

CHAPTER 75-02-01.2
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM

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75-02-01.2-01. Definitions.

Unless otherwise stated in this section, the definitions set forth in North Dakota Century Code section 50-09-01 are applicable to this chapter. Additionally, in this chapter, unless the context or subject matter requires otherwise:

1. "Applicant" means an individual who is seeking a benefit under this chapter.
2. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
3. "Assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs, but does not include nonrecurring, short-term benefits, work subsidies, supportive services provided to families who are employed, and refundable earned income tax credits.
4. "Base month" means the month, immediately before the processing month, about which the income and circumstances of the household are evaluated to determine the amount of any benefits to be paid during the benefit month.
5. "Benefit cap child" means a child born after June 30, 1998, to a household member who was a recipient of assistance under this chapter during the month of probable conception.
6. "Benefit month" means the calendar month immediately following the processing month.

7. "Benefits" means the amount of temporary assistance for needy families assistance a family receives including the temporary assistance for needy families amount, essential services, and supportive services, reduced by recoupments.
8. "Caretaker relative" means the relative so designated by the household who:
 - a. Lives with an eligible dependent child;
 - b. Is a pregnant woman, caretaker relative to no dependent child, in the last trimester of her pregnancy; or
 - c. Lives with a dependent child, under age eighteen and receiving supplemental security income benefits, who is the last child in the home.
9. "Child only case" means a case in which the only eligible individual is a dependent child and the caretaker relative is ineligible as a nonlegally responsible caretaker, or as a legally responsible caretaker due to being a supplemental security income recipient, a disqualified alien, a disqualified fleeing felon, a disqualified parole violator, a disqualified probation violator, or disqualified for committing fraud.
10. "Child support agency" has the same meaning as defined in North Dakota Century Code section 14-09-09.10.
11. "Department" means the North Dakota department of human services.
12. "Dependent child" means a needy child:
 - a. Who lives in the home of a relative by birth, marriage, or adoption;
 - b. Who has been deprived of parental support or care by reason of:
 - (1) The continued absence of a parent from the home, other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States;
 - (2) The death of a parent; or
 - (3) The physical or mental incapacity of a parent; and
 - c. Who is:
 - (1) Under the age of eighteen; or
 - (2) Under the age of nineteen and a full-time student in a secondary school or a vocational or technical school that is equivalent to a secondary school, if, before the end of the calendar month in which the student attains age nineteen, the student may reasonably be expected to complete the program of such school.
13. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which a household member is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the household, for income to be considered earned.
14. "Earned right benefit" means a benefit an individual is entitled to receive as a result of being employed, even after the employment has terminated. These benefits include veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; workforce safety and insurance wage-loss and permanent impairment benefits; and unemployment compensation.

15. "Eligible caretaker relative" means a caretaker relative who:
- a. If, related to an eligible dependent child as a brother or sister, is not under sixteen years of age;
 - b. If deprivation of parental support or care is by reason of the incapacity or disability of a parent, is the incapacitated or disabled parent or the eligible dependent child's other parent, but not stepparent;
 - c. If deprivation of parental support or care is by reason of the death or continued absence of a parent, is the eligible dependent child's other parent, but not stepparent;
 - d. Is not a recipient of supplemental security income benefits; and
 - e. Is in financial need;
 - f. Is a pregnant woman, in the third trimester of her pregnancy, caretaker relative to no other dependent or legally responsible caretaker child, who or whose husband is incapacitated; or
 - g. Is related to a dependent child by birth, whether by whole or half-blood, by marriage, or by adoption, and who is within the fifth degree of relationship to that child.
16. "Family" includes:
- a. An individual or group of related individuals within a household whose needs are recognized in a grant of benefits through temporary assistance for needy families;
 - b. The parents of any dependent child and all brothers and sisters of any dependent child, whether by whole or half-blood, marriage, or adoption, any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits;
 - c. An alien who does not meet citizen and alienage requirements;
 - d. An alien who is ineligible for temporary assistance for needy families benefits because of the application of sponsor-to-alien deeming;
 - e. An individual who is ineligible for temporary assistance for needy families benefits as the result of the imposition of a sanction or disqualification; and
 - f. An individual who is a household member who is a legal dependent or a legally responsible caretaker of a member of the household, but does not include roomers or boarders.
17. "Full-time student" means a student who:
- a. If in a secondary school, is enrolled in classes which, if completed, will earn the student four or more units of credit;
 - b. If in a vocational or technical school under state operation, a college, or a university, is enrolled in classes that, if completed, will earn the student twelve or more semester hours of credit during a regular term or six or more semester hours of credit during a summer term at an educational facility operating on a semester system, or twelve or more quarter hours of credit during a regular term or six or more quarter hours of credit during a summer term at an educational facility operating on a quarter system;

- c. If in a private vocational or technical school, is enrolled in classes which, according to a written statement from school officials, constitutes full-time enrollment;
 - d. Is enrolled in an accredited alternative high school, correspondence courses, or adult basic education, according to a written statement from school officials or who is home schooled; or
 - e. Is an individual participating in job corps, whether an adult or a child.
18. "Housing costs" means the full amount of rent or, if purchasing a home, the full amount of the mortgage, property insurance, property taxes, special assessments, repairs, and improvements of the home.
19. "Ineligible caretaker relative" means a caretaker relative who is not an eligible caretaker relative.
20. "Legally responsible" means having a legal duty for the financial support of another person.
21. "Lives in the home of a relative" means a circumstance that arises when a relative assumes and continues responsibility for the day-to-day care and control of a child in a place of residence maintained by the relative (whether one or more) as the relative's own home. It includes situations in which the child or the relative requires medical treatment that requires a special living arrangement. It also includes situations in which the child is temporarily absent from the home, with a plan to return, when the child:
- a. Physically resides in the home, but is under the jurisdiction of a court and is receiving probation services or protective supervision;
 - b. Receives education while in an educational boarding arrangement in another community if needed specialized services or facilities are unavailable in the home community or if transportation problems make school attendance near home difficult or impossible;
 - c. Receives services at a summer camp such as Camp Grassick, receives services at an attention deficit hyperactivity disorder summer camp, or receives extended hospital stays during the summer months;
 - d. Receives special education at the school for the deaf or school for the blind, whether as a day student or a boarding student, except that a boarding student's needs are limited to those maintenance items that are not provided by the school; or
 - e. Receives education at a boarding school in another community, provided that the child was not placed in that setting following removal from the child's home by court order following a determination that the child was abused, neglected, or deprived, except that the child is entitled to a clothing and personal needs allowance only if that allowance is made available for the child's use on a regular basis.
22. "Parent" means the child's mother or father, whether by birth or adoption, but does not mean:
- a. An individual whose parental rights have been terminated with respect to that child; or
 - b. A stepparent.
23. "Part-time student" means an individual enrolled in a secondary school, vocational school, correspondence courses, technical school, college, or university, or who is home schooled, who is not a full-time student.

24. "Processing month" means the month, immediately after the base month, and immediately before the benefit month, in which the human service zone determines eligibility for, and the amount of, any benefit to be paid during the benefit month.
25. "Proper individual" means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.
26. "Prospective budgeting" means the determination, made only with respect to the initial month of eligibility and the month immediately after the initial month of eligibility, based on the human service zone's best estimate of the income and circumstances of the household in those months, of the amount of any grant of benefits in those two months.
27. "Prudent person concept" means a method or program administration that relies upon individual staff members:
 - a. To exercise judgment in requesting, reviewing, and weighing information provided by an applicant, recipient, or any source of verification; and
 - b. To be attentive, vigilant, cautious, perceptive, and governed by reason and common sense.
28. "Recipient" means an individual who receives cash assistance under this chapter.
29. "Relative by birth, marriage, or adoption" means an individual related to the dependent child by birth, whether by blood or half-blood, by marriage including a marriage that has been terminated by death or divorce, or by adoption, as father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, or first cousin.
30. "Retrospective budgeting" means a determination, made by the human service zone during the processing month, based on income and circumstances of the household, during the base month, of the amount of any grant of assistance in the benefit month.
31. "Sanction penalty month" means the month in which a sanctioned individual's financial needs may be removed from a household's temporary assistance for needy families grant.
32. "Special item of need" means an additional benefit paid to a temporary assistance for needy families household to reimburse certain expenses that are not included in the basic standard of need. These items include health insurance premiums, car seats, essential service, house allowance, and catastrophic events.
33. "Standard employment expense allowance" means twenty-seven percent of earned income, or one hundred eighty dollars, whichever is greater, to be first disregarded from the earned income of any child or adult relative applying for benefits under this chapter, or any other individual whose needs are taken into account in determining eligibility under this chapter, but whose earned income is not required to be wholly disregarded as the income of a child who is a full-time student or a part-time student who is not a full-time employee.
34. "Stepparent" means an individual married to a parent of a child after the birth or adoption of the child, but who is not also a parent of that child by either birth or adoption.
35. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
36. "Supportive services" means services approved by the department and provided to an individual receiving other temporary assistance for needy families benefits, to assist in training for employment, seeking employment or maintaining employment, and to support job opportunities and basic skills program activities.

37. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] during periods beginning July 1, 1997.
38. "Temporary assistance for needy families household" means an individual or group of individuals who reside together and includes at least one individual in receipt of temporary assistance for needy families.
39. "Unearned income" means income that is not earned income.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011; January 1, 2014.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-02. Human service zone demonstration projects.

Human service zone within North Dakota may, with the department's approval, conduct a temporary assistance for needy families demonstration project in defined areas which may provide benefits and services that are not identical to benefits and services provided elsewhere in North Dakota.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-02.1. Diversion.

Diversion may be provided to a family experiencing a specific crisis situation or episode of need. Diversion is not assistance under title 45, Code of Federal Regulations, part 260.31, and is not a benefit for purposes of North Dakota Century Code section 50-09-06.1. Diversion may be provided to a family that meets all factors of eligibility for assistance under the temporary assistance for needy families program except as provided in this section.

1. A family may not receive diversion and a temporary assistance for needy families grant in the same month. A family may receive diversion for up to four months within a twelve-month period beginning in the month diversion is provided. A family that includes a caretaker who is not a legally responsible relative of a child member of the family may not receive diversion.
2. Diversion may be provided to defray expenses necessary to retain or obtain employment. Within the limits described by the department, additional funds may be made available to a participant who would be unable to enter into or remain in a work activity without the use of those funds. Necessary expenses incurred in retaining or obtaining employment must be verified.
3. Cooperation in obtaining support or establishing paternity for any child member of the family is permitted but not required.
4. An applicant may appeal a denial, limitation, or termination of diversion, and a recipient of diversion may appeal termination or reduction of diversion, by making a written request for a hearing within thirty days from the date of the notice of adverse action. If diversion is denied or the case is close, diversion may not be provided pending completion of the fair hearing process. If diversion is reduced, benefits may be continued only based on the reduced level, pending completion of the fair hearing process.
5. A month in which diversion is received does not count toward the temporary assistance for needy families sixty-month lifetime limit provided under section 75-02-01.2-35.1.

6. When a diversion household is determined to have a recurrent or ongoing need, the diversion case must be closed and the household may reapply under temporary assistance for needy families to meet the recurrent or ongoing needs.

History: Effective June 1, 2005; amended effective January 1, 2009; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-02.2. Kinship care assistance.

1. Kinship care provides a monthly maintenance payment and supportive services to a child residing outside the child's parental home with a caretaker who is related to that child within the fifth degree of kinship. To be eligible:
 - a. A court of competent jurisdiction must have entered an order placing a child's care, custody, and control with a human service zone, an official of a human service zone, the executive director of the department, the division of juvenile services, or with a tribal agency; and
 - b. Before placing a child in kinship care for more than thirty days, the child's custodian must have completed a family study, a child abuse and neglect background check, and other investigations, as identified in chapter 75-03-14, as the department may determine necessary to demonstrate that:
 - (1) The home in which care is provided is in fit and sanitary condition and properly equipped to provide good care to the child;
 - (2) The caretaker and other adults residing in the home of the caretaker properly qualify to carry out the duties and responsibilities of a kinship care provider;
 - (3) Kinship care provided in the home is for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all children cared for in the home; and
 - (4) The home is maintained according to standards prescribed for its conduct by the department.
2. Within the limits established by the department, supportive services may provide reimbursements for child care expenses, transportation, clothing, emergent needs, activity fees, and, as a payer of last resort, reasonable legal fees incurred by or on behalf of a child and approved by the department.
3. For purposes of this section, a relative is within the fifth degree of kinship if the relative by birth, marriage, or adoption, is the child's sibling; niece; nephew; grandniece; grandnephew; grandparent; aunt; uncle; first cousin; first cousin once removed; great-grandparent; great-aunt; great-uncle; parent's first cousin; great, great-grandparent; great, great-aunt; great, great-uncle; or great, great, great-grandparent.
4. Kinship care monthly maintenance payments must be the same as the standard of need amount for a shared living arrangement for a child under the temporary assistance for needy families program and an additional monthly amount established by the department.

History: Effective June 1, 2005; amended effective January 1, 2009; January 1, 2011; January 1, 2017; January 1, 2020.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-02.3. Transition assistance.

Transition assistance promotes job retention by providing an extended period of cash assistance to qualified families under temporary assistance for needy families. Households with earnings from employment exceeding the allowable standard of need for their household size may remain eligible for transition assistance for up to six months. Transition assistance is assistance under title 45, Code of Federal Regulations, part 260.31, and is a benefit for purposes of North Dakota Century Code section 50-09-06.1. Transition assistance may be provided to a family that meets all factors of eligibility for assistance under the temporary assistance for needy families program except as provided in this section. For purposes of this section, "caretaker" means a person who provides support to a minor child and who may or may not receive benefits. All provisions of this chapter apply except:

1. A family may not receive a grant for transition assistance in any month in which that family receives a grant for temporary assistance for needy families or diversion assistance.
2. No one may be provided transition assistance in an application month. Only recipients of temporary assistance for needy families may become eligible for transition assistance.
3. Transition assistance provides a monthly job retention incentive, transportation assistance, and special items of need as allowed under the temporary assistance for needy families program.
4. A family may not receive transition assistance for more than six consecutive months.
5. Transition assistance may not be provided to:
 - a. A caretaker sanctioned due to noncompliance with work requirements;
 - b. A caretaker relative, in a child-only case;
 - c. A minor parent who is not the head of household or spouse of the head of household;
 - d. An alien who is ineligible to receive assistance due to his or her immigration status;
 - e. A caretaker in receipt of supplemental security income benefits; and
 - f. A caretaker with a disqualification penalty applied for a voluntary job quit or voluntary refusal of an offer of employment or training for employment.

History: Effective January 1, 2009; amended effective January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-03. Request for benefits.

1. All individuals wishing to request assistance from the temporary assistance for needy families program shall have the opportunity to do so, without delay.
2. A request for benefits is a written request made by an individual desiring assistance under the program, or by a proper individual seeking such assistance on behalf of another individual, to a human service zone.
3. A request for benefits must be in writing and signed on a prescribed application form.
4. A prescribed request for benefits form must be signed by the applicant if the applicant is physically and mentally able to do so. An application made on behalf of an applicant adjudged incompetent by a court must be signed by the guardian.

5. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who require it.
6. The date of the request for benefits is the date the applicant-signed form is received in the human service zone.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-03.1. Upfront eligibility.

Unless first determined exempt or granted good cause for nonparticipation, the applicant, and any member of the family for whom temporary assistance for needy families is requested, shall, as a condition of eligibility, comply with the requirements of the child support agency and job opportunities and basic skills or a tribal native employment works program.

History: Effective June 1, 2005.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-04. Applicant's or guardian's duty to establish eligibility.

It is the responsibility of the applicant or guardian of the applicant to provide information sufficient to establish the eligibility of each individual for whom assistance is requested, including the furnishing of a social security number or verification of application for a social security number, and the establishment of age, verification of relationship, identity, citizenship, verification of school attendance of any child age sixteen and older, and medical and social information to be used for any necessary incapacity determination, and financial eligibility.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-05. Verification.

While eligibility for the program is determined in large measure on information supplied by the applicant or recipient, aspects of eligibility that must be supported by conclusive, documenting evidence include:

1. The existence of conditions requiring professional examinations or judgments to establish the existence of incapacity or pregnancy;
2. The amount and source of all income;
3. The equity value of assets whenever available information or the prudent person concept suggests that the equity value may exceed program limitations;
4. The basis for special need requests;
5. The relationship between any dependent child, caretaker relative, and any other member of the household whose presence, assets, or income may affect the composition, eligibility, or benefits of the household;
6. School attendance of any child sixteen or older;
7. Citizenship or alien status of household members;

8. The identity of each member of the household;
9. Proof of or application for a social security number; and
10. Any other factor of eligibility for which available information is lacking, questionable, or inconclusive, and which suggests to a prudent person that further inquiry or documentation is necessary.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-06. Selection of primary individual.

1. Each household shall have a primary individual. The primary individual must be identified among the household members, with one of the following relationships to a dependent child member of the household, using the following order of priority:
 - a. A natural or adoptive parent;
 - b. An adult relative, within the fifth degree of kinship;
 - c. A stepparent;
 - d. A spouse of any person identified in subdivision a, b, or c, whether or not that marriage is terminated by death or divorce; and
 - e. A minor brother, sister, half-brother, half-sister, stepbrother, or stepsister who is at least sixteen years of age.
2. The primary individual may be eligible or ineligible for the assistance.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2017.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-07. Presumptive eligibility.

Repealed effective January 1, 2003.

75-02-01.2-08. Notification of program requirements.

All applicants must be notified of generally applicable program requirements and of related services through the provision of brochures and through the provision of responses to inquiries made by applicants concerning program requirements. Applicants and recipients are responsible to call attention to their particular circumstances, and to inquire as to the effect of those circumstances on eligibility.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-09. Decision and notice.

1. A decision as to eligibility must be made promptly on applications, within thirty days, except in unusual circumstances.
2. A decision as to eligibility on redeterminations must be made within thirty days.

