Stats.

(c) *SSI-related persons.* In this subsection, "SSI-related person" means a person who meets one of the following conditions:

1. The person is age 65 or over; or

2. The person is blind or disabled.

(d) *Verification of blindness or disability.* Except as provided under par. (e), the blindness or disability claimed under par. (c)2 shall be verified in one of the following ways:

1. By presentation of a current old age and survivors disability insurance (OASDI) disability award notice;

2. By presentation of a current medicare card indicating blindness or disability; or

3. By receipt of a disability determination made by the department's bureau of social security disability insurance, along with current medical reports.

(e) *Presumption of disability in an emergency.* 1. Under emergency circumstances, a person may be presumed disabled for purposes of demonstrating SSI-relatedness and be eligible for MA without the verification required under par. (d).

2. When an emergency need for MA exists, the department shall make a preliminary disability determination within 7 days of the date a completed disability determination form is received.

3. An emergency need for MA shall exist when the applicant is:

a. A patient in a hospital;

b. Seriously impaired and the attending physician states the applicant will be unable to work or return to normal functioning for at least 12 months;

c. In need of long-term care and the nursing home will not admit the applicant until MA benefits are in effect; or

d. Unable to return home from a nursing home unless in-home service or equipment is available and this cannot be obtained without MA benefits.

Note: Copies of the disability determination form may be obtained from the county or tribal income maintenance agency.

(2) CITIZENSHIP. U.S. citizenship shall be a requirement for eligibility for MA, except that an alien lawfully admitted for permanent residency may be eligible, including an alien lawfully present in the United States as a result of s. 203 (a) 7 (8 USC 1153), 207 (c) (8 USC 1157), 208 (8 USC 1158) or 212 (d) 5 (8 USC 1182) of the immigration and nationality act, an alien granted lawful temporary resident status under s. 245A (8 USC 1255a), 210 (8 USC 1160) or 210A (8 USC 1161) of the immigration and nationality act or an alien otherwise permanently residing in the United States under color of law within the meaning of 42 CFR 435.408. An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law may not receive medical assistance benefits except as provided under 8 USC 1255a (h) (3) or 42 USC 1396b (v).

(3) WISCONSIN RESIDENCE. (a) *Definitions.* In this subsection:

1. "Incapable of indicating intent" means:

a. The individual's IQ is 49 or less, or the individual has a mental age of 7 or less, based on tests acceptable to the department;

b. The individual is found legally incompetent under guardianship statutes; or

c. Medical documentation or other documentation acceptable to the department supports a finding that the individual is incapable of indicating intent.

2. "Intent to reside" means that a person intends that Wisconsin is the person's place of residence and that the person intends to maintain the residence indefinitely.

3. "Physical presence" means living in Wisconsin.

(b) *Physical presence and intention.* An eligible person shall be a Wisconsin resident, as determined under 42 CFR 435.403. Residence shall be based on physical presence, except as provided in an interstate agreement, and on the person's intent to maintain Wisconsin residence indefinitely, except as otherwise provided in pars. (c) to (g).

(c) *Migrant farm workers.* A migrant farm worker who is living in Wisconsin and who entered with a job commitment or to seek employment shall be considered a resident so long as there is no medical assistance being received from another state. In this paragraph, "migrant farm worker" means any person whose primary employment in Wisconsin is in the agricultural field or cannery work, is authorized to work in the United States, who is not immediate family by blood or marriage of the employer, and routinely leaves an established place of residence to travel to another locality to accept seasonal or temporary employment. Members of the migrant farm worker's family who live with the worker in Wisconsin shall also be considered Wisconsin residents.

(d) *Non-institutionalized persons.* The residence of a person under age 21 shall be determined in accordance with the rules governing residence under the AFDC program except that non-institutionalized persons under age 21 whose MA eligibility is based on blindness or disability are residents if they are physically present in Wisconsin.

(e) *Institutionalized persons.* 1. For any institutionalized person who is under age 21, or who is age 21 or older and became incapable of indicating intent before age 21, the state of residence is that of:

a. The parents or the legal guardian, if one has been appointed, and parental rights have terminated at the time of placement in an institution; or

b. The parent applying for MA on behalf of the applicant if the parent resides in another state and there is no appointed legal guardian.

2. Institutionalized persons over age 21 are Wisconsin residents when they are physically present with the intent to reside in Wisconsin except that persons who become incapable of indicating intent at or after age 21 are residents of the state in which they are physically present.

(f) *Out-of-state institutional placements.* When a state arranges for a person to be placed in an institution located in another state, the state making the placement is the state of residence irrespective of the person's indicated intent or ability to indicate intent.

(g) *Establishment of residence.* Once established, residence is retained until superseded by a new place of residence.

(4) FURNISHING OF A SOCIAL SECURITY NUMBER. (a) All individuals for whom MA benefits are requested shall have a social security number and shall furnish the number to the agency, except an individual who is one of the following:

1. An alien who is requesting medical assistance only for emergency services; or

2. A child who is eligible for medical assistance under 42 USC 1396a (e) (4). During the time that the child is eligible under 42 USC 1396a (e) (4), the agency shall use the mother's social security number.

(b) If an applicant does not have a social security number, application for the number shall be made by or on behalf of the applicant to the federal social security administration. If there is a refusal to furnish a number or apply for a number, the person for whom there is a refusal is not eligible for MA. The department may not deny or delay services to an otherwise eligible applicant pending issuance or verification of the individual's social security number.

(5) ASSIGNMENT OF MEDICAL SUPPORT. The parent or caretaker relative of a dependent child enumerated in s. 49.19 (1) (a), Stats., shall be deemed to have assigned all rights to medical support to the state as provided in s. 49.45 (19) (a), Stats. If there is a refusal to make the assignment, the person who refuses is not eligible for MA.

(6) NOT A PERSON DETAINED BY LEGAL PROCESS. A person detained by legal process is not eligible for MA benefits. For purposes of this subsection, "detained by legal process" means incarcerated because of law violation or alleged law violation, which includes misdemeanors, felonies, and delinquent acts. A person who returns to the court after observation, 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 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 who are 18 years of age or older shall be ineligible except that if the member of the MA group who is on strike is medically verified pregnant or, if the MA group includes a medically verified pregnant woman, the pregnant woman continues to be eligible during her pregnancy and through the month in which the 60th day following the end of pregnancy falls. 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 employes 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 employes.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (1) (b) 1., Register, February, 1988, No. 386, eff. 3-1-88; emerg. r. and recr. (7), eff. 8-1-88; r. and recr. (7), Register, December, 1988, No. 396, eff. 1-1-89; emerg. am. (7), eff. 6-1-89; am. (7), Register, February, 1990, No. 410, eff. 3-1-90; am. (1) (b) 1, 2 and 4, (2), (3) (b) and (9), r. and recr. (4), Register, March, 1993, No. 447, eff. 4-1-93.

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. 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 NEEDY. 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, except that in determining initial eligibility under s. HSS 103.075 for an institutionalized individual with a community spouse the asset standard shall be the regular SSI-related MA group size one asset standard as provided under s. 49.47 (4) (b) 3g, Stats., plus the community spouse resource allowance as provided under s. 49.455 (6) (b), Stats. 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 federal 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 except when no minor child is in the home, in which case SSI-related procedures shall be used.

(b) *Fiscal test groups in which some are receiving AFDC and some are applying for MA only.* 1. If some members of the fiscal test group are receiving AFDC and some are not, the eligibility of the non-AFDC recipients shall be determined by comparing the assets of the entire fiscal test group to the appropriate asset standard and by comparing the income of the non-AFDC members or, if appropriate, the fiscal test group, to the appropriate share of the total family income standard.

2. For purposes of this paragraph, the family consists of parents and all children, including AFDC recipients, in the household for whom either spouse is legally responsible, except that the family does not include SSI recipients and children who do not have a legally responsible parent in the home.

(c) *SSI-related child when family is ineligible.* A blind or disabled child in a family found financially ineligible for AFDC-related MA may have his or her eligibility determined individually according to SSI-related financial procedures for child-only cases specified in s. HSS 103.05.

(d) *Non-legally responsible relative (NLRR) case.* 1. If SSI-related adults are caring for a minor child for whom they are not legally responsible, the adults shall have their financial eligibility determined according to AFDC-related procedures, except that their eligibility may be determined according to SSI-related financial procedures if they are found ineligible for AFDC-related MA because of earned income or if they elect to be processed as SSI-related.

2. The income and assets of a child residing with an NLRR shall be measured against the AFDC-related standard for one person, except that when the NLRR child is blind or disabled eligibility shall be determined according to SSI-related financial procedures.

