

## Chapter HSS 209

## COMMUNITY WORK EXPERIENCE FOR AFDC RECIPIENTS

HSS 209.01 Introduction

HSS 209.02 Agency responsibilities

HSS 209.03 Registration and participation

**HSS 209.01 Introduction.** (1) **AUTHORITY AND PURPOSE.** This chapter is adopted under the authority of s. 49.50 (7m), Stats., to provide rules for county and tribal administration of community work experience programs which place AFDC recipients in uncompensated community jobs that serve a useful public purpose and provide recipients with job experience.

(2) **APPLICABILITY.** This chapter applies to all counties and tribal governing bodies that elect to establish a community work experience program, to any community agency operating a community work experience program and to all AFDC recipients required to register for and participate in community work experience.

(3) **DEFINITIONS.** In this chapter:

(a) "AFDC" means aid to families with dependent children, a public assistance program under title IV-A of the Social Security Act of 1935, as amended, and ss. 49.19 to 49.41, Stats., and ch. HSS 201.

(b) "AFDC recipient" means a person who is found eligible for and receives AFDC.

(c) "AFDC regular case" means a caretaker who is financially eligible for AFDC and whose child or children are deprived of parental support or care by reason of the death of a parent or continued absence of a parent from the home.

(d) "AFDC unemployed parent case" means an AFDC group where the child or children are deprived of parental support because the principal wage earner in the group is unemployed.

(e) "Agency" means a county department of social services, a county public welfare or human services department, or an American Indian organization which administers income maintenance programs.

(f) "American Indian organization" means the agency designated by the tribal governing body under s. 46.70, Stats., to administer services under s. 46.22 (4) (n), Stats.

(g) "Caretaker relative" means a qualified relative as specified in s. HSS 201.17 (1) who has a child under his or her care as specified in s. HSS 201.17 (2).

(h) "Community agency" means any public or non-profit organization under contract with an agency to operate a community work experience program.

(i) "Community work experience program" or "CWEP" means a program established by a county agency under s. 46.22 (4) (n), Stats., for the purpose of making AFDC recipients more employable through either work experience, which involves placement of AFDC recipients in uncompensated community jobs that serve a useful public purpose, or a

combination of this type of work experience and training, including vocational training.

(j) "Department" means the Wisconsin department of health and social services.

(k) "FFP" means federal financial participation, that is, federal reimbursement for the allowable administrative costs of the community work experience program.

(l) "Medical assistance," also called "medicaid," means the assistance program under title XIX of the Social Security Act of 1935, as amended, and ss. 49.43 to 49.49, Stats.

(m) "Participant" means any AFDC recipient who is required or volunteers to take part in a community work experience program.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86.

**HSS 209.02 Agency responsibilities.** (1) **CONDITIONS FOR RECEIPT OF FEDERAL FUNDS.** In order to receive FFP available for its CWEP, a county or tribal governing body shall modify its contract with the department under s. 46.032, Stats., and shall make available all records necessary for the department's exercise of its supervisory functions under s. 46.206, Stats.

(2) **OPERATING RESPONSIBILITIES.** Each agency or community agency operating a CWEP program shall:

(a) Pay all work-related expenses of participants that are determined by the county to be necessary and directly related to participation, including expenses for transportation, child care, tools and special clothing not provided by the agency or community agency. No participant may be required to pay any work-related expenses from his or her own funds. Payment shall be made in accordance with the following provisions:

1. Payment for transportation costs, including the cost of transportation to and from the child care provider, shall be in the amounts equal to the cost of transportation by the most appropriate means as determined by the department or county;

2. Payment for child care, including child care during the time a participant travels to and from a CWEP assignment, shall be in the amounts determined by the department to be reasonable, necessary and cost-effective but not in excess of the maximum reimbursement rates under s. HSS 55.74;

3. Work-related expenses determined by the county to be necessary and directly related to participation shall be paid in advance to the participant, except that child care providers shall be reimbursed directly. Only expenses, other than for transportation and day care, that add up to \$10 a month for each participant may be counted for FFP purposes; and