3. Immediately upon an eligibility determination, whether eligibility can be found, ineligibility can be found, or eligibility cannot be determined, program applicants or recipients shall be notified by the human service zone. Adequate notice of any decision terminating or reducing benefits must be sent at the time required by section 75-01-03-08.
4. The effective date a case is closed or suspended is the last calendar day of the month identified in the notice.
5. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-10. Monthly report - Must be complete and timely.

1. When the human service zone receives a completed monthly report, it shall process the payment only if all eligibility conditions are met. The human service zone shall notify the household of any changes from a payment made in the month immediately past. If payment is being reduced or assistance terminated as a result of information provided in the monthly report, the human service zone shall send an adequate notice. The household may be reinstated to the payment amount made in the month immediately past if an appeal of the decision described in the notice is made within ten days of the date of the notice.
2. A human service zone may terminate assistance if it has received no timely monthly report or has received only an incomplete report. The human service zone shall send an adequate notice, mailed to arrive no later than the date it would have made payment if the human service zone had received a timely and complete monthly report. If the household notifies the human service zone and files a complete report within ten days of the date of the notice, the human service zone may accept the replacement report and provide for payment based on the report only if the information indicates that the household is still eligible. If, based on the replacement report, the household is found ineligible or eligible for an amount less than the payment amount made in the month immediately past, the human service zone shall promptly notify the household of the right to a fair hearing and, if a hearing is requested within ten days from the date of the notice, the right to have payment reinstated to the payment amount made in the month immediately past.

History: Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-11. Good cause for failure to submit complete and timely monthly report.

Repealed effective January 1, 2017.

75-02-01.2-12. Determining claims of good cause.

Determinations concerning claims of good cause require the use of decisionmaking principles. These principles must be applied to the individual's statements and information to determine if the requirements of good cause are met. The decisionmaking principles are:

1. The individual claiming good cause is responsible to show that good cause exists.
2. Uncorroborated statements of fact are less believable than corroborated statements.

3. Statements by persons with a reputation for being untruthful are less believable than similar statements by persons without that reputation.
4. A reputation for being untruthful exists if the files maintained by the department, the human service zone, or the job opportunities and basic skills program employment contractor contain evidence of untruthful statements made by the individual, or if the individual has made untruthful statements that are a matter of public record.
5. Statements by individuals with a reputation for failures or delays in furnishing information necessary for official action are less believable than similar statements by individuals without that reputation.
6. A reputation for failures or delays in furnishing information necessary for official action exists if the files maintained by the department, the human service zone, or a job opportunities and basic skills program employment contractor contain evidence of any failure or delay, without good cause, to furnish reports, including monthly reports, necessary verifications, or a failure or delay in attending meetings or interviews intended to secure information necessary for official action.
7. A statement of fact, made by an individual with something to gain if that statement is regarded as true, is less believable than a similar statement made by an individual with little or nothing to gain.
8. An individual's explanations or reasons for claiming good cause must be judged by a prudent person concept. A prudent person is one who exercises those qualities of attention, knowledge, intelligence, and judgment that society requires of its members for protection of their own interests and the interests of others.
9. Statements of fact made by the individual claiming good cause, or by other individuals who support or oppose the claim of good cause, are not presumed to be either truthful or untruthful. Rather, statements of fact must be evaluated to determine if they are more likely than not or less likely than not to be true.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2009.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-13. Residence.

1. There is no durational state residence required for eligibility for benefits.
2. No individual who is otherwise eligible may be denied assistance under the program if the individual resides in the state.
3. A resident of the state is one who:
 - a. Is living in the state voluntarily with the intention of making the person's home there; or
 - b. At the time of application, is living in the state and is not receiving temporary assistance for needy families from another state.
4. For purposes of establishing the temporary assistance for needy families filing unit, a child is a resident of the state in which the child is living other than for a temporary basis. For all other purposes of this chapter, a child is a resident of the state in which the child is living.
5. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily.

6. Residence is retained until abandoned.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-14. Deprivation of parental support or care.

A dependent child must be shown to be both "deprived of parental support or care" and "needy", although a causal relationship between the two need not exist. The phrase encompasses the situation of any child who is in need and otherwise eligible, and whose parent has died, is continually absent from the home, or is physically or mentally incapacitated. The requirement applies whether the parent was the chief breadwinner or devoted himself or herself primarily to the care of the child and whether or not the parents were married to each other. The determination that a child has been deprived of parental support or care is made in relation to the child's natural or adoptive parents.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-15. Continued absence of a parent.

1. For purposes of this chapter:
 - a. "Deprived of parental support or care by reason of the continued absence of a parent" means a situation that occurs when all of the following factors are present:
 - (1) The parent is physically absent from the home;
 - (2) The nature of the parent's absence is such as to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and
 - (3) The known or indefinite duration of the absence precludes relying on the parent to perform the parent's functions in planning for the present support or care of the child.
 - b. A "parent's absence is such as to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child" only if one of these three functions is totally interrupted or finally terminated.
2. A determination that a parent's absence has or has not interrupted or terminated the parent's functioning must be supported by information provided by the applicant or otherwise available to the human service zone.
3. Except as provided in subsections 4 and 5, if all three of the conditions for showing deprivation by reason of the continued absence of a parent are met, the reason for the parent's absence and the length of the parent's absence is immaterial.
4. A parent who is performing active duty in uniformed service is "absent from the home" only if there is evidence that continued absence would have existed irrespective of the parent's serving in uniformed service. Acceptable evidence that such an absence exists includes proof of legal separation, desertion, or divorce, either final or in process. If there has been no legal action taken, some indication of how the parent came to be absent must be provided.

5. A parent temporarily living apart from the child or children while attending school or vocational training or working or seeking work in another community does not meet the requirements for continued absence as long as the parent continues to function as a parent, even if the level of support or care is deficient or diminished.
6. Types of parental absences frequently giving rise to dependency in children include:
 - a. Divorce. The continued absence of a parent may be established as the result of divorce.
 - b. Separation. Legal separation is an arrangement by which a husband and wife live apart, subject to a court order that may divide the parties' property, provide for spousal or child support, and provide for custody and visitation of children, but remain married. Such court orders may be temporary or permanent. Separation by mutual consent or agreement involves the discontinuance of the marital relationship without legal action. Continued absence of a parent as a result of this arrangement can be established if there is no collusion between the parents to render the family eligible for temporary assistance for needy families.
 - c. Imprisonment. Imprisonment of a parent is a type of parental absence that creates dependency among children. Continued absence exists only if the parent is sentenced to and serves a thirty-day or longer term of incarceration unless:
 - (1) The term actually served is less than the sentence imposed;
 - (2) The term served is shortened by order of the court; and
 - (3) Assistance has been issued before information about the shortened term is received by the human service zone.
 - d. Unmarried parenthood. A child born out of wedlock is deprived of parental support by reason of continued absence of a parent if the child's parents do not reside together.
 - e. Desertion. Desertion is the voluntary and willful abandonment, by a parent, of the parent's child or children without making adequate provision for the care and support of the child or children.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-16. Unemployment of the principal wage earner - Pay after performance.

Repealed effective July 1, 1997.

75-02-01.2-17. Death of a parent.

A child, if otherwise eligible for temporary assistance for needy families, may be deprived of parental care by reason of the death of a parent. The applicant shall verify that the deceased individual is the parent of the child.

History: Effective December 9, 1996; amended effective July 1, 1997.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-18. Incapacity of a parent.

1. A child, if otherwise eligible for temporary assistance for needy families, is deprived of parental support or care when the child's parent has a physical or mental condition, supported by current competent medical testimony, of such a debilitating nature as to reduce substantially or eliminate the parent's capacity either to earn a livelihood or to discharge the parent's responsibilities as a homemaker and provider of child care for a period of thirty days or more. In making a determination of incapacity to earn a livelihood, the department shall take into account the limited employment opportunities of persons with disabilities.
2. The incapacity must substantially reduce or eliminate employment in the parent's usual occupation. If the incapacity does not allow the parent to be able to return to the parent's usual occupation, once medically capable, the parent will be expected to adapt to another occupation. It does not matter whether a parent was employed or fulfilled the role of homemaker prior to the onset of the asserted incapacity. Incapacity is established either when the person is unable to earn a livelihood or to act as a homemaker. A parent may also establish incapacity by demonstrating that the parent has reached age sixty-five.
3. A determination that a parent is disabled or blind, made by the social security administration, constitutes adequate substantiation of incapacity for purposes of this section.
4. A parent continues to be incapacitated, for purposes of this section, if the incapacity is not reasonably subject to remediation, or if the parent makes reasonable progress toward remediation of the incapacity. For purposes of this section, reasonable progress toward remediation of the incapacity means cooperation with medical practitioners who prescribe a course of treatment intended to remediate or limit the effect of the incapacity, including physical therapy, counseling, use of prosthesis, drug therapy and weight loss, cooperation with vocational practitioners, cooperation with vocational and functional capacity evaluations, and reasonable progress in a course of training or education intended to qualify the parent to perform an occupation which, with that training or education, the parent would have the capacity to perform.
5. A parent who engages in activities inconsistent with the claimed incapacity may be determined to not be incapacitated.
6. The department may require a parent to demonstrate reasonable progress toward remediation of the incapacity, and may set reasonable deadlines for the demonstrations.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2014.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-19. Legal custody.

Repealed effective January 1, 2003.