3. If the child is found financially ineligible, the eligibility of the NLRR caretaker relative shall be determined by measuring that relative's income and assets against AFDC-related eligibility standards.

(e) *Child residing in a licensed foster or group home.* For a child who lives in a foster or group home licensed under ch. HSS 56 or 57, only the child's own income and assets shall be used when determining the child's financial eligibility. The child's income and assets shall be measured against the AFDC-related income and asset standards for one person.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (4) (intro.), Register, March, 1993, No. 447, eff. 4-1-93.

HSS 103.05 Determining assets and income in child-only cases. (1) MEANING OF CHILD-ONLY CASE. A child-only case exists when:

(a) A family has been determined financially ineligible for AFDC-related MA only and there is a child in the family who is SSI-related but not receiving SSI payments;

(b) A step-parent family requests MA exclusively for a stepchild;

(c) A step-parent family refuses or is determined ineligible for AFDC;

(d) A step-parent family is determined financially ineligible for MA only; or

(e) A step-parent family is determined ineligible for MA because a caretaker relative is a striker.

(2) ESTABLISHING CHILD-ONLY MA GROUPS. In child-only cases, the child or children of each legal parent shall form their own MA group and shall be tested for financial eligibility with the children's own income and assets, if any, plus the income and assets deemed to the children of this group according to subs. (3) and (4).

(3) DEEMING OF PARENTAL ASSETS. (a) All of the legal parent's nonexempt assets shall be deemed to the child in 3-generation and stepparent cases.

(b) In cases of an SSI-related child where 2 parents are in the home, parental assets in excess of the SSI asset limit for 2 persons shall be deemed to the blind or disabled child. Where there is one parent, parental assets in excess of the SSI asset limit for one person shall be deemed to the blind or disabled child in accordance with 42 CFR 435.845.

(4) DEEMING OF PARENTAL INCOME. (a) *To the third-generation child.* All of the net income of the second-generation minor parent shall be deemed to the third-generation child.

(b) *To the stepchild.* The income deemed to the stepchild shall be the remainder of the total of the net income of the legal parent minus the categorically needy income standard based on the number of ineligible family members.

(c) *To the SSI-related child.* The amount of parental monthly income deemed to the SSI-related child shall be determined according to the procedure set out in this paragraph. The department shall adjust the monthly amounts in accordance with changes in the SSI program. Beginning with unearned income, parental monthly gross income shall be deemed to each ineligible child to bring the child's income up to an amount equal to one-half the maximum federal share of the SSI benefit paid to a single individual living in his or her own household. The remaining parental income shall be deemed to the SSI-related child as follows:

1. When the only type of parental income remaining is unearned, $20 shall be subtracted. Then, where there are 2 parents, an amount equal to the maximum federal share of the SSI benefit paid to a couple living in their own household shall be subtracted, and where there is one parent, an amount equal to the maximum federal share of the SSI benefit paid to an individual living in his or her own household shall be subtracted. The remaining income shall be considered available to the SSI-related child as unearned income.

2. When the only type of parental income remaining is earned, $85 shall be subtracted. Then, where there are 2 parents, an amount equal to 3 times the maximum federal share of the SSI benefit paid to an individual living in his or her own household shall be subtracted, and where there is one parent, an amount equal to 2 times the maximum federal share of the SSI benefit paid to an individual living in his or her own household shall be subtracted. The remaining income shall be considered available to the SSI-related child as unearned income.

3. When parental income remaining is a mix of unearned and earned, $20 shall be subtracted using unearned income first. From any remaining earned income, $65 shall be subtracted and then one-half of the remainder. When there are 2 parents, an additional amount equal to the maximum federal share of the SSI benefit paid to a couple living in their own household shall be subtracted, and when there is one parent, an additional amount equal to the maximum federal share of the SSI benefit paid to an individual living in his or her own household shall be subtracted. The remaining income shall be considered available to the SSI-related child as unearned income.

(5) INCOME LIMITS FOR CHILD-ONLY MA GROUPS. (a) In third-generation and stepchild cases, each MA group shall be tested against an income standard consisting of a proportionate share of the AFDC-related standard for the appropriate family size. For purposes of this paragraph, "family" means parents and all children in the household for whom either spouse is legally responsible, including the third-generation, but not SSI recipients or NLRR children. If the stepchild or third-generation child is ineligible for MA because of excess income, the applicant may elect either a family spend-down period or a child-only spend-down period to gain MA eligibility.

(b) The eligibility of an SSI-related child shall be determined by testing against the SSI-related income standard for one person.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

HSS 103.06 Assets. (1) SPECIAL SITUATIONS OF INSTITUTIONALIZED PERSONS. (a) In determining the eligibility of an institutionalized person, only the assets actually available to that person shall be considered.

(b) The homestead property of an institutionalized person is not counted as an asset if:

1. The institutionalized person's home is currently occupied by the institutionalized person's spouse or a dependent relative. In this subdivision, "dependent relative" means a son, daughter, grandson, granddaughter, stepson, stepdaughter, in-law, mother, father, stepmother, stepfather, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, stepsister, halfsister, halfbrother, niece, nephew or cousin who is financially, medically or otherwise dependent on the institutionalized person;

2. The institutionalized person intends to return to the home and the anticipated absence from the home, as verified by a physician, is less than 12 months; or

3. The anticipated absence of the institutionalized person from the home is for more than 12 months but there is a realistic expectation, as verified by a physician, that the person will return to the home. That expectation shall include a determination of the availability of home health care services which would enable the recipient to live at home.

(c) If none of the conditions under par. (b) is met, the property is no longer the principal residence and becomes non-homestead property.

(d) When income that has been protected for institutionalized recipients accumulates to the point that the asset limit is exceeded, MA eligi-

bility shall terminate. Eligibility may not be reinstated until the assets are below the limit at which time a new application shall be required.

(e) To maintain continuous MA eligibility the recipient may apply assets as a refund of MA benefits to the department. In no instance may refunds exceed benefits received.

(2) MOTOR VEHICLES. (a) In this section:

1. "Motor vehicle" means a passenger car or other motor vehicle used to provide transportation of persons or goods and which is owned by a person in the MA or fiscal test group.

2. "Equity value" means the fair market value minus any encumbrances which are legal debts.

3. "Fair market value" means the wholesale value shown in a standard guide on motor vehicle values or the value as estimated by a reliable expert.

(b) For persons whose eligibility is being determined according to AFDC categorically needy financial standards, the following conditions shall apply:

1. If one vehicle is owned, up to $1,500 of equity value is exempt; and

2. If more than one vehicle is owned, up to $1,500 of equity value of the vehicle with the greatest equity value is exempt. The equity value of the vehicle with the greatest equity value in excess of $1,500 and the equity value of any other vehicle is counted as an asset.

(bm) For persons whose eligibility is being determined according to AFDC medically needy financial standards, the following conditions shall apply:

1. If one vehicle is owned, it is exempt from consideration as an asset regardless of value;

2. If more than one vehicle is owned, a second vehicle is exempt from consideration as an asset if the agency determines that it is necessary for the purpose of employment or to obtain medical care; and

3. The equity value of any nonexempt vehicle owned by the applicant is counted as an asset.

(c) For persons whose eligibility is being determined according to SSI categorically needy or medically needy financial standards, the following conditions shall apply:

1. If one vehicle is owned it is exempt if it meets one of the following conditions:

a. It is necessary for employment;

b. It is necessary for medical treatment of a specific or regular medical problem;

c. It is modified for operation by or transportation of a handicapped person; or

d. It is necessary because of climate, terrain, distance or similar factors to provide transportation to perform essential daily activities.

2. If no automobile is exempt under subd. 1, one automobile is not counted as an asset to the extent that its current fair market value does not exceed $4,500. Fair market value in excess of $4,500 counts toward the asset limit.

3. If more than one vehicle is owned, the equity value of the nonexempt vehicle is counted as an asset.

(3) JOINT ACCOUNTS AND JOINTLY HELD PROPERTY. (a) *Joint accounts.* A joint account shall be deemed available to each person whose name is on the account or listed as an owner. The value of a joint savings or checking account shall be determined as follows in determining eligibility for MA:

1. For persons who receive MA who are not age 65 or over, or not blind or disabled, the division of a joint account shall be determined according to applicable federal law; and

2. For persons who receive MA who are age 65 or over or who are blind or disabled, joint accounts shall be divided as follows:

a. If both owners of the joint account receive MA, equal shares of the joint account shall be included for the purpose of determining MA eligibility; and

b. If only one owner of the joint account receives MA, the full amount of the joint account shall be included for the purpose of determining MA eligibility.