4. Medical expenses for injuries or illnesses which directly result from participation in a CWEP job shall be paid only if these expenses are not otherwise reimbursed by workers' compensation or medical assistance;

(b) Give participants an allowance payable in advance for expenses under par. (a), except for child care;

Register, March, 1990, No. 411

(c) Design the program to improve the employability of participants through actual work experience or work experience and training to enable the participants to move into regular employment, as follows:

1. Conduct an employability assessment and develop an employability plan for training, education and work experience based on prior training, proficiency, experience and skills of the participant; and

2. Assign participants to CWEP projects by taking into consideration, to the extent possible, the prior training, proficiency, experience and skills of each participant;

(d) Ensure that participants are not assigned to projects which require traveling an unreasonable distance from their homes or remaining away from their homes overnight without their consent. In this paragraph "unreasonable distance" means more than one hour travel time one way between the participant's home and the work or activity site, excluding time to take children to child care, using available transportation;

(e) Ensure that any job injuries incurred by CWEP participants are attended to in the same manner as regular employee injuries;

(f) Consider CWEP participants as employees of the agency or community agency only for purposes of workers' compensation benefits;

(g) Supervise or arrange for the supervision of participants;

(h) Establish ongoing work schedules and clearly explain them to the CWEP participants;

(i) Specify in writing for the participant the work site rules and expectations which shall be the same as the general work rules applicable to other employees at the work site or if there are no other employees at the work site, the employees of the agency. The work rules shall include job duties, performance expectations, work days and hours and activities prohibited on the work site;

(j) Specify in writing for the participant the CWEP rules of participation, the location of the work site, the required number of hours to be worked each month and the rights and responsibilities of CWEP participants;

(k) Ensure that participants are not required to use their AFDC benefits, other income or other financial resources to pay for any costs associated with participation in CWEP;

(l) Require that CWEP jobs meet any state and local standards for health and safety;

(m) Ensure that persons currently employed are not displaced by CWEP participants and that established unfilled positions that are vacant are not filled by CWEP participants;

(n) Ensure that CWEP jobs are not used to fill vacancies created due to a strike, lockout or other bonafide labor dispute, and are not used in violation of any existing labor agreement between employees and employers;

(o) Ensure that CWEP jobs are not used for political, electoral or partisan activities;

(p) Give priority to placing AFDC recipients in regular jobs over CWEP participation;

(q) Give first priority for placement in CWEP jobs to mandatory participants who volunteer;

(r) Ensure that supervisory evaluations of a participant's work are made during and at the end of the work experience and are made available to the participant;

(s) Ensure that a participant who has regular, paid employment is not given a CWEP assignment that interferes with his or her ability to fulfill the paid employment commitments; and

(t) Ensure that no person is required to participate in CWEP for more than 16 weeks in a 12-month period.

(3) **PROGRAM EMPLOYE WORK SCHEDULES.** An agency or community agency may schedule a CWEP participant for work only under the following conditions:

(a) Child care services, when determined to be reasonable, necessary, and cost-effective, are available and all costs are reimbursed by CWEP. Child care services shall be considered unavailable if there is no space available for the child in day care licensed under s. 48.65, Stats., certified under s. 48.651, Stats., or established under s. 120.13 (14), Stats., within reasonable travel time and distance, or if the cost of the care where space is available exceeds the maximum rate established by the county under s. 46.98 (4), Stats., and s. HSS 55.74. When child care costs are greater than the amount allowed, the agency shall:

1. Exempt the individual from participation;

2. Reduce the number of hours to be worked by the participant in order to reduce the participant's day care costs; or

3. Permit participation at the maximum number of hours but supplement the funds available to pay for day care.

(b) The participant's total combined hours in both CWEP training and work does not exceed 8 hours a day and 32 hours a week, to allow 8 hours a week for the participant to seek regular employment;

(c) The employe's travel time to and from training, work, or a child care provider, and meal times for which regular employes are not paid, are not included as hours of CWEP participation; and

(d) The employe is not required to work on legal holidays on which the majority of regular employes at the CWEP work site do not work.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86; emerg. am. (2) (a) 2. and (3) (a) (intro.), eff. 11-1-88; am. (2) (a) 2. and (3) (a) (intro.), Register, December, 1988, No. 396, eff. 1-1-89; emerg. am. (2) (a) 2., eff. 10-2-89; am. (2) (d), Register, February, 1990, No. 410, eff. 3-1-90; am. (2) (a) 2., Register, March, 1990, No. 411, eff. 4-1-90.