75-02-01.2-20. Eligibility throughout month.

1. In the first month in which eligibility is established, based on any one application, the benefit amount is that pro rata portion of the monthly benefit amount equal to the percentage of the month remaining after the later of the first day of eligibility or the date of application, except:
 - a. In the case of a family that has entered North Dakota from a state which issues grants twice a month, the benefit amount is that pro rata portion of the monthly benefit amount

equal to the percentage of the month remaining after the later of the date coverage in the other state ends or the date of application; and

- b. The benefit amount may be adjusted to correct an underpayment or overpayment arising out of previous periods of eligibility.
2. In the second and subsequent months in which eligibility is established, based on any one application, if the monthly reporting requirements are met, the household continues to be eligible throughout the month if eligible for any portion of the month.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-21. Asset considerations.

1.
 - a. All assets that are actually available must be considered. Assets are actually available when at the disposal of a member of the household; when a member of the household has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when a member of the household has the lawful power to make the asset available or to cause the asset to be made available. A determination that an asset is deemed available is a determination that the asset is actually available.
 - b. Assets must be reasonably evaluated.
 - c. All assets owned individually or jointly by members of a household are deemed available to the household.
 - d. Assets owned jointly by a member of the household and an individual who is a member of a separate household, but has a legal obligation to support a member of the household, are presumed available to the household unless the applicant can show that the assets are in fact not available.
 - e. If the household can demonstrate that only a portion of an asset is available, only that portion may be considered.
 - f. An asset is not available if it cannot be practically subdivided or sold.
 - g. A stepparent's assets, whether owned exclusively by the stepparent or jointly with the parent, are deemed available in their entirety to the parent. Because the temporary assistance for needy families filing unit must include the parent, if technically eligible, the equity value of all assets, including the stepparent's assets, must fall within program asset limitations or the unit is ineligible.
 - h. An asset may be temporarily unavailable while the household is taking reasonable measures to overcome a legal impediment.
 - i. Assets ordinarily available to the household may be rendered temporarily unavailable to members of such a unit who are being served by shelters for abused persons and families while the legal ramifications of the circumstances that led to the need for such services are explored.
 - j. As in all instances in which there is a question of ownership, the household must be given the opportunity to present evidence in rebuttal of the presumption that a joint account is an available asset. A successful rebuttal may result in a finding that the funds in the joint account are in fact not owned by the household. For example, when the funds

are clearly available to the family only in the event of the coowner's death, access is restricted and the funds are therefore not an asset. The funds are likewise not an asset to the family if withdrawals from the account are possible only with the surrendering of the passbook, which is not accessible to the applicant or recipient, or with dual signatures and the coowner may not sign.

- k. An asset may be sold or exchanged for another asset. An asset acquired in an exchange or with the proceeds from a sale continues to be treated as an asset subject to the asset limits, exemptions, and exclusions applicable to the type of asset acquired. This subdivision does not supersede other provisions of this chapter which describe or require specific treatment of assets, or which describe specific circumstances that require a particular treatment of assets.
2. The financial responsibility of any individual for any applicant or recipient of temporary assistance for needy families is limited to members of the temporary assistance for needy families filing unit. Such responsibility is imposed upon applicants or recipients as a condition of eligibility. Except as otherwise provided in this section, the assets of the members of the temporary assistance for needy families filing unit are deemed available to an applicant or recipient, even if those assets are not actually contributed. For purposes of this subsection, biological and adoptive parents, but not stepparents, are treated as parents.
 3. Temporary assistance for needy families benefits, and any income, earned or unearned, which is taken into account in determining the amount of a grant for a particular month, may not be treated as an asset in that month.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-22. Asset limits.

No member of a household may be found eligible for benefits unless the value of the household's assets, not specifically excluded under this chapter, does not exceed three thousand dollars for a household consisting of one individual, six thousand dollars for households consisting of two individuals, and an additional twenty-five dollars for each additional individual. In all instances, including determination of equity, property must be realistically evaluated in accord with current market value. Any reasonable costs associated with liquidation of excess assets must be taken into account.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-23. Exempt assets.

The following assets are exempt from consideration in determining eligibility for temporary assistance for needy families benefits:

1. The home occupied by the household including trailer homes being used as living quarters, and the land upon which the home stands, up to twenty contiguous acres [8.09 hectares], if rural, and up to two acres [.81 hectare], if located within the established boundaries of a city;
2. Personal effects, wearing apparel, household goods, and furniture;
3. One car, van, or pickup of any equity value;

4. Indian trust or restricted lands, the proceeds from the sale thereof so long as those proceeds are impressed with the original trust, and the proceeds from the lease thereof so long as those proceeds are not commingled with other funds;
5. For twelve months from the month of receipt, any refund of federal income taxes made to a member of the household including the earned income tax credit, and any payment made to a member of the household by an employer, relating to advance payment of earned income tax credit;
6. Real property that the household is making a good-faith effort to sell;
7. Indian per capita funds and judgment funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exclusion;
8. The equity value of all assets owned by a member of the household who is a recipient of supplemental security income; and
9. The equity value of the assets, jointly owned by a program household member and a recipient of supplemental security income.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2014.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-24. Lump sums received by a member of the household.

1. All nonrecurring lump sum payments must be considered as an asset beginning the second month following the month of receipt. For that month, the remaining lump sum amount is included with all other nonexempt assets in determining eligibility.
2. Recurring unearned income lump sum payments received after an application has been filed for temporary assistance for needy families must be considered countable income and prorated over the period the payment is intended to cover. The prorated lump sum payment must continue to be counted if the case closes and reopens during the income prorate period in which the payment was received or reopens during the income prorate period immediately succeeding the income prorate period in which the case was closed.
3. For purposes of this section, "lump sum income or payment" includes retroactive monthly benefits provided under title II of the Social Security Act and other retroactive monthly benefits, payments in the nature of windfall, such as lottery or gambling winnings or inheritances, judgments, or settlements for injuries to person or property to the extent that the payment is not earmarked and used for the purpose for which it was paid such as burial costs, and repair or replacement of lost or damaged assets, and workers' compensation awards.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-25. Good-faith effort to sell real property.

A good-faith effort to sell is demonstrated only if the property owner:

1. Arranges for regular advertising, including classified advertisements in newspapers, post "for sale" signs, and marketing efforts made by real estate agencies;
2. Makes sales efforts including contacts with persons who respond to advertising efforts, persons known to be potential purchasers of property of the type offered, and entry into a listing agreement with a real estate agency;
3. Sets and publishes an asking price likely to result in a sale; and
4. Accepts any offer that meets or exceeds seventy-five percent of the published asking price.

History: Effective December 9, 1996.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-26. Disqualifying transfers.

1. The transfer of an asset, without adequate consideration, disqualifies the household from receipt of benefits. For a participating household, the disqualification begins the first benefit month after notice of adverse action. For a nonparticipating household, the period of disqualification begins with the month of application.
2. Length of disqualification is as follows:
 - a. One month for a disqualifying transfer of more than zero dollars, but less than two hundred fifty dollars;
 - b. Three months for a disqualifying transfer of two hundred fifty dollars or more, but less than one thousand dollars;
 - c. Six months for a disqualifying transfer of one thousand dollars or more, but less than three thousand dollars;
 - d. Nine months for a disqualifying transfer of three thousand dollars or more, but less than five thousand dollars; and
 - e. Twelve months for a disqualifying transfer of five thousand dollars or more.
3. Notwithstanding subsection 1, a transfer is not disqualifying if it is made by an individual, who is not a responsible relative, by removing the name of a member of the household from a jointly owned account to which no member of the household contributed, provided that the name of the household member is removed:
 - a. If the existence of the account is discovered by the human service zone while the household is in the process of applying for assistance, before the initial payment is certified; or
 - b. If the existence of the account is discovered by the human service zone while the household is receiving benefits, within thirty days after that discovery.
4. If the household member who caused the household's ineligibility due to a disqualifying transfer leaves the household, the remaining household members are no longer subject to the disqualification penalty only if the transferred asset was owned solely by the departing household member. Effective the day following the day in which the individual left the household, the remaining members may apply for benefits. If the transferred asset was jointly owned with any remaining member of the household, the disqualification period must continue as initially calculated.

5. When an individual who caused a household's ineligibility due to a disqualifying transfer moves to a different household, the new household may be disqualified from the receipt of benefits for a period beginning with the month in which the individual became a member of the new household and continuing for the remainder of the period of disqualification.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2017.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-27. Social security numbers.

Before the needs of an individual may be included in the benefit, the individual shall furnish a social security number or proof that the individual has applied for a social security number. An individual may not be initially included in or added to a household, including newborn children, until the individual's social security number or proof of application has been received. An individual who has been included in or added to a household upon providing proof that the individual has applied for a social security number shall provide a social security number within six months of receipt of the number or at the time of the next redetermination of eligibility following receipt of the number, whichever is earlier.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-28. Eligibility for aliens who arrived before August 22, 1996.

Repealed effective January 1, 2017.

75-02-01.2-28.1. Eligibility for aliens who arrived on or after August 22, 1996.

Repealed effective January 1, 2017.

75-02-01.2-29. Ineligibility due to participation in strikes.