(b) *Jointly held property.* If the applicant or recipient is a joint owner of property with a person who refuses to sell the property and who is not a legally responsible relative of the applicant or recipient, the property shall not be considered available to the applicant or recipient and may not be counted as an asset. If the property is available to the applicant or recipient, it shall be divided equally between the joint owners.

(4) HOMESTEAD PROPERTY. (a) A home owned and lived in by an applicant or recipient is an exempt asset.

(b) Net proceeds from the sale of homestead property shall be treated as assets as follows:

1. For AFDC-related MA the proceeds are considered available assets in the month of receipt and, if retained, in any of the following months; and

2. For SSI-related MA the proceeds are disregarded if they are placed in an escrow account and used to purchase another home within 3 months. After 3 months the proceeds are considered available.

(5) NON-HOMESTEAD REAL PROPERTY. (a) If the equity value of the non-homestead property together with all other assets does not exceed the asset limit, the person may retain the property and be eligible for MA.

(b) If the value of non-homestead property together with the value of the other assets exceeds the asset limit, the non-homestead property need not be counted as an asset if it produces a reasonable amount of income. In this paragraph, "reasonable amount of income" means a fair return considering the value and marketability of the property.

(c) If the total value of non-homestead property and non-exempt assets exceeds the asset limit, the person who owns the non-homestead property shall list the property for sale with a licensed realtor at a price which the realtor certifies as appropriate. If the property is listed for sale, it may not be counted as an asset. When the property is sold, the net proceeds shall be counted as an asset.

(6) LIFE ESTATE. The applicant or recipient may hold a life estate without affecting eligibility for MA. If the property or the life estate is sold, any proceeds received by the applicant or recipient shall be considered assets. In this subsection, "life estate" means a claim or interest a person has in a homestead or other property, the duration of the interest being limited to the life of the party holding it with that party being entitled to the use of the property including the income from the property in his or her lifetime.

(7) TRUSTS. (a) Trust funds shall be considered available assets, except that:

1. Trust funds payable to a beneficiary only upon order of a court shall not be considered available assets if the trustee or other person interested in the trust first applied to the court for an order allowing use of part or all of the trust fund to meet the needs of the beneficiary and the court denied such application;

2. Trust funds held in a trust which meets the requirements of s. 701.06, Stats., shall not be considered available assets unless the settlor is legally obligated to support the beneficiary;

3. For SSI-related MA applicants and recipients, the pertinent SSI standards on the treatment of trusts as resources shall apply; and

4. For AFDC-related applicants and recipients, the pertinent AFDC standards on the treatment of trusts as resources shall apply.

(8) PERSONAL PROPERTY. Household and personal effects of reasonable value, considering the number of members in the fiscal test group, shall be exempt.

(9) LOANS. Money received on loan shall be exempt unless it is available for current living expenses, in which case the money shall be treated as an asset even if a repayment schedule exists.

(10) LIFE INSURANCE POLICIES. The cash value of a life insurance policy shall be considered an asset, except that for SSI-related persons it is an asset only when the total face value of all policies owned by the person exceeds $1,500. In this subsection, "cash value" means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it, and "face value" means the dollar amount of the policy which is payable on death.

(11) LUMP SUM PAYMENTS. All lump sum payments, unless specifically exempted by federal statute or regulation, shall be treated as assets instead of income. In this subsection, "lump sum payment" means a nonrecurring payment such as retroactive social security benefits, income tax refunds, and retroactive unemployment benefits.

(12) WORK-RELATED ITEMS. Work-related items essential to the employment or self-employment of a household member, except motor vehicles, are exempt from being counted as assets. For business or farm

operations, internal revenue service (IRS) returns shall be used to determine whether or not the operation is profitable or moving toward becoming profitable. If the operation is not profitable or becoming profitable, all assets related to the operation shall be counted in the determination of eligibility.

(13) SPECIAL EXEMPT ASSETS FOR BLIND OR DISABLED PERSONS. The following assets shall be exempted in determining the eligibility of blind or disabled persons:

(a) Assets essential to the continuing operation of the person's trade or business;

(b) Income-producing property; and

(c) Funds conserved for a departmentally approved plan for self-support of a blind or disabled person. The conserved funds shall be segregated from other funds. Interest earned on conserved funds is exempt so long as the conserved funds do not exceed the provision of the approved plan.

(14) LAND CONTRACTS. (a) The applicant or recipient shall obtain a written estimate of the fair market value of a land contract from a source active in the market for land contracts in Wisconsin.

(b) If the applicant's or recipient's vendor interest in a land contract exceeds the medically needy asset limit under s. 49.47 (4) (b), Stats., the applicant or recipient shall offer the land contract for sale. The applicant's or recipient's vendor interest in a land contract shall be counted as an available asset unless he or she provides written documentation from a source active in the market for land contracts in Wisconsin proving that his or her interest in the land contract cannot be sold.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (1) (d), r. and recr. (1) (e), Register, January, 1987, No. 373, eff. 2-1-87; am. (6), cr. (14), Register, July, 1989, No. 403, eff. 8-1-89; am. (2) (b), cr. (2) (bm), r. and recr. (2) (c), Register, December, 1990, No. 420, eff. 1-1-91; am. (1) (b) 1., r. and recr. (4) (b), Register, March, 1993, No. 447, eff. 4-1-93.

HSS 103.063 Divestment prior to August 9, 1989. (1) APPLICABILITY. This section applies to all applicants for MA and recipients of MA who disposed of a resource at less than fair market value prior to August 9, 1989 and to all inter-spousal transfers occurring before October 1, 1989. Section HSS 103.065 applies to all institutionalized applicants and recipients who divest on or after August 9, 1989, except for inter-spousal transfers occurring before October 1, 1989.

(1m) PURPOSE. This section implements s. 49.45 (17), 1987-88 Stats., which makes an applicant for or recipient of MA ineligible when the applicant or recipient disposed of a resource at less than fair market value within 2 years before or at any time after his or her most recent application for MA or any review of eligibility for MA. Section 49.45 (17) (d), 1987-88 Stats., is specifically concerned with an applicant for or recipient of MA who resides as an inpatient in a skilled nursing facility (SNF), intermediate care facility (ICF) or inpatient psychiatric facility and who disposed of homestead property at any time during or after the 2 year period prior to the date of the most recent application or any review of eligibility.

(2) DIVESTMENT OF NON-HOMESTEAD PROPERTY. (a) *Amount of divestment.* For any person who disposed of a resource, except a homestead or

other exempt resource, at less than fair market value within 2 years before or at any time after his or her most recent application for MA, or any review of eligibility, the agency shall determine the amount of the divestment in the following manner:

1. If the compensation received is less than net market value, the difference between the compensation received and the net market value is the divested amount and shall be considered an asset.

2. If the divested amount plus other nonexempt assets are equal to or less than the appropriate assets limit, the divestment shall not be considered a bar to eligibility.

3. If the divested amount plus the other nonexempt assets are greater than the appropriate assets limit, the excess over this limit shall be the amount of divestment to be expended for maintenance needs and medical care.

(b) *Divestment as a barrier to eligibility.* 1. Divestment by any person within 2 years before or at any time after his or her most recent application for MA or any review of eligibility shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving MA. Divestment bars eligibility for MA except as provided in subds. 2 and 3 and par. (c).

2. To rebut the presumption that divestment was made in contemplation of seeking aid, the applicant shall furnish convincing evidence to establish that the transaction was exclusively for some other purpose. For example, the applicant may rebut the presumption that the divestment was done in contemplation of receiving aid by showing by convincing evidence that at the time of divesting the applicant had provided for future maintenance needs and medical care.

3. Divestment shall only be considered a barrier to eligibility when the net market value of all the resources disposed of exceeds the medically needy asset levels in s. 49.47 (4) (b) 3, Stats.

4. Division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payments is not divestment.

(c) *Removing divestment as a barrier to eligibility.* 1. Divestment is no longer a barrier to MA eligibility for persons who are determined to have divested non-homestead property:

a. If the divested amount is $12,000 or less, when the sum of the divestment has been expended for maintenance needs and medical care of the applicant or recipient or when 2 years have elapsed since the date of divestment, whichever occurs first; or,

b. If the divested amount exceeds $12,000, when the entire sum of the divestment has been expended for maintenance needs and medical care of the applicant or recipient.

2. The amount expended for maintenance needs and medical care of the applicant or recipient shall be calculated monthly, as follows:

a. For a non-institutionalized person, the expended amount is the medical care expenses for the person plus the appropriate medically needy income limit for either AFDC or SSI, depending upon which program the

person would be eligible for under MA, were it not for the divestment; and

b. For a person institutionalized in a SNF, ICF or inpatient psychiatric facility, the expended amount is the total cost of the institutional care.