**HSS 209.03 Registration and participation.** (1) **REGISTRATION FOR COMMUNITY WORK EXPERIENCE.** All AFDC recipients shall register for community work experience as a condition of AFDC eligibility in counties that elect to establish a CWEP. A recipient is exempt from participation if:

Register, March, 1990, No. 411

(a) The recipient is the primary caretaker relative in the home and is personally providing care for a child under 2 years of age. If the child is at least 2 years of age but less than 6 years of age, and living in the relative's home, the recipient shall participate if day care licensed under s. 48.65 (1), Stats., certified under s. 48.651, Stats., or established under s. 120.13 (14), Stats., is available for the child. Child care shall be considered unavailable if there is no space available for the child in day care licensed under s. 48.65, Stats., certified under s. 48.651, Stats., or established under s. 120.13 (14), Stats., within reasonable travel time and distance, or if the cost of the care where space is available exceeds the maximum rate established by the county under s. 46.98(4), Stats., and s. HSS 55.74;

(b) The recipient is 60 years of age or older;

(d) The recipient is currently employed for at least 30 hours per week in a job expected to last a minimum of 30 days and his or her hourly earning are at least equal to the legally established minimum wage for the type of job held, except that when the job held does not have an established minimum wage a recipient currently working at least 30 hours per week in a job expected to last a minimum of 30 days shall be exempted from CWEP regardless of wage level;

(e) The recipient is less than 16 years of age;

(f) The recipient is 16 or 17 years of age, is enrolled full time in school, has not graduated and has not been legally excused from school attendance by the school board except when he or she has been excused for no more than 30 days due to a physical or mental condition;

(g) The recipient is an 18-year-old student who is enrolled in and regularly attending high school, vocational or technical school with the expectation of graduating, and can reasonably be expected to complete the program before reaching age 19;

(h) The recipient has incurred an illness or injury which temporarily prevents employment or entry into training;

(i) The recipient is incapacitated with a medically confirmed physical or mental impairment which prevents the individual from engaging in employment or training. This shall include a period of recuperation after childbirth if prescribed by the woman's physician;

(j) The recipient lives so far from the CWEP work site that he or she is unable to travel to the site within one hour, excluding time required to take children to and from child care, through use of available transportation;

(k) The recipient is needed at home on a substantially continuous basis to care for another family member whose medical condition as determined by a physician or psychologist does not permit self-care and for whose care no other appropriate member of the household is available;

(l) The recipient is enrolled in an educational or training program which, when it is completed, is expected to lead to employment. In this paragraph, "enrolled" means being accepted in writing into an educational or training program and regularly attending that program;

(m) The recipient is medically-verified to be pregnant and in the second or third trimester of pregnancy; or

(n) The recipient is a full-time volunteer serving under the Volunteers in Service to America (VISTA) program, pursuant to Title I of the Domestic Volunteer Service Act of 1973, as amended, 42 USC 4951 to 4958.