1. No household is eligible for benefits under this chapter for any month in which any member of that household participates in a strike. If it is discovered that a household member participated in a strike during a month in which a benefit has already been paid for that month, the human service zone shall consider that amount as an overpayment subject to recovery.
2. For purposes of this section:
 - a. "Participating in a strike" means actual refusal, in concert with others, to provide services to one's employer.
 - b. "Strike" means a work stoppage, including a work stoppage due to the expiration of a collective bargaining agreement or a deliberate slowdown or interruption of operations by a body of workers to enforce compliance with demands made on an employer.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-30. Limitation on benefits to pregnant women.

A pregnant woman, not made ineligible by any other provision of this chapter, who is caretaker relative to no child, may receive temporary assistance for needy families based upon the standard of

need for one adult, without consideration of any additional pregnancy-related needs, no earlier than the sixth month of pregnancy. Medical verification of the pregnancy and the approximate date on which the pregnant woman is expected to deliver must be provided.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-30.1. Benefit cap.

Any household that includes a child born after June 30, 1998, may be subject to a benefit cap. If a parent was an adult during the probable month of conception and received assistance, or would have been eligible for assistance if not for a sanction or a disqualification, assistance will not be increased due to the birth of that child. The benefit cap does not apply if:

1. The parent disputes the probable month of conception and provides medical verification to substantiate the parent's claim;
2. The pregnancy is determined to be the result of rape or incest;
3. The case has been closed for more than twelve months; or
4. The benefit cap child resides with someone other than the parent who received assistance during the probable month of conception.

History: Effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-31. Age of parent - Effect on eligibility.

1. For purposes of this section:
 - a. "Adult caretaker" means a caretaker who is not a minor caretaker.
 - b. "Minor caretaker" means an individual, under the age of eighteen years, who has never been married and who:
 - (1) Is the parent of a dependent child living in the same household; or
 - (2) Is eligible as a pregnant woman in the third trimester of her pregnancy who is a caretaker relative to no child.
2. A minor caretaker who lives with the minor caretaker's own parents is eligible only if eligibility may be established after consideration of the income, but not the assets, of the parents with whom the minor caretaker lives, applying the following disregards:
 - a. The greater of one hundred eighty dollars or twenty-seven percent of earned income of each employed parent of the minor caretaker, for work expenses.
 - b. An amount equal to the standard of need, not including special allowances or special items of need, applicable to a household consisting of the minor caretaker's parents and any other individuals living in the home, who are or could be claimed as dependents of the minor caretaker's parents for federal income tax purposes, but who are not members of the household.

- c. Amounts paid by the minor caretaker's parents, to support individuals who are not members of the household, who are or could be claimed as dependents of the minor caretaker's parents for federal income tax purposes.
 - d. Amounts paid by the minor caretaker's parents, for child support or spousal support, health insurance premiums, or child or adult dependent care costs related to employment or employment and education or training, to individuals who are not members of the household.
- 3. An adult caretaker, who lives with the adult caretaker's own parent or legal guardian, if eligible, is eligible without consideration of the income or assets of any adult caretaker's parents with whom the adult caretaker lives, except that regular contributions of money made by such adult caretaker's parent to any member of the household must be considered.
- 4. For purposes of this section, a minor caretaker who becomes an adult while living with the minor caretaker's own parents or legal guardian is treated as an adult caretaker, effective the first day of the month in which the caretaker reaches age eighteen.
- 5. For purposes of this section, a minor caretaker who ends residency with the minor caretaker's own parent is treated as having ended residency on the first day of the month in which the minor caretaker left the minor caretaker's parent's home.
- 6. For purposes of this section, a minor caretaker who resumes residency with the minor caretaker's own parent is treated as having resumed that residency on the first day of the month after the month in which the minor caretaker resumed residency with the minor caretaker's parent.
- 7. A minor caretaker who does not live with either of the minor caretaker's own parents, if eligible, is eligible without consideration of the income or assets of the minor caretaker's parent except that regular contributions of money made by a minor caretaker's parent to any member of the household must be considered. The minor caretaker's parents remain legally responsible for the minor caretaker's support. The matter must be referred to the child support agency for the purpose of securing support from the minor caretaker's parents as well as for the purpose of securing support for the minor caretaker's child from the child's absent parent.
- 8. No household may include the child of a minor caretaker, living with that minor caretaker, during any time when the minor caretaker is living in a foster home or child care institution and receiving a foster care maintenance benefit. Any amount reasonably necessary to the maintenance of such a child of the minor caretaker is included in the minor caretaker's foster care maintenance benefit.
- 9. Except as provided in subsection 10, a minor caretaker must live in the home of the minor caretaker's own parent, legal guardian, or other adult relative, or in a state-approved adult supervised supported living arrangement.
- 10. A minor caretaker may show there is good cause to live in a place other than required in subsection 9. Good cause exists if, based on evidence provided to the human service zone:
 - a. The minor caretaker has no living parent or legal guardian;
 - b. No parent or legal guardian of the minor caretaker will allow the minor caretaker to live in the home of the parent or legal guardian;
 - c. The physical or emotional health or safety of the minor caretaker or the minor caretaker's child would be jeopardized if they lived with the minor caretaker's parent or legal guardian; or

- d. After reasonable search, the whereabouts of the minor caretaker's parents or legal guardian are unknown.
- 11. A household consisting of two natural or adoptive parents may be eligible for benefits when at least one parent is age sixty-five or older, if all factors of eligibility are met and the household's countable income is less than the temporary assistance for needy families standard of need.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-32. Value of benefit.

- 1. The reasonable value of the physical and custodial care or support that has been furnished to the child or children of a noncustodial parent by the program is, for each month such child or children are eligible, the amount of the assistance received multiplied by the number of children of the noncustodial parent in the household and divided by the total number of children in the household.
- 2. If a stepparent is eligible to receive assistance, the reasonable value of the physical and custodial care or support which has been furnished to the child or children of a noncustodial parent by the program is, for each month such child or children are eligible, the amount of assistance received multiplied by the number of children of the noncustodial parent in the household and divided by one plus the total number of children in the household.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-33. Assignment of right to support.

- 1. The child support agency must be notified of any child, except a benefit cap child or a child in receipt of supplemental security income, who is a member of the household and whose eligibility for assistance is based on the continued absence of the child's parent from the home.
- 2. The applicant and, upon request, any member of the household for whom temporary assistance for needy families is requested, as a condition of eligibility shall:
 - a. Execute all necessary documents to protect the right of any member of the household, and the agency, to child support from the absent parent of such member; and
 - b. Cooperate in obtaining support and in establishing paternity of any child in the household with respect to whom paternity has not been established.
- 3. The requirement for the assignment of rights to support from absent parents continues through the month in which the latest of the following occurs:
 - a. The child reaches age eighteen.
 - b. The child graduates from high school, provided that graduation does not occur after the month of the child's nineteenth birthday.
 - c. Child support obligations, imposed by a court for periods after the child reaches age eighteen, are terminated.

4. For purposes of this section:
 - a. "Cooperate in obtaining support and in establishing paternity" includes:
 - (1) Appearing at a state or local office designated by the child support agency to provide information or evidence relevant to the case;
 - (2) Appearing as a witness at a court or other proceeding;
 - (3) Providing credible information, or credibly attesting to lack of information;
 - (4) Paying to the department any support funds received that are covered by the assignment of rights; and
 - (5) Taking any other reasonable steps to assist in establishing paternity and securing child support.
 - b. A child support agency shall determine if the applicant, recipient, or any member of the household, who is required to cooperate in obtaining support and establishing paternity, has done so. In making that determination, the child support agency shall consider if any information provided, or attestation to lack of information, is corroborated by relevant circumstances and is credible. Information provided, or an attestation to lack of information, is not presumed correct.
5. An individual shall cooperate in establishing paternity of a child born out of wedlock for whom the individual can legally assign rights, and obtaining child support and payments for the individual and any other individual for whom the individual can legally assign rights, unless cooperation is waived by the human service zone for good cause.
6. The custodian who refuses to cooperate in obtaining support, including establishing paternity, is ineligible to receive assistance. If the custodian continues to refuse to cooperate, the entire household shall become ineligible for assistance and may not reapply for one full benefit month following case closure.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-34. Good cause for failure or refusal to cooperate in obtaining support or establishing paternity.

1. The human service zone, for good cause, may waive the requirement that an individual cooperate in obtaining support and establishing paternity if it determines that cooperation is against the best interests of the child. A human service zone may determine that required cooperation is against the best interests of the child only if:
 - a. The individual's cooperation in establishing paternity or securing child support is reasonably anticipated to result in:
 - (1) Physical harm to the child for whom support is to be sought;
 - (2) Emotional harm to the child for whom support is to be sought;
 - (3) Physical harm to the parent or caretaker relative with whom the child is living which reduces that individual's capacity to care for the child adequately; or

- (4) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces that individual's capacity to care for the child adequately; or
 - b. At least one of the following circumstances exists, and the human service zone believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure child support would be detrimental to the child for whom support would be sought:
 - (1) The child for whom support is sought was conceived as a result of incest or forcible rape;
 - (2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or
 - (3) The individual, otherwise required to cooperate, is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep or relinquish the child for adoption, and the discussions have not gone on for more than three months.
2. Physical harm and emotional harm must be of a serious nature in order to justify a waiver.
3. A waiver due to emotional harm may only be based on a demonstration of an emotional impairment that substantially impairs the individual's functioning. In determining a waiver, based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the caretaker relative, the human service zone shall consider:
 - a. The present emotional state of the individual subject to emotional harm;
 - b. The emotional health history of the individual subject to emotional harm;
 - c. Intensity and probable duration of the emotional impairment;
 - d. The degree of cooperation to be required; and
 - e. The extent of involvement of the child in the paternity establishment or support activity to be undertaken.
4. In all cases in which the human service zone has determined that good cause exists based on a circumstance subject to change, a determination to grant a waiver must be reviewed, at a minimum, once every twelve months to determine if the circumstances which led to the waiver continue to exist.
5. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2014.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-35. Combined requirements.