(3) DIVESTMENT OF HOMESTEAD PROPERTY. (a) *Applicability.* Divestment by any person of his or her homestead property is a barrier to eligibility only if he or she is a resident of an SNF, ICF or inpatient psychiatric facility.

(b) *Amount of divestment.* A person who is a resident of an SNF, ICF or inpatient psychiatric facility who disposed of his or her homestead for less than fair market value on or after July 2, 1983, but within 2 years before or at any time after his or her most recent application for MA or any review of his or her eligibility for MA, shall have the amount of divestment determined in the same manner as in sub. (2) (a).

(c) *Divestment as a barrier to eligibility.* 1. Divestment of a homestead by any person residing as an inpatient in an SNF, ICF or inpatient psychiatric facility within 2 years prior to the date of his or her most recent application for MA or any review of his or her eligibility for MA, shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving MA. Divestment bars eligibility for MA except as provided in subds. 2 and 3 and par. (d).

2. To rebut the presumption that divestment was made in contemplation of receiving aid, the applicant shall furnish convincing evidence to establish that the transaction was exclusively for some other purpose. For example, the applicant may rebut the presumption that the divestment was done in contemplation of receiving aid by showing by convincing evidence that, at the time of divesting, the applicant had provided for his or her future maintenance needs and medical care.

3. Divestment shall only be considered a barrier to eligibility when the net market value of all the resources disposed of exceeds the medically needy asset levels in s. 49.47 (4) (b)3, Stats.

4. Divestment does not occur in cases of division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payments.

(d) *Removing divestment as a barrier to eligibility.* 1. Divestment of a homestead is no longer a barrier to eligibility for institutionalized persons:

a. If the amount of divestment to be expended for maintenance needs and medical care is less than the average MA expenditures for 24 months of care in an SNF, when the entire amount of the divestment is expended for this care, or 2 years has elapsed since the date of the divestment, whichever occurs first; or

b. If the amount of divestment to be expended for maintenance needs and medical care is greater than the average MA expenditure for 24 months of care in an SNF, when the entire amount of the divestment has been expended.

2. Expended amounts shall be determined, as long as the person is institutionalized, by using the average monthly MA expenditure, statewide, for care provided in an SNF.

3. An individual who is an inpatient in a SNF, ICF or inpatient psychiatric facility who has been determined to have divested a homestead, may be found eligible if:

a. It is shown to the satisfaction of the department that the individual can reasonably be expected to be discharged from the medical institution and return to that homestead;

b. The title to the homestead was transferred to the individual's spouse or child who is under age 21 or is blind or totally and permanently disabled according to a determination made by the department's bureau of social security disability insurance;

c. It is shown to the satisfaction of the department that the individual intended to dispose of the homestead either at fair market value or for other valuable consideration; or

d. It is determined by the department that the denial of eligibility would work undue hardship on the individual.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; renum. from HSS 103.02 and am., cr. (1), Register, April, 1990, No. 412, eff. 5-1-90.

HSS 103.065 Divestment on or after August 9, 1989. (1) APPLICABILITY. This section applies to all institutionalized applicants for and recipients of MA who dispose of resources at less than fair market value on or after August 9, 1989, except for inter-spousal transfers occurring before October 1, 1989, and to all institutionalized applicants for and recipients of MA whose spouse disposes of resources at less than fair market value on or after July 1, 1990. Section HSS 103.063 applies to all applicants and recipients who divested before August 9, 1989 and to inter-spousal transfers occurring before October 1, 1989.

(2) PURPOSE. This section implements s. 49.45 (17), Stats., which provides for a period of restricted MA coverage when an individual who is institutionalized or becomes institutionalized, or the individual's spouse, disposes of resources at less than fair market value.

(3) DEFINITIONS. In this section:

(a) "Community spouse" means a person who is legally married as recognized under state law to an institutionalized individual but is not himself or herself an institutionalized individual.

(b) "Institutionalized individual" means an applicant or recipient who is an inpatient in an SNF or ICF, an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in an SNF or ICF, or receiving home and community-based care MA services under ss. 49.46 and 49.47, Stats.

(c) "Medical assistance" or "MA" means payment for services provided to a resident of an SNF or ICF under s. HSS 107.09 (2) and (4) (a), payment to a medical institution as defined under 42 CFR 435.1009 for care based on a level of care provided in an SNF or ICF, or payment for services provided under a home and community-based care waiver program authorized under 42 USC 1396n (c).

(d) "Medical assistance card services" means the services covered under ch. HSS 107, except for services reimbursed as institutional care, as defined by s. HSS 107.09 (2) and (4) (a), services received in an SNF or ICF or a medical institution and services reimbursed under a home and community-based care waiver program authorized under 42 USC 1396n (c).

(e) "Resource" has the meaning given in 42 USC 1382b, except that the home, as defined in s. HSS 101.03 (75), is a nonexempt resource.

(4) DIVESTMENT. (a) *Divestment resulting in ineligibility.* An institutionalized individual or someone acting on behalf of that individual who disposes of resources at less than fair market value within 30 months immediately before or at any time after the individual becomes institutionalized if the individual is receiving MA on the date he or she becomes institutionalized or, if the individual is not receiving MA on that date, within 30 months immediately before or at any time after the date the individual applies for MA while institutionalized, shall be determined to have divested. A divestment results in ineligibility for MA for the institutionalized individual unless made to an exempt party under par. (b) or (c) or when one of the circumstances in par. (d) exist. An institutionalized individual may also be determined ineligible for MA if his or her spouse disposes of resources at less than fair market value on or after July 1, 1990. In this paragraph, "receiving" means entitled to receive as well as actually receiving, in the same way that "recipient" as defined in s. HSS 101.03 (150) means a person who is entitled to receive benefits under MA as defined under s. HSS 101.03. (95).

Note: The department advises that when the transfer for less than fair market value has been made by the spouse of the institutionalized applicant or recipient, the determination of whether or not the transfer will be treated as a divestment will be made pursuant to both the divestment provisions under s. 49.45 (17), Stats., and the spousal impoverishment prevention provisions under s. 49.455, Stats.

(am) In determining the amount of the divestment to be satisfied, the agency shall consider all transfers by either the institutionalized individual or his or her community spouse at less than fair market value that occur within a calendar month as one divestment.

(b) *Permitted divestment to an exempt party — homestead property.* Transfer of homestead property at less than fair market value is not divestment resulting in ineligibility under this section if the individual transferred title to the homestead property to:

1. The spouse of the institutionalized individual on or after October 1, 1989;

2. A child of the institutionalized individual who is under age 21 or who meets the SSI definition of total and permanent disability or blindness under 42 USC 1382c;

3. A sibling of the institutionalized individual who has an equity interest in the homestead and who was residing in the institutionalized individual's home for at least one year immediately before the date the individual became an institutionalized individual. In this subdivision, "equity interest" means ownership interest in a homestead by one or more persons who pay or have paid all or a portion of mortgage or land contract payments, expenses for upkeep and repair or payment of real estate taxes. The institutionalized individual shall provide documentation to verify the sibling's equity interest in the homestead; or

4. The child, other than a child described in subd. 2, of the institutionalized individual who was residing in the institutionalized individual's home for a period of at least 2 years immediately before the date the individual became an institutionalized individual and who provided care to the institutionalized individual which permitted him or her to reside at home rather than in an SNF, ICF or medical institution which receives payment based on a level of care provided in an SNF or ICF. The institutionalized individual shall provide a notarized statement to the agency from his or her physician or another person or persons who have personal knowledge of the living circumstances of the institutionalized individual stating that the individual was able to remain in his or her home because of the care provided by the child. A notarized statement only from the child does not satisfy the requirements of this subdivision.

(c) *Permitted divestment on or after August 9, 1989, but before July 1, 1990, to an exempt party — non-homestead property.* For transfers that occured on or after August 9, 1989, but before July 1, 1990, transfer of a non-homestead resource at less than fair market value is not divestment resulting in ineligibility under this section if the individual transferred the resource to one of the following individuals:

1. Beginning October 1, 1989, to the community spouse or to another individual for the sole benefit of the community spouse after the individual became an institutionalized individual;

2. To a minor or adult child of the institutionalized individual who meets the SSI definition of total and permanent disability or blindness under 42 USC 1382c; or

3. Beginning October 1, 1989, to the individual's spouse or to another person for the sole benefit of the individual's spouse before the individual became an institutionalized individual. Such a transfer is not considered divestment resulting in ineligibility for as long as the individual's spouse does not transfer the resource to another person other than his or her spouse at less than fair market value. The individual's spouse shall report any transfer of the resource to the agency within 10 days after the transfer is made as required under s. 49.12 (9), Stats. Failure of the institutionalized individual's spouse to report the transfer may be fraud under s. 49.49 (1) (a) 3, Stats.