(1m) **PARTICIPATION IN SELF-INITIATED POST-SECONDARY EDUCATION AND TRAINING PROGRAMS.** An agency shall determine if participation in post-secondary education or training activities by a mandatory participant constitutes satisfactory participation in CWEP. That determination shall be made in accordance with the following conditions:

(a) The participant:

1. Applied for admission in the post-secondary education or training program before being referred to CWEP and has been accepted;
2. Applied for admission in the post-secondary education or training program during a period of at least a month or more when he or she was not assigned to another CWEP activity and has been accepted; or
3. Was a student in good standing as defined by the post-secondary education or training institution at the time this subsection became effective;

(b) The participant has not quit a permanent full-time job without good cause within the 12 month period prior to enrolling in the CWEP program. A participant shall be considered to have good cause if any of the following apply:

1. The participant's gross monthly income on the job was less than the sum of the AFDC grant for that family size plus the income amounts that would have been disregarded in AFDC for child care, work-related expenses and earned income disregards;
2. The job paid less than 185% of the federal poverty line and did not offer health care benefits for one or more members of the AFDC group;
3. Personal circumstances including but not limited to divorce, death of a family member, physical disability or relocation, caused the participant to quit the job; or
4. Other good cause reasons under s. HSS 209.03 (3) apply;

(c) The participant has completed orientation, his or her education and training needs have been assessed, an employability plan has been developed as required under 42 USC 682b and the education program is included in the employability plan;

(d) The participant is enrolled in a vocational or technical school or is enrolled in an academic college or university in an undergraduate program. Enrollment in a graduate program at a college or university is not acceptable;

(e) The participant has not previously completed a degree or diploma course of study at a vocational or technical school or at an academic college or university. The CWEP agency may grant an exception for a participant who needs education to update skills or to secure certification related to a previously completed course of study. The CWEP agency may also grant an exception if the participant completed a 2 year degree program in a field where there are few prospects for employment as determined by the CWEP agency;



(f) The cost of the schooling is financed by a source other than CWEP, such as by a federal or state grant or loan or a combination of grant and loan;

(g) The educational activities have a clear employment goal in a recognized occupation where there are prospects for employment as determined by the CWEP agency;

(h) The participant is making satisfactory progress in the education or training program and is in good academic standing, as determined by the school. The CWEP agency shall review the participant's progress in the education and training activities. The CWEP agency may not require a participant to come in for a review during times when he or she is scheduled for educational activities;

(i) The participant is participating full-time, as defined by the institution, in post-secondary education or training activities. If the individual chooses to attend school less than full-time, the CWEP agency may require the participant to work or participate in other employment and training activities for a combined total of no more than 129 hours per month. Study time shall be included in calculating the 129 hours. The CWEP agency manager may grant an exception if individual or family circumstances prevent full-time participation and the individual is attending a vocational or technical school or, if attending an academic college or university, the individual has less than 2 years of a 4 year program to complete at the time he or she first enrolls in CWEP. In unusual situations, the CWEP agency may also grant an exception for an individual who is attending the first 2 years of a 4 year program, if temporary circumstances expected to last no more than one year prevent full time participation;

(j) During periods when school is not in session, the CWEP agency may require the participant to participate in other employment and training activities. If the CWEP agency requires the participant to participate during periods when school is not in session, the CWEP agency shall assign the participant to appropriate temporary activities. Participation in these activities may not prevent the participant from returning to school. In this paragraph, "when school is not in session" means in the summer, if the participant is not attending summer school, and between-quarter or between-semester breaks of 3 or more weeks;

(k) Participation in post-secondary education or training counts as satisfactory participation for only one parent in a 2-parent household; and

(l) Participation in training or education activities approved by the department's division of vocational rehabilitation is considered as meeting the requirements of this subsection.

(2) VOLUNTARY PARTICIPATION. (a) An AFDC recipient who is exempt from CWEP registration may volunteer to be a participant in CWEP.

(b) The agency shall inform every recipient who volunteers to participate in CWEP at the time she or he volunteers, of the conditions of participation, including any sanction that may result from failure to comply with a CWEP assignment. The agency shall also inform the recipient at that time that the voluntary participant may withdraw from participation in CWEP without any penalty if the recipient does so in writing before the beginning date of a CWEP assignment or if, during an assign-

ment, the participant gives the agency 20 days advance written notice of that decision in which case the recipient may not participate in CWEP as a voluntary participant for 12 months after the date of withdrawal.