1. The department shall establish combined requirements for the temporary assistance for needy families standards of need that represent amounts of income, by household size and living arrangement, necessary for a standard of living compatible with decency and health.
2. The six basic items of need considered in the temporary assistance for needy families cash grant are:

- a. Shelter;
- b. Food;
- c. Clothing;
- d. Personal needs such as combs, toothbrushes, toothpaste, razor blades, sanitary supplies, and haircuts;
- e. Household supplies such as cooking utensils, laundry detergent, bedding, and towels; and
- f. Fuel and utilities.

History: Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-35.1. Time limit on certain benefits - Exceptions.

Except as otherwise provided in this section, no household may be provided assistance if that household includes an adult who has received assistance under a temporary assistance for needy families program provided by any state or Indian tribe for sixty months, whether or not consecutive, after the date that program commenced.

1. In determining the number of months an adult received temporary assistance for needy families, the department shall disregard any month in which:
 - a. The adult was a minor child and not, at the same time, a head of household or married to a head of household; or
 - b. No adult member of the household was included in the benefit for the federal lifetime count under title 45, Code of Federal Regulations, part 264.1.
2. In determining the number of months an adult received temporary assistance for needy families, the department shall disregard any month in which the adult lived in Indian country if, during the month, at least fifty percent of the adults living in that Indian country were unemployed. The department shall determine the percentage of unemployed adults living in Indian country by any means the department determines to be appropriate and reliable, provided that the means chosen are consistent with requirements imposed under federal law.
3. This section may not be applied to preclude eligibility for members of a household if:
 - a. The eligible adult caretaker in the temporary assistance for needy families household reaches the age of sixty-five years on or before the sixty-first month in which that individual receives temporary assistance for needy families benefits;
 - b. The eligible adult caretaker is determined to be incapacitated or has been determined to be disabled by the social security administration;
 - c. The household includes an individual who is a victim of domestic violence. Domestic violence includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members; or

- d. The condition of a child or a spouse precludes care by a child care provider, in-home care, or outside of home care and prevents the caretaker from employment.
4. For purposes of this section:
- a. An adult caretaker may be treated as "incapacitated" if the individual is incapacitated or treated as incapacitated under section 75-02-01.2-18; and
 - b. "Indian country" means:
 - (1) All lands within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation;
 - (2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
 - (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.
5. The number of households that may be exempted from the temporary assistance for needy families lifetime limit may not exceed twenty percent of the average monthly number of households receiving temporary assistance for needy families assistance.
6. If a household must submit a written request to the human service zone requesting to be exempt from the sixty-month lifetime limit, the written request must explain the reason for the exemption and must include clear and convincing documentation from a professional service provider.
7. During the exemption period from the lifetime limit, all temporary assistance for needy families, job opportunities, and basic skills program policies apply.
8. Applicants and recipients that appeal the denial for an exemption from the lifetime limit may request in writing a fair hearing within the thirty days from the date of the denial or closure notice. Assistance is not continued pending the fair hearing.

History: Effective July 1, 1997; amended effective January 1, 2003; June 1, 2005; January 1, 2009.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-36. Determining membership in training, education, employment, and management household.

Repealed effective January 1, 2003.

75-02-01.2-37. Determining membership of the household.

- 1. The household must include at least one eligible child unless:
 - a. The only child receives supplemental security income benefits; or
 - b. The household includes a pregnant woman in the last trimester of her pregnancy.
- 2. Any parent and spouse of the parent of a dependent child who reside in the home must be included in the household.

3. If the household includes a parent and a needy dependent child, any other child who resides in the home, for whom assistance is sought, and to whom the parent is a relative by birth, marriage, or adoption, must be included in the household.
4. If the household includes a parent and the parent's nonneedy dependent child or children, any other needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, must be included in a household which consists only of the needy dependent child or children.
5. If the household includes a parent, the parent's needy dependent child or children, and other dependent children to whom the parent is a relative by birth, marriage, or adoption, the household must include the parent and the parent's needy dependent child or children, and may include any needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, but exclude any nonneedy dependent child or children who is not the parent's child but to whom the parent is a relative by birth, marriage, or adoption, and who is not a brother or sister, whether by the whole or half-blood or by adoption, to a needy dependent child.
6. If the household includes a stepparent but does not include a natural or adoptive parent, the household must include the stepparent of the natural or adoptive parent's needy dependent child or children and any brothers and sisters of the needy dependent child, whether by whole or half-blood or by adoption, and any natural or adoptive children of the stepparent.
7. A minor parent who lives in the home of a parent of the minor parent is treated as a dependent child in a household that includes a parent of the minor parent unless:
 - a. The minor parent is married or formerly married and divorced, but not formerly married in an annulled marriage;
 - b. The minor parent has resided with the other parent of the minor parent's child; or
 - c. The minor parent has lived separately and apart from the minor parent's parent or lawful guardian, with the consent or acquiescence of the minor parent's parent or lawful guardian, while managing the minor's own financial affairs regardless of the source of income, so long as it is not from any activity declared to be a crime by the laws of North Dakota or the United States.
8. Household members who are receiving supplemental security income benefits may not be included in the household.
9. Household members who are ineligible for assistance because of a sanction or disqualification imposed under this chapter must be included in the household for the purpose of consideration of income and assets of the sanctioned household member.
10. Household members who are ineligible for assistance because they do not meet citizenship or alienage requirements imposed under this chapter must be included in the household for the purpose of consideration of income and assets of those household members.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-38. Determining membership of the food stamp filing unit.

Repealed effective January 1, 2003.

75-02-01.2-39. Determining membership of the low income home energy assistance program filing unit.

Repealed effective January 1, 2003.

75-02-01.2-40. Combined supplemental security income and temporary assistance for needy families households.

1. With respect to the same month, no individual may receive assistance through both the supplemental security income program and the temporary assistance for needy families program.
2. An individual who is receiving supplemental security income benefits may be a member of a household as an ineligible caretaker relative for a child in the household.
3. Assets or income owned solely or jointly by the recipient of supplemental security income benefits, including that portion of income disregarded in determining eligibility for supplemental security income benefits, may not be considered available to the members of the household.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-41. Recipients living out of state.

An individual who receives assistance is free to travel without a loss of eligibility so long as the individual remains a resident of the state. An individual remains a resident of the state when absent from the state for brief periods provided the individual returns to the state by the last day of the month following the month the individual left. An individual temporarily living out of state who remains a resident of North Dakota is subject to the same standards and procedures for eligibility determinations and budgeting as a similarly situated individual present in the state.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-42. Grant amount in whole dollars.

Benefits are granted in whole dollar amounts. In calculating benefit amounts, numbers are rounded down to the nearest whole dollar.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-43. Benefits less than ten dollars.

No benefit payment may be issued if the calculated benefit is less than ten dollars, but the household must be treated for all other purposes of this chapter, including the application of the retrospective budgeting cycle, as a household to which the department makes a benefit payment.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-44. Income described.

1. All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant or recipient; when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when the applicant or recipient has the lawful power to make the income available or to cause the income to be made available. In specific circumstances, income available to persons other than the applicant or recipient is deemed available. This subsection does not supersede other provisions of this chapter which describe or require specific treatment of income, or which describe specific circumstances that require a particular treatment of income.
2. Income may be earned, unearned, or deemed. It may be received regularly, irregularly, or in lump sums. Income may be counted or excluded. It may be disregarded for some purposes, but not for others. Other sections of this chapter explain those treatments.
3. Each household member must accept any earned rights benefits to which entitled. Each household member must provide verification as to whether the household member is qualified for earned rights benefits; and, if qualified, must make application for those benefits and secure those benefits if qualified.
4. Earned income includes:
 - a. Wages, salaries, commissions, bonuses, or profits received as a result of holding a job or being self-employed;
 - b. Earnings from on-the-job training including the Workforce Innovation and Opportunity Act;
 - c. Wages received as the result of participation in a program under the Older Americans Act;
 - d. Wages received from sheltered workshop employment;
 - e. Sick leave pay or loss-of-time private insurance paid for the loss of employment due to illness or injury;
 - f. Compensation for jury duty;
 - g. Tips;
 - h. Income from boarders;
 - i. Income from room rentals;
 - j. Income from participation in job corps; and
 - k. Income from internship or stipends.
5. Unearned income includes:
 - a. Social security, veterans benefits of any kind, private pensions, pensions provided to former employees of public entities, workers' compensation, unemployment benefits, union compensation during strikes, and military allotments;
 - b. Rents paid without an appreciable amount of personal involvement and effort provided as a service to the tenant, mineral lease rentals, bonus payments and royalties, dividends, and interest paid;