(cm) *Permitted divestment on or after July 1, 1990, to an exempt party — non-homestead property.* Transfer of a non-homestead resource at less than fair market value on or after July 1, 1990, is not divestment resulting in ineligibility under this section to the extent that the resource was transferred:

1. To or from the individual's spouse or to another individual for the sole benefit of the spouse; or

2. To a minor or adult child of the institutionalized individual who meets the SSI definition of total and permanent disability or blindness under 42 USC 1382c.

(d) *Circumstances under which divestment is not a barrier to eligibility.* An institutionalized individual who has been determined to have made a prohibited divestment under this section shall be found ineligible for MA as defined under s. HSS 101.03 (95) unless:

1. The transfer of property occurred as the result of a division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payments; or

2. It is shown to the satisfaction of the department that one of the following occurred:

a. The individual intended to dispose of the resource either at fair market value or for other valuable consideration;

b. The resource was transferred exclusively for some purpose other than to become eligible for MA;

c. The ownership of the divested property was returned to the individual who originally disposed of it; or

d. The denial or termination of eligibility would work an undue hardship. In this subparagraph, "undue hardship" means that a serious impairment to the institutionalized individual's immediate health status exists.

(5) DETERMINING THE PERIOD OF INELIGIBILITY. An institutionalized individual who has made a prohibited divestment under this section resulting in ineligibility or whose spouse has made a divestment under this section resulting in ineligibility on or after July 1, 1990, as determined by the agency, without a condition under sub. (4) (d) existing, shall be ineligible for MA as defined in this section for, beginning with the month of divestment, the lesser of:

(a) Thirty months; or

(b) The number of months obtained by dividing the total uncompensated value of the transferred resources by the statewide average monthly cost to a private pay patient in an SNF at the time of application. In this paragraph, "total uncompensated value of the transferred resource" means the difference between the compensation received for the resource and the fair market value of the resource less any outstanding loans, mortgages or other encumbrances on the resource.

(6) AGENCY RESPONSIBILITIES. (a) The agency shall determine if an applicant or recipient who is ineligible for MA under this section is eligible for MA card services. The applicant or recipient's income eligibility shall be determined using the standards under s. HSS 103.04 (4).

(b) The agency shall monitor retention of assets by the non-institutionalized spouse for those transfers that occur on or after October 1, 1989, but before July 1, 1990, under sub. (4) (c) 3 at each application or review of eligibility for the institutionalized spouse.

History: Cr. Register, March, 1990, No. 412, eff. 5-1-90; am. (1), (2), (4) (a) and (c) (intro.), (5) (intro.) and (6) (b), cr. (4) (cm), Register, May, 1991, No. 425, eff. 6-1-91; am. (2), (3) (a) and (4) (a), cr. (4) (am), Register, March, 1993, No. 447, eff. 4-1-93.

HSS 103.07 Income. (1) SPECIAL SITUATIONS OF INSTITUTIONALIZED PERSONS. (a) *Support received by institutionalized persons.* 1. Any financial support or contribution received by an institutionalized person shall be considered available when determining the eligibility of that person for MA.

2. The income and assets of the parents of children under age 18 who reside in institutions shall be evaluated by the department to determine whether, pursuant to s. 46.10 (14), Stats., collections may be made from one or both parents. If the child is residing in an institution not specified in s. 46.10 (14), Stats., but the institution is approved to receive MA payments, the parental liability shall be the same as that provided in s. 46.10 (14), Stats., and collected in the same manner.

3. The agency shall decide if the spouse of an institutionalized applicant or recipient should be referred for support action under s. 49.90, Stats. When deciding whether to refer for support action, the agency shall consider the spouse's basic essential needs and present and future expenses. In no case may support from the spouse of an institutionalized applicant or recipient be pursued when the spouse's assets, not counting homestead property and a motor vehicle, or, if applicable, not counting assets excluded under s. HSS 103.075 (5) (a) 2, are less than the amount provided under s. 49.47 (4) (b) 3g, Stats., or, if applicable, the spousal asset share under s. 49.455 (6) (b), Stats., and when the spouse's income is less than the spousal monthly income allowance under s. 49.455 (4) (b), Stats.

(b) *Allocation of institutionalized person's income to dependents outside the institution.* Except as provided under s. HSS 103.075 (6), no allocation may be made from an institutionalized applicant's or recipient's income to a spouse who is eligible for SSI but who refuses to obtain SSI. Except as provided under s. HSS 103.075 (6), no allocation may be made to a spouse or to minor children under the spouse's care if the spouse or any of the children are receiving AFDC or SSI. Otherwise, allocations shall be made as follows:

1. If the spouse is caring for a minor child for whom either the institutionalized person or the spouse is legally responsible, the AFDC assistance standard plus expenses that would be allowed under s. HSS 103.04 (3) shall be used to determine the need of the spouse and children. If their total net income is less than their need, income of the institutionalized person shall be allocated in an amount sufficient to bring the spouse's and children's income up to their monthly need. In this subdivision, "total net income" means income equal to unearned income plus net earned income, and "net earned income" means income equal to gross earned income minus work-related expenses according to requirements of AFDC. Income disregards of the AFDC program under 45 CFR 233.20 (a) shall be used as appropriate in computing income.

2. If the spouse is not caring for a minor child, the SSI payment level for one person living in that person's own household shall be used to determine the spouse's monthly need. The spouse's earned income shall be netted by subtracting the work-related expenses according to sub. (3) and $20 from earned or unearned income or both. If the spouse's net income is less than the spouse's monthly need, income of the institutionalized person may be allocated in an amount sufficient to bring the spouse's income up to monthly need. Income disregards of the SSI program under 20 CFR 416.1112 and 416.1124 shall be used as appropriate in computing income.

3. The following amounts shall be excluded when computing the income of the spouse and children under subd. 1 or the spouse alone under subd. 2:

a. All earnings of a child less than 14 years old, or less than 18 years old when the child is a full-time student;

b. All earnings of a child less than 18 years old who attends school part-time and is employed fewer than 30 hours a week;

c. Any portion of any grant, scholarship or fellowship used to pay the costs of tuition, fees, books and transportation to and from classes;

d. Amounts received for foster care or subsidized adoption;

e. The bonus value of food stamps and the value of foods donated by the federal department of agriculture;

f. Home produce grown for personal consumption; and

g. Income actually set aside for the post-high school education of a child who is a junior or senior in high school.

(c) *When both spouses are institutionalized and there is an application for MA.* When both spouses are institutionalized, the following shall apply:

1. If one spouse applies for MA, the total income of both spouses may be combined to ascertain if their combined income is less than total need, provided that the spouse not applying has income exceeding that spouse's needs and is willing to make that income available;

2. If the combined income of both spouses is less than total need, separate determinations shall be made to see if either spouse has excess income. Any excess may be allocated to the other spouse. Either one or both of the spouses may be eligible depending on income allocation; and

3. If the combined income of both spouses exceeds total need, separate determinations shall be made. Only the actual amount of income made available from one spouse to the other may be used in determining the eligibility of the other spouse. If the spouse refuses to make a reasonable amount available, the agency shall review the case under par. (a) 3 to determine if legal action for support should be taken pursuant to s. 49.90, Stats.

(d) *Computing income available towards cost of care.* Institutionalized recipients of MA who are determined eligible under s. HSS 103.06 and this section shall apply their available income toward the cost of their care after deducting the income disregards in this paragraph. In this paragraph, "available income" means any remaining income after the following reductions are made:

1. A personal needs allowance, as provided under s. 49.45 (7) (a), Stats., and

2. If employed, the first $65 and one-half of the remainder of gross earnings;

3. The cost of health insurance;

4. Necessary medical or remedial care recognized under state law but not covered by MA;

5. The actual amount paid by the institutionalized person for support of a person for whom the institutionalized person is legally responsible but not to exceed the appropriate AFDC assistance standard unless the

institutionalized person is paying court-ordered support in an amount greater than the AFDC assistance standard in s. 49.19 (11) (a) 1, Stats.; and

6. The monthly cost of maintaining a home when the conditions of s. HSS 103.06 (1) (b) 3. are met, but not to exceed the SSI payment level for one person living in that person's own household.