(3) REFUSAL TO PARTICIPATE AND DETERMINATION OF GOOD CAUSE. (a) Reconciliation action shall be initiated by the CWEP agency when a mandatory or voluntary CWEP participant refuses to participate in the program. Refusal to participate occurs when:

1. The participant expresses verbally or in writing to CWEP administrative agency staff that he or she refuses to participate; or

2. The participant implies refusal to participate when he or she:

a. Fails to appear for employer, CWEP administrative agency or other assigned interviews or activities;

b. Voluntarily leaves assigned employment without good cause as determined under par. (c);

c. Is discharged from appropriate employment for misconduct; or

d. Through some other behavior or action shows that he or she refuses to participate in CWEP activities.

(b) The CWEP administrative agency shall schedule an interview with the CWEP participant who has refused to participate to determine:

1. If he or she had good cause as determined under par. (c) for past incidents of refusal to participate; and

2. If he or she is now willing and able to resume participation in CWEP activities.

(c) Good cause for not participating in an assigned CWEP activity shall be one or more of the conditions in sub. (1) or any of the following circumstances:

1. Illness, injury or incapacity of the participant or a member of the participant's family. In this paragraph, "member of the participant's family" means a spouse, child, parent or other dependent relative who lives with the participant;

2. Court-required appearance or temporary incarceration;

3. Family emergency or unavailable child care;

4. Breakdown in the transportation arrangement;

5. Appointment for a job interview; or

6. Any other circumstance beyond the control of the participant.

(d) The interview under par. (b) shall result in one of the following determinations:

1. The participant had good cause under par. (c) and the conditions causing nonparticipation have been resolved. The resolution of the temporary problems or misunderstandings enables the participant to begin or resume active CWEP participation;

2. The participant had good cause under par. (c) and the conditions causing nonparticipation cannot be resolved. The CWEP agency shall



refer the participant back to the income maintenance agency for status reexamination or shall arrange for appropriate supportive services to enable the registrant to participate;

3. The participant did not have good cause under par. (c) for past refusal to participate but the problems have been resolved or eliminated and there is agreement that the participant will begin or resume active participation; or

4. The participant did not have good cause under par. (c) for past refusal to participate and the problem or problems preventing participation cannot be resolved. This includes occasions when the participant did not keep appointments with the CWEP administrative agency to discuss nonparticipation issues.

(e) The CWEP administrative agency shall send a written report to the agency when a participant fails to report to the CWEP administrative agency or otherwise refuses to participate in CWEP without good cause. The report shall include the specific circumstances of refusal to participate and the date of the occurrence. The agency shall take appropriate action in accordance with s. HSS 201.19 (2) for refusal to participate.

(4) MAXIMUM REQUIRED HOURS OF PARTICIPATION IN ANY MONTH. (a) An agency may not require a recipient to participate in the program for more hours in a month than the number of hours equal to the recipient group's monthly AFDC payment 2 months earlier minus child support payments made 2 months earlier, which offset the AFDC benefit, divided by the greater of the applicable state or federal minimum wage. Child support payments to the county clerk of courts and subsequently disregarded from AFDC benefits are not considered to have offset the AFDC grant.

(b) Agency arranged or approved training in which the recipient participates shall be counted toward CWEP participation requirements on a hour-for-hour basis.

(5) NOTICE AND RIGHT TO FAIR HEARING. (a) The agency shall send written notice to any participant who fails to comply with a CWEP work assignment without good cause. The notice shall include:

1. The agency's proposed action affecting the participants's AFDC eligibility and payments; and

2. An explanation of the participant's right to explain any disagreement with the proposed action by contacting the agency within 10 working days of the date on the written notification.

(b) Any participant adversely affected by an agency decision under this section may request a fair hearing in accordance with s. 49.50 (8), Stats., and s. PW-PA 20.18 [ch. HSS 225]. The request for a fair hearing shall be addressed to the department's office of administrative hearings.

Note: The mailing address of the office of administrative hearings is P.O. Box 7875, Madison, Wisconsin 53707.

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74-2

HSS 209

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