- c. Cash contributions;
 - d. Cash gifts;
 - e. General assistance payments made to any member of the household by a human service zone or the bureau of Indian affairs; and
 - f. Any other form of income that is not earned income.
6. Deemed income includes:
- a. In the case of income deemed from a stepparent, that stepparent's entire gross income less:
 - (1) The greater of one hundred eighty dollars or the twenty-seven percent standard employment expense allowance;
 - (2) An additional amount for the support of the stepparent and any other individuals living in the home whose needs are not taken into account in making the eligibility determination and who are or could be claimed by the stepparent as dependents for federal income tax purposes, but not including any sanctioned individuals or individuals who are required to be included in the household, but have failed to cooperate, equal to the standard of need amount for a family group of the same composition and size as the stepparent and those other individuals described in this paragraph;
 - (3) Spousal support payments, child support payments, health insurance premiums, and child or adult dependent care costs related to employment or employment and education or training actually being made to or on behalf of persons not living in the home; and
 - (4) Amounts actually being paid to individuals not living in the home who are or could be claimed by the stepparent as dependents for federal income tax purposes.
 - b. In the case of income deemed from the sponsor of a sponsored alien, the income of the sponsor and the sponsor's spouse is calculated by allowing:
 - (1) The earned income disregard of the greater of one hundred eighty dollars or the twenty-seven percent standard employment expense allowance; and
 - (2) A disregard equal to one hundred thirty percent of the federal poverty level equal to the household size of the sponsor.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; January 1, 2017.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-45. Excluded income.

- 1. The following income must be excluded in determining eligibility for assistance:
 - a. All earned income of any child, except a minor parent, attending elementary or high school full time;
 - b. A loan from any source that is subject to a written agreement requiring repayment by the recipient;

- c. The value of general assistance benefits provided in voucher form by any human service zone, tribe, or the bureau of Indian affairs;
 - d. Assistance payments from other programs, agencies, or organizations that:
 - (1) Do not serve the same purposes as the temporary assistance for needy families cash grant; or
 - (2) Provide goods or services that are not included in the standard of need;
 - e. Scholarships, grants, stipends, and awards for educational purposes, which are given because of need or achievement by the bureau of Indian affairs, other federal sources, state sources, civic, fraternal, and alumni organizations, or relatives, to undergraduate-level and graduate-level students;
 - f. Workstudy program income earned by an undergraduate-level or graduate-level student;
 - g. Family subsidy program payments made by the department;
 - h. Returned deposits from rentals and from utility companies;
 - i. Adoption assistance and subsidized adoption payments;
 - j. Foster care payments, subsidized guardianship payments, and payments received as a retainer for services as an emergency shelter foster home; and
 - k. Irregular cash gifts, which total, in any month, less than five hundred dollars per household received for a special occasion, such as Christmas, birthdays, or graduations.
2. For purposes of this section, "child" means an individual:
- a. Under age eighteen; or
 - b. Age eighteen and a full-time student in elementary or high school, or in an equivalent level of vocational or technical training, if, before attaining age nineteen, such student may reasonably be expected to complete the high school or vocational training curriculum.

History: Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; January 1, 2017.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-46. Gross income test.

Repealed effective January 1, 2003.

75-02-01.2-47. Budgeting process.

- 1. Budgeting is the process by which a household's need is determined. Through the process available, income is matched against the standard of need.
- 2. If nonexcluded income equals or exceeds the standard of need, the household is not needy, and the household is ineligible for assistance.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-48. Net income test.

The applicant or applicant household is subject to a net income test. The net income test compares the standard of need, personal needs allowance for out-of-home eligible individuals, and special items of need to the adjusted net income. If the adjusted net income is less than the standard of need, personal needs allowance, and special items of need, the household passes the net income test and the cash grant amount is calculated.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-49. Income considerations.

1. All income must be considered in establishing eligibility and in determining the cash grant amount.
2. Income must be reasonably evaluated. A determination that income is deemed available is a determination that the income is actually available.
3. Income from wages, or any other source, must be considered received in the month in which it was actually received or considered to be available. Wages held at the request of an employee must be considered income in the month in which the wages would otherwise have been paid by the employer.
4. A member of a household who receives regular income, other than on a monthly basis, may occasionally receive an extra check which causes the unit to become ineligible in the month of receipt. If the receipt of additional income is anticipated to result in ineligibility for only one month, the case may be suspended, rather than closed.
 - a. If the additional income is received in the month of application, the first month of prospective budgeting, the application must be denied.
 - b. If the additional income is received in the month after the month of application, the second month of prospective budgeting, the case must be prospectively suspended, and all income, except income derived from the last check received in that month, from the source of regular income, must be retrospectively budgeted.
 - c. If the additional income is received in any month except the month of application or the month after the month of application, all income must be retrospectively budgeted.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 59-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-50. Earned income considerations.

1. Earned income must be verified and documented in the case record. Earned income may be received from a variety of sources.
2. Net earned income is determined by adding monthly net income from self-employment to other monthly earned income and subtracting the applicable deductions and disregards.
3. Except as provided in subsection 4, monthly self-employment income is determined as follows:
 - a. Monthly self-employment income is one-twelfth of the business or farm income calculated from the net profit of an individual's income tax forms and schedules, plus

gains or minus losses related to self-employment business that are expected to continue during the current year, minus any type of income that must be considered unearned income, and minus expenses with the exception of depreciation and depletion.

- b. For a business that has been operating for less than a full tax year, monthly self-employment income is the gross income from the individual's income tax forms and schedules, plus gains or minus losses related to the self-employment business that are expected to continue during the current year, minus any type of income that must be considered unearned income and minus expenses, with the exception of depreciation and depletion, divided by the number of months the business has been in operation.
 - c. In the case of a business that furnishes room and board, monthly gross receipts less one hundred dollars per room and board client.
 - d. If the most recent available federal income tax return does not accurately predict income because the business has been recently established, because the business has been terminated or subject to severe reversal, because the applicant or recipient makes a convincing showing that actual net income is substantially less than the amount determined, because the individual has not filed an income tax return, or because the human service zone determines for any reason that actual net profits are substantially greater than the amount determined based on the most recent available federal income tax return, an amount determined by the human service zone to represent the best estimate of monthly net income from self-employment must be used. If the most recent available federal income tax return is not used or if the individual did not file a federal income tax return, the self-employed individual shall provide the best information available on income and expenses. Income and expense statements, when available, must be used as a basis for computation.
4. If earnings from more than one month are received in a lump sum payment, the payment must be divided by the number of months in which the income was earned, and the resulting monthly amounts are attributed to each of the months with respect to which the earnings were received.
 5. Income received on a contractual basis is allocated equally to each of the months covered by the contract, regardless of when the contract payments are actually received, and is deemed available to be received in the months to which income is allocated.
 6. The standard employment expense allowance recognizes all costs associated with employment, including transportation, uniforms, social security contributions, and income tax withholding. This standard allowance applies to adult household members and nonstudent dependent children who are employed either full time or part time.
 7. The standard employment expense allowance is the greater of one hundred eighty dollars or twenty-seven percent of gross earned income per month. This standard employment expense allowance applies to all individuals who receive an employment expenses allowance, including stepparents and parents of minor parents.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2014.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-51. Disregarded income.

1. The department shall establish an employment incentive, and an employment incentive limit, to reasonably encourage household members to earn income.

2. If permitted under subsection 3, income must be disregarded, as an employment incentive, in determining the cash grant amount.
 - a. The greater of one hundred eighty dollars or twenty-seven percent of the household's monthly gross earned income, except earnings of any child who is a full-time elementary or high school student, is disregarded as a standard employment expense allowance. The amount remaining is net earned income.
 - b. Any net earned income that exceeds the income incentive limit is treated as countable earned income.
 - c. A portion of net earned income that is equal to or less than the income incentive limit may be disregarded, under this subdivision, in determining countable earned income.
 - (1) If an applicant has earned income in the month of application or the month after the month of application, at least fifty percent of the net earned income may be disregarded for six months beginning the month in which the earned income is first budgeted.
 - (2) If a recipient has earned income, at least thirty-five percent of the net earned income may be disregarded for months seven through nine beginning the month earned income is first budgeted.
 - (3) If a recipient has earned income, at least twenty-five percent of the net earned income may be disregarded for months ten through thirteen after the month earned income is first budgeted.
 - (4) If a recipient has earned income, no net earned income may be disregarded under this subdivision after the thirteenth month after the month earned income is first budgeted.
 - (5) Individuals that have received a full thirteen months of the incentive known as the time-limited percentage will not be eligible for this incentive again.
 - d. An employed household member who receives an employment incentive disregard for a period of at least six consecutive months is provided employment incentive disregards of at least fifty percent for the first six months beginning the month in which the income is first budgeted, at least thirty-five percent for months seven through nine, at least twenty-five percent for months ten through thirteen, and none thereafter.
 - e. An employed household member who receives an employment incentive disregard for a period of less than six consecutive months is, upon reemployment, provided the employment incentive disregards the member would have received if the first month of reemployment was the first month income is budgeted retrospectively.
 - f. If an employed household member, who is receiving the employment incentive disregard, voluntarily terminates employment and is unable to show good cause for failure or refusal to participate, the employment incentive disregard cycle continues as if the household member was employed.
 - g. If any nondisregarded income remains, a health insurance premium, or paid child or spousal support, if applicable, may be disregarded.
 - h. If any nondisregarded income remains, child and dependent care costs that are employment-related or a combination of employment-related and education or training-related may be disregarded.