(2) SPECIAL TYPES OF INCOME. (a) *Farm and self-employment income.* Farm and self-employment income used in MA calculations shall be determined by adding back into the net earnings the following: depreciation, personal business and entertainment expenses, personal transportation, purchases of capital equipment, and payments on the principal of loans. The total shall be divided by 12 to get monthly earnings. If no tax return has been filed, the individual shall complete a 1040 form of the internal revenue service (IRS) to determine net earnings or loss, or to anticipate, in case of relatively new businesses, net earnings as required by the IRS. If the latest income tax return does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the agency shall calculate the self-employment income based on anticipated earnings. Agencies shall determine whether it is necessary to use anticipated earnings on a case-by-case basis and shall document the reasons for the determination in the case record.

(b) *Contractual employment income.* Income received on other than an hourly or piecework basis from employment performed under a contract which is renewable on an annual basis shall be averaged over a 12-month period. Persons receiving this income shall be considered to receive compensation for the entire 12-month period even though actual compensation may only be received for part of the year.

Note: For example, if school teachers are paid 9 months a year, the wages they receive are to be averaged over a 12-month period.

(c) *In-kind benefits.* Predictable in-kind benefits received regularly and in return for a service or product delivered shall be treated as earned income in MA calculations. The value of the in-kind income is determined by using the prevailing wage rate in the local community for the type of work performed, but not less than the minimum wage for that type of work.

(d) *Income from providing room and board.* Net profit from room and board shall be treated as earned income in MA calculations. Net profit is determined by deducting the following expenses of providing room and board from the gross room and board income received:

1. Roomer only - $15.00;

2. Boarder only - current food stamp allotment for one; and

3. Roomer and boarder - current food stamp allotment for one plus $15.00.

(e) *Income from rentals.* When the owner reports rental income to the IRS as self-employment income, the procedures set forth in par. (a) shall be followed in MA calculations. If the owner does not report rental income to the IRS as self-employment income, net rental income shall be determined as follows:

1. When the owner is not an occupant, net rental income is the rental income minus the mortgage payment and verifiable operational costs;

2. When the owner receives rental income from a duplex or multiple rental unit building and the owner resides in one of the units, net rental income shall be computed according to the following method:

a. Add the interest portion of the mortgage and other verifiable operational costs common to the entire operation;

b. Multiply the number of rental units by the total in subpar. a.;

c. Divide the result in subpar. b. by the total number of units;

d. Add the result in subpar. c. to any operational costs paid by the owner that are unique to any rental unit; and

e. Subtract the result in subpar. d. from the total rent payments. The result is net rental income.

(f) *Income of SSI child's parents.* Income of a disabled child's parents shall not be considered when determining the child's eligibility for MA if the child meets the conditions stated in 42 USC 1396a (e) (3).

(g) *Income disregards.* Income disregards of the AFDC program under 45 CFR 233.20 (a) and of the SSI program under 20 CFR 416.1112 and 416.1124 shall be used as appropriate.

(h) *Income from land contracts.* Income received from a land contract shall be counted as unearned income. If the income is received on a monthly basis, it shall be included as monthly income. Payments received on less than a monthly basis shall be prorated to a monthly amount over the period between payments. Any expenses that the applicant or recipient is required to pay under the terms of the land contract shall be deducted from the gross income received from the land contract.

(i) *Interest income.* 1. Interest income shall be counted as unearned income when:

a. It is received on a regular basis; and

b. It exceeds $20.00 per month. Amounts of $20.00 or less are considered inconsequential income and are disregarded.

2. The interest shall be counted as income in the month in which it is received. Interest income that is received less often than monthly shall be prorated over the period the payment covers.

(3) DEDUCTIONS FROM EARNED INCOME. (a) *Work-related deduction.* If an individual is employed, $90 shall be deducted from the individual's earned income when determining MA eligibility.

(b) *Dependent care deductions.* When employment cannot be maintained without dependent care for a child or incapacitated adult in the MA or fiscal test group, the following deductions shall be applied:

1. The actual cost of care but not more than $175 each month for each dependent child age 2 or over or incapacitated adult; and

2. The actual cost of care but not more than $200 each month for each dependent child under age 2.

(c) *Special deductions for employed blind persons.* Transportation expenses incurred in getting to and from work, expenses related to job performance and expenses related to improving job ability such as training meant to improve employability and increase earning power shall be deducted from the earned income of blind persons.

Note: Examples of expenses related to job performance are a reader, translation of material into braille, the cost and upkeep of a seeing eye dog for a blind person, and the cost of a prosthesis.

(4) DEDUCTION FROM ANY INCOME FOR SUPPORT TO AN INSTITUTIONALIZED PERSON. If a person in the MA group has legal responsibility for a person residing in an institution where the cost of care cannot be covered by MA, any income actually made available by the MA group toward the institutional cost of care shall be deducted from the MA group's income.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; cr. (2) (h), Register, July, 1989. No. 403, eff. 8-1-89; emerg. r. and recr. (3) (a) and (b), eff. 10-2-89; r. and recr. (3) (a) and (b), Register, March, 1990, No. 411, eff. 4-1-90; am. (1) (a) 3., (b) (intro.), (c) 3. and (d) (intro.), r. and recr. (1) (d) 1., cr. (2) (i), Register, March, 1993, No. 447, eff. 4-1-93.

HSS 103.075 Prevention of spousal impoverishment. (1) APPLICABILITY. For resource eligibility, this section applies to all institutionalized applicants for and recipients of MA who began a continuous period of institutionalization on or after September 30, 1989, and to their spouses. For purposes of computing income available towards the cost of an institutionalized individual's care, this section applies to all institutionalized applicants for and recipients of MA who were residing in an institution on October 1, 1989, or who entered an institution subsequent to that date, and to their spouses.

(2) PURPOSE. This section implements s. 49.455, Stats., which provides for protection of a couple's income and resources when one spouse is institutionalized and the other spouse lives in the community.

(3) DEFINITIONS. In this section:

(a) "Community spouse" means an individual who is legally married as recognized under state law to an institutionalized spouse but is not himself or herself an institutionalized individual.

(b) "Consumer price index" means the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor.

(c) "Continuous period of institutionalization" means an individual has resided in or is likely to remain in an institution for at least 30 consecutive days.

(d) "Family member" means a minor or dependent child, dependent parent or dependent sibling of an institutionalized or community spouse who resides with the community spouse.

(e) "Institutionalized spouse" means either an individual who is in a medical institution or nursing facility and is legally married to an individual who is not in a medical institution or nursing facility or an individual who receives services under a waiver under 42 USC 1396n (c) or (d) and is legally married to an individual who is not in a medical institution or nursing facility and does not receive services under a waiver under 42 USC 1396n (c) or (d).

(f) "Medical institution" means a facility that:

1. Is organized to provide medical care, including nursing and convalescent care;

2. Has the necessary professional personnel, equipment and facilities to manage the medical, nursing and other health care needs of patients on a continuing basis in accordance with accepted professional standards;

3. Is authorized under state law to provide medical care; and

4. Is staffed by professional personnel who are responsible for professional medical and nursing services. The professional medical and nursing services shall include adequate and continual medical care and supervision by a physician, registered nurse or licensed practical nurse supervision and services and nurses' aide services sufficient to meet nursing care needs and a physician's guidance on the professional aspects of operating the institution.

(g) "Resources" does not include items excluded under 42 USC 1382b (a) or (d) or items that would be excluded under 42 USC 1382b (a) (2) (A) but for the limitation on total value established under that provision.

(4) ASSESSMENT. (a) An institutionalized spouse or the community spouse, or a representative acting on the behalf of either spouse, may request that an agency complete an assessment of the couple's assets for purposes of determining total countable assets of the couple and the community spouse resource allowance. If the request is not part of an application for medical assistance, the agency may charge a fee not exceeding the reasonable expenses of providing and documenting the assessment.

(b) Both the institutionalized spouse and the community spouse shall verify the assets that they own, jointly or individually, and the value of those assets at the beginning of the most recent continuous period of institutionalization.

(c) The agency shall:

1. Complete the assessment within 30 days after the date of the request for an assessment;

2. Determine and verify the total countable assets of the couple using the procedures under sub. (5) (b) 2;

3. Determine the community spouse resource allowance pursuant to s. 49.455 (6) (b), Stats.; and

4. Notify in writing the institutionalized spouse and the community spouse, or a representative acting on the behalf of either spouse, of the couple's total countable assets, the community spouse resource allowance and the amount of assets that the couple may retain so that the institutionalized spouse may be asset-eligible for MA and of the right of either spouse to a fair hearing under sub. (8) after an application for medical assistance is filed.

(5) ASSETS. (a) *Applicability.* This subsection applies only to individuals who began their most recent continuous period of institutionalization after September 29, 1989. Those individuals who began their most recent

continuous period of institutionalization before September 30, 1989, shall have their eligibility determined using asset eligibility criteria under s. HSS 103.06 (1) unless the individual left the institution or lost eligibility for a community-based services waiver program under 42 USC 1396n (c) or (d) for a period of at least 30 days and subsequently began a new continuous period of institutionalization after September 29, 1989.

(b) *Eligibility determination.* 1. Initial determination. The agency shall consider the total countable assets of the institutionalized spouse and his or her community spouse in determining initial MA eligibility for the institutionalized spouse.

2. Total countable assets. The agency shall count all available assets belonging to either spouse in the month for which eligibility is being determined except for the following:

a. Homestead property;

b. One vehicle, regardless of value;

c. Household and personal effects, regardless of value;

d. Burial assets and funds set aside for the purpose of meeting burial expenses, regardless of value. This includes burial trusts, burial funds, burial plots, burial insurance and other property or funds expressly set aside for burial expenses; and

e. Any other assets that would otherwise be excluded for purposes of SSI-related MA eligibility determination as provided under s. HSS 103.06.

3. Asset limit. The agency shall compare the value of the couple's assets to the amount obtained by adding the SSI-related one person asset limit under s. 49.47 (4) (b) 3g, Stats., to the community spouse resource allowance under s. 49.455 (6) (b), Stats. If the couple's available assets are equal to or less than the asset limit, the institutionalized spouse is asset eligible for MA.

(c) *Consideration of community spouse's assets.* During a continuous period of institutionalization after an institutionalized spouse is determined to be eligible for MA, no assets of the community spouse may be considered available to the institutionalized spouse.

(d) *Protected resources.* 1. For the 12 months after an institutionalized spouse has been initially determined eligible for MA, an amount equal to the amount of assets comprising the community spouse resource allowance for which an institutionalized spouse has title interest that does not exceed the limits described in s. 49.455 (6) (b), Stats., shall be exempt from consideration;

2. After 12 months, the exemption of the protected spousal asset share ceases to exist;

3. In subsequent redeterminations of eligibility after 12 months, the agency shall compare the assets of an institutionalized spouse to the SSI-related MA asset limit provided under s. 49.47 (4) (b) 3g, Stats. If the institutionalized spouse's assets exceed those limits, he or she is ineligible for MA.

4. Limits on countable assets shall be determined as provided in par. (b) 2 as long as there is a community spouse.

(e) *Exceptions to resource ineligibility.* The agency may not determine an institutionalized spouse ineligible if one or more of the following conditions exists:

1. The institutionalized spouse has assigned to the state any rights to support from the community spouse;

2. The institutionalized spouse lacks the ability to execute an assignment under subd. 1 due to a physical or mental impairment but the agency has the right to bring a support proceeding against the community spouse without an assignment; or

3. The agency determines and documents in the case record that denial of eligibility would work an undue hardship for the institutionalized spouse. In this subdivision, "undue hardship" means that a serious impairment to the institutionalized individiual's immediate health status exists.

(6) INCOME. (a) *Income attribution.* 1. No income of a community spouse may be deemed available to an institutionalized spouse applying for MA, except if a court order is in effect.

2. The agency shall count voluntary contributions of a community spouse towards the cost of his or her institutionalized spouse's care as income in determining an institutionalized spouse's eligibility and the amount that an institutionalized spouse is required to contribute towards the cost of his or her care. An agency may not request or suggest that a community spouse make a voluntary contribution toward the institutionalized spouse's cost of care.

3. Unless an institutionalized spouse establishes by a preponderance of evidence through a fair hearing that ownership interest is other than as provided under s. 49.455 (3) (b), Stats., and this subdivision, non-trust income shall be considered the income of the person in whose name the payment is made or, if the income is paid in both spouses' names or is unspecified, half shall be considered as the income of each or, if the income is shared with others, amounts equal to each spouse's proportionate share shall be considered available.

4. The agency shall consider trust income as available based upon the specific terms of the trust. Income paid to a spouse from the trust belongs to that spouse alone. If trust income is paid to both spouses or if the percentage is unspecified, half of the income shall be considered to belong to each spouse.

5. The income eligibility standards against which an institutionalized spouse's income is tested shall be the same as those under s. HSS 103.04 (4).

(b) *Protecting income for the community spouse and dependent family members.* 1. Community spouse income allowance. An MA-eligible institutionalized spouse may allocate income to his or her community spouse to provide for the monthly maintenance of the community spouse. An institutionalized spouse may allocate enough of his or her income, after deducting a personal needs allowance as provided under s. 49.45 (7) (a), Stats., or 42 CFR 435.726 (c) in the case of an institutionalized spouse

participating in a home and community-based care waiver program under s. 46.277, Stats., to bring the community spouse's monthly income up to the amount specified in s. 49.455 (4) (b), Stats., or an amount ordered by a court, whichever is greater. The community spouse's monthly gross income shall be determined by the agency as provided under s. 49.47 (4) (c), Stats., without regard to the SSI-related MA deductions.

2. Family member income allowance. An MA-eligible institutionalized spouse may deduct from his or her income, sufficient funds to bring each dependent family member's monthly income up to the amount specified in s. 49.455 (4) (a) 3, Stats., or an amount ordered by a court, whichever is greater. A dependent family member is:

a. Any minor natural or adopted child or step-child of either the institutionalized spouse or the community spouse who resides with the community spouse;

b. Any adult natural or adopted child or step-child of either the institutionalized spouse or the community spouse who is claimed as a dependent by either the institutionalized spouse or the community spouse for tax purposes under the internal revenue service code or who could be claimed as a dependent for tax purposes if a tax return were filed and who resides with the community spouse;

c. A sibling of either the institutionalized spouse or the community spouse who is claimed as a dependent by either the institutionalized spouse or the community spouse for tax purposes under the internal revenue service code or who could be claimed as a dependent for tax purposes if a tax return were filed and who resides with the community spouse; or

d. A parent of either the institutionalized spouse or the community spouse who is claimed as a dependent by either the institutionalized spouse or the community spouse for tax purposes under the internal revenue service code or who could be claimed as a dependent for tax purposes if a tax return were filed and who resides with the community spouse.

(c) *Computing income available towards the cost of care.* An institutionalized recipient shall apply his or her available income toward the cost of his or her care. In this paragraph, "available income" means any income remaining after the following deductions are made from the recipient's gross monthly income:

1. A personal needs allowance as provided under s. 49.45 (7) (a), Stats., or 42 CFR 435.726 (c), as appropriate;

2. The community spouse monthly income allowance under par. (b) 1 that is actually made available by the institutionalized spouse to the community spouse or to another individual for the benefit of the community spouse;

3. The total family member income allowance calculated under par. (b) 2, whether or not actually made available by the institutionalized spouse to a family member; and

4. The amount incurred as expenses for remedial or medical care for the institutionalized spouse as follows:

a. For an individual participating in a community-based care waiver program, the amount incurred as expenses for remedial or medical care and the cost of the individual's health insurance premiums; and

b. For an individual residing in a medical institution, the cost of the institutionalized spouse's health insurance premiums.

(7) NOTICE. The agency shall notify both spouses when it determines that an institutionalized spouse is eligible for MA, or it shall notify the spouse who requested a determination of MA eligibility. The notice shall be in writing and shall include the following information:

(a) The amount of the community spouse monthly income allowance calculated under sub. (6) (b) 1;

(b) The amount of any family allowance calculated under sub. (6) (b) 2;

(c) The amount of the couple's total countable assets determined under sub. (4) (c);

(d) The amount of the community spouse resource allowance and the method used to calculate the allowance under sub. (4) (c) 3;

(e) The amount of income that the institutionalized spouse is required to contribute toward the cost of his or her care; and

(f) Each spouse's right to a fair hearing under sub. (8) concerning ownership or availability of income or resources and the determination of the community spouse monthly income or resource allowance.

(8) FAIR HEARING. (a) An institutionalized spouse or a community spouse may request a fair hearing in accordance with the procedures set out in s. HSS 104.01 (5) in regard to any of the following:

1. The determination of the community spouse monthly income allowance under sub. (6) (b) 1;

2. The determination of the amount of the monthly income otherwise available to the community spouse used in the calculation under sub. (6) (b) 1;

3. The amount of the couple's total countable assets determined under sub. (4) (c);

4. The determination of the spousal share of resources under sub. (4) (c) 3; and

5. The determination of the community spouse resource allowance under sub. (4) (c) 3.

(b) If the institutionalized spouse has made an application for MA and a fair hearing is requested under par. (a), the agency shall hold the hearing within 30 days after the request.

(c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (6) (b), the hearing officer shall determine an amount adequate to provide for the community spouse's needs. In this paragraph, "exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. The agency shall use the amount determined by the hearing officer

in place of the minimum monthly maintenance needs allowance determined under sub. (6) (b).

(d) If either spouse establishes at a fair hearing that the community spouse resource allowance determined by the agency under sub. (4) (c) 3 does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under s. 49.455 (4) (c), Stats., the hearing officer shall establish an amount to be used under sub. (5) (b) that results in a community spouse resource allowance that generates sufficient income to raise the community spouse's monthly income to the minimum monthly maintenance needs allowance under s. 49.455 (4) (c), Stats.

(e) Neither the institutionalized spouse nor the community spouse shall have the right to a fair hearing under this section until after an MA application is filed and MA eligibility and the benefit level are determined.

History: Cr. Register, March, 1993, No. 447, eff. 4-1-93.

HSS 103.08 Beginning of eligibility. (1) DATE. Except as provided in subs. (2) to (4), eligibility shall begin on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application. Retroactive eligibility of up to 3 months may occur even though the applicant is found ineligible in the month of application.

(2) SPEND-DOWN PERIOD. (a) 1. The spend-down period shall begin on the first day of the month in which all eligibility factors except income were met, but no earlier than the first day of the month 3 months prior to the month of application. However, at the recipient's option, it may begin on the first day of any of the 3 months prior to the date of application if all eligibility factors, except income, were met in that month. A recipient's decision to choose an optional beginning date shall be recorded in the agency's case record. For persons who previously received MA and then reapply, the spend-down period cannot cover the time during which they were receiving MA.

2. The MA group shall be eligible as of the date within the spend-down period on which the expenditure of excess income or the obligation to expend excess income is achieved.

3. The applicant shall be responsible for some bills or parts of bills for services received on the first day of eligibility if there is remaining unspent and unobligated excess income on that day.

(b) If the amount of the monthly excess income changes before the expenditure or obligation of excess income is achieved, the expenditure or obligation of excess income for the remainder of the 6-month period shall be recalculated. When the size of the MA group changes, the monthly income limit shall be adjusted appropriately to the size of the new group, and the amount of excess income to be expended or obligated shall be adjusted accordingly. If any change is reported that may affect eligibility, the eligibility of the entire MA group may be redetermined and, if there is determined to be excess income, a new spend-down period shall be established.

(c) 1. Once the expenditure or obligation of excess income has been achieved, the MA group shall be eligible for the balance of the 6-month

spend-down period, unless it is determined that assets have increased enough to make the MA group ineligible, or that a change in circumstances has caused someone in the MA group to become ineligible for nonfinancial reasons.

2. If the entire group is determined ineligible, the MA benefits shall be discontinued with proper notice. If only one person in the MA group is determined ineligible for nonfinancial reasons, only that person's MA benefits shall, with proper notice, be discontinued. The other person or persons in the MA group continue their eligibility until the end of the 6-month period.

3. If the size of the MA group increases due to the addition of a child, that child is eligible for benefits during the rest of the spend-down period. An adult caretaker who enters the group, except a woman who is medically verified as pregnant or a person who is SSI-related, is not eligible for benefits during the remainder of the spend-down period.

(3) PRESUMPTIVE DISABILITY CASES. If, in a presumptive disability case, the applicant meets all other conditions for eligibility, MA benefits shall begin on the date the presumptive disability finding is made and shall continue at least until the official disability determination is completed. Presumptive disability eligibility shall not be granted retroactively. MA benefits based on presumptive disability shall not be continued pending an appeal of a negative official disability determination.

(4) PREGNANCY-RELATED MA CASES. For pregnancy-related cases pursuant to ss. 49.46 (1) (a) 1m and 9 and 49.47 (4) (a) 2 and (am) 1, Stats., eligibility shall begin on the date pregnancy is verified or the date of application, whichever is earlier, but eligibility may only be backdated as provided under sub. (1).

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (4), Register, March, 1993, No. 447, eff. 4-1-93.

HSS 103.09 Termination of medical assistance. (1) FINAL MONTH COVERAGE. When eligibility ends, except in the case of death of the recipient, the MA benefits shall continue until the end of the calendar month.

(2) FOUR-MONTH CONTINUATION OF ELIGIBILITY. When an MA group becomes ineligible for AFDC due solely to excess income, is receiving child support payments and all of the excess income consists of child support collections, and has received an AFDC payment in at least 3 of the 6 months immediately preceding the month in which ineligibility begins, eligibility for MA shall continue for 4 months from the date that AFDC eligibility was terminated. The 6 months preceding the month in which ineligibility begins includes the month in which the MA group became ineligible for AFDC if the MA group was eligible for and received AFDC for that month.

(3) TWELVE-MONTH CONTINUATION OF ELIGIBILITY. (a) When an MA group becomes ineligible for AFDC due to loss of the earned income disregards under s. 49.19 (5) (a) 4 and 4m, or (am), Stats., or to a change in the amount of earned income disregards under s. 49.19 (5) (a) 4 and 4m, or (am), Stats., eligibility for MA shall continue for 12 months from the date that AFDC eligibility was terminated.

(b) When an MA group becomes ineligible for AFDC due to an increase in earned income or an increase in hours of employment or a com-

bination of increased earned income and increased hours of employment, eligibility for MA shall continue for 12 months from the date that AFDC eligibility was terminated provided that at least one member of the MA group received AFDC for at least 3 of the 6 months immediately preceding the month in which AFDC was discontinued and at least one member of the MA group is continuously employed during that period.

(c) When an MA group becomes ineligible for AFDC due to an increase in earned income, or to a combination of an increase in earned income and in increase in child support payments, and has received an AFDC payment in at least 3 of the 6 months immediately preceding the month in which ineligibility begins, eligibility for MA shall continue for 12 months from the date that AFDC eligibility was terminated. The 6 months preceding the month in which ineligibility begins includes the month in which the MA group became ineligible for AFDC if the MA group was eligible for and received AFDC for that month.

(4) TIMELY NOTICE. The agency shall give the recipient timely advance notice and explanation of the agency's intention to terminate MA. This notice shall be in writing and shall be mailed to the recipient at least 10 calendar days before the effective date of the proposed action. The notice shall clearly state what action the agency intends to take and the specific regulation supporting that action, and shall explain the right to appeal the proposed action and the circumstances under which MA is continued if a fair hearing is requested.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (3) (a), r. (2) (a), renum. (2) (b) to be (2) and am., r. and recr. (3) (b), cr. (3) (c), Register, March, 1993, No. 447, eff. 4-1-93.

HSS 103.10 Redetermination of eligibility. The agency shall give the recipient timely advance notice of the date on which the recipient's eligibility will be redetermined. This notice shall be in writing and mailed to the recipient at least 15 calendar days but no more than 30 calendar days before the redetermination date. The requirement for timely advance notice of eligibility redetermination does not apply to spend-down cases in which the period of certification is less than 60 days.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

HSS 103.11 Presumptive eligibility for pregnant women. (1) REQUIREMENTS. Pregnant women may be determined presumptively eligible for MA on the basis of verification of pregnancy and preliminary information about family income. That determination shall be made by providers designated by the department who are qualified in accordance with this section. A provider qualified to make determinations of presumptive eligibility shall meet the following requirements:

(a) Be certified as an MA provider under ch. HSS 105; and

(b) Provide one or more of the following services:

1. Outpatient hospital services;

2. Rural health clinic services; or

3. Clinic services furnished by or under the direction of a physician; and

(c) Receive funding or participate in a program under:

1. The migrant health center or community health center programs under s. 329 or 330 of the public health service act;

2. The maternal and child health services block grant programs;

3. The special supplemental food program for women, infants and children under s. 17 of the child nutrition act of 1966;

4. The commodity supplemental food program under D.4 (a) of the agriculture and consumer protection act of 1973; or

5. A state prenatal [perinatal] program; and

Note: Although "prenatal" was used in the filed rule order, the department's medical assistance manual uses the term "perinatal".

(d) Have been determined by the department to be a qualified provider under this section.

(2) DUTIES AND RESPONSIBILITIES. (a) A qualified provider shall ascertain presumptive MA eligibility for a pregnant woman by:

1. Verifying or obtaining verification of the woman's pregnancy; and

2. Determining on the basis of preliminary information that the woman's family income meets the applicable income limits.

(b) The provider shall inform the woman, in writing, of the determination of presumptive eligibility and that she has 14 calendar days from the date of the determination to file an application for MA eligibility with the county department of social services.

(c) Within 5 working days following the date on which the determination was made, the provider shall in writing notify the department and the agency where the woman will apply for MA eligibility of the woman's presumptive eligibility.

(d) In the event that the provider determines that a woman is not presumptively eligible, the provider shall inform her that she may file an application for MA eligibility at the county department of social services.

History: Cr. Register, February, 1988, No. 386, 3-1-88.