3. An income disregard is available only if the eligible employed individual previously received assistance, but has not completed the thirteen-month earned income employment incentive disregard cycle, including months in which the earned income disregard was unavailable because:
 - a. No payment was made because the calculated cash grant was less than ten dollars; or
 - b. The household voluntarily requested termination of assistance for the primary purpose of avoiding completion of the earned income employment incentive disregard cycle or any part of that cycle.
4. If, in any month, additional income received from a recurring source causes the household to be suspended as ineligible for one month, the month of suspension does not count as a month for purposes of this section.
5. Nonhousehold member deduction for stepparent and minor parent budgeting, if applicable, may be made.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011; January 1, 2017.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-52. Voluntary quit or refusal of employment.

No household member, except a dependent child, may refuse a bona fide offer of employment or training for employment, or terminate employment, without good cause, within thirty days before the date of application.

1. If an offer of employment or training was made through job service North Dakota, job service North Dakota shall determine if a bona fide offer was made and if there was good cause for refusing it.
2. If an offer of employment or training was made other than through job service North Dakota, the human service zone shall determine if a bona fide offer was made and if there was good cause for refusing it, considering the following factors:
 - a. Whether there was a definite offer of employment at wages meeting any applicable minimum wage requirements and that are customary for such work in the community;
 - b. Whether there were any questions as to the physical or mental ability of the household member to engage in the offered employment or training for employment;
 - c. Whether there were any questions of the working conditions such as risks to health, safety, or lack of workers' compensation protection;
 - d. Whether the household member had a way to get to or from the particular job, including evidence the household member reasonably attempted to arrange for transportation;
 - e. Whether, as a condition of being employed, the household member would be required to join a company union, or to resign or refrain from any bona fide labor organization, or would be denied the right to retain membership in and observe the lawful rules of any such organization;
 - f. Whether the position offered is vacant directly due to a strike, lockout, or other labor dispute;

- g. Whether the work is at an unreasonable distance from the household member's residence, provided one-way traveltime of one hour or less may not be treated as an unreasonable distance;
 - h. Whether gross wages are less than the allowable employment expense and child care or adult dependent care;
 - i. Whether an individual's substantially continuous presence in the household is necessary to care for another individual in the household to whom the individual owes a legal duty to provide care, who has a condition, verified by reliable medical evidence, which does not permit self-care or care by another household member; and
 - j. Whether the individual is a victim of domestic violence.
3. If it is determined that a household member voluntarily quit employment or a bona fide offer of employment or training was refused by a household member, without good cause:
- a. In the case of a recipient household, the member who voluntarily quits a job or refuses a bona fide offer of employment or training for employment is subject to sanction through the job opportunity and basic skills program, if the individual is required to participate in the program; and
 - b. In the case of an applicant household, the entire household is ineligible for the thirty days following the actual date of refusal or termination of employment.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-53. Deduction for dependent care.

- 1. A deduction for a member of a household who is an employed caretaker relative may be made for the cost of necessary care of a child or incapacitated adult who is a member of the household, living in the home, and receiving assistance.
- 2. The deduction may not be made for the cost of dependent care provided by the caretaker relative's child or stepchild who is under twenty-one years of age, unless:
 - a. The provider of dependent care does not live in the home occupied by the household;
 - b. The provider of dependent care is at least eighteen years of age;
 - c. The provider of dependent care was not claimed as a dependent on the most recent federal income tax return filed by the caretaker relative;
 - d. A bona fide relationship of employer and employee exists between the caretaker relative and the provider of dependent care; and
 - e. The provider of dependent care is not a member of the caretaker relative's household.
- 3. The deduction may not be made for the cost of dependent care provided to a child by that child's stepparent who lives in the home occupied by the household or by the child's natural or adoptive parent.
- 4. The deduction is for the lesser of the actual cost of care or limits established under the child care assistance program based on the age of the child.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-54. Unearned income considerations.

1. Unearned income must be verified and documented in the case record.
2. All unearned income must be treated as available in the month in which the income is received unless the income is disregarded. Unearned income must be applied to determine eligibility for, and the amount of, the household's monthly cash grant.
3. All nonexempt unearned income must be considered available in the month in which it is received. Unearned income is usually received at fixed intervals and at regularly scheduled dates. State or federal assistance payments such as supplemental security income or social security received on a recurring basis must be treated as received once per month, even if mailing cycles may cause two payments to be received in one month and none received in another month.
4. Unearned income received annually or received in regular annual totals, but in irregular intervals, must be considered available, in each month, in an amount equal to one-twelfth of the annual total. The twelve-month period may be a calendar year or other twelve-month fiscal period appropriate to the nature of the payment. Sources of income appropriate for this treatment include:
 - a. Nonexcluded lease payment income deposited in and disbursed through individual Indian moneys accounts maintained by individual Indians by the bureau of Indian affairs as proceeds from the lease of lands held by the federal government in trust for the Indian;
 - b. Lease payments made to persons for the use of lands occupied or owned by those persons unless the lease specifically provides for monthly payments or unless the lease is for a total term of less than one year; and
 - c. Mineral lease payments, however denominated, except initial leasing bonus payments.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-55. Reinstatement following suspension or case closing.

1. If assistance is reinstated after a suspension of one month, all factors of eligibility must be considered to determine eligibility. If eligibility exists, the amount of assistance is determined based on two-month retrospective budgeting.
2. If the household is for any reason ineligible in the month following the month of a suspension, the case must be closed.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-56. Computing payment for first and second months of eligibility.

If an applicant household has not received assistance in the preceding calendar month:

1. Assistance for the household must be prorated based on the date of request or the date of eligibility, whichever is later; and
2. The human service zone shall compute the amount of the cash grant for the household for the initial month of eligibility and the month following using prospective budgeting. The human service zone shall otherwise compute the amount of assistance provided to the household using retrospective budgeting.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-57. Computing payment for months following the second month of eligibility.

The human service zone shall compute assistance for months following the second month of eligibility through two-month retrospective budgeting.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-58. Computing payment if individuals are added to the household.

1. If the individual being added to a household did not receive assistance in the previous month, assistance for the added individual is based on the pro rata portion of the additional monthly cash grant amount equal to the percentage of the month remaining after:
 - a. The date of birth of a newborn, provided that the request for the newborn is made within ten days of the date of birth and the newborn's social security number or application for social security number and verification of birth are furnished within thirty days of the request; and
 - b. In all other cases, the later of the date of the request or the date the individual becomes eligible.
2. If the individual being added to an existing household received a temporary assistance for needy families grant from another state in the preceding calendar month:
 - a. The added individual's cash grant must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and
 - b. The human service zone shall compute the added individual's cash grant for the initial month of eligibility and the month following using prospective budgeting.
3. If the individual being added to an existing household received a temporary assistance for needy families grant in North Dakota during the preceding calendar month:
 - a. The added individual's benefits must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and
 - b. The human service zone shall compute the added individual's cash grant for the initial month of eligibility and the month following by continuing the budget methodology which was used in the preceding month.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-59. Computing payments if individuals leave the household.

1. If an individual who was a household member leaves the household during a benefit month, the individual is included in the household during that month.
2. The human service zone shall determine eligibility for the remaining members of the household, in the month following the month in which the former household member left, through retrospective budgeting.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-60. Computing payment if stepparent income is deemed.

1. The amount of a household's cash grant must be reduced by the deemed income of a stepparent who lives in the home, but who is not a member of the household.
2. To encourage marriage among single-parent families and assist those families when the primary individual in a household marries, the income of the stepparent must be disregarded in determining the cash grant for the first six months, effective the month of the marriage. This subsection applies to recipients only, but not to applicants. No six-month disregard of stepparent income is allowed in situations when a primary individual marries before receiving benefits.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2017.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-61. Computing benefits when an individual's needs are deleted from the cash grant.

If an individual is subject to sanction, that individual's needs are removed from the cash grant and that individual's income and assets must be considered in determining the eligibility and needs of the remaining members of the household.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-62. Computing payment for a child in boarding school.

1. If a child leaves the residence occupied by the household to attend boarding school, the child is treated as having left on the first day of the month following the month in which the child actually left.
2. If a child returns from boarding school to the residence occupied by the household for reasons other than home visits, and the caretaker relative notifies the human service zone of the return or anticipated return by the fifth day of the month of actual return, the child is treated as having returned on the first day of the month of actual return, but is otherwise treated as having returned on the first day of the month following the month of actual return.
3. Payment for any month in which a child who is a member of the household is in boarding school, or is treated as in boarding school, is, with respect to that child, limited to an allowance for clothing and personal needs.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-63. Budgeting in unusual circumstances.

1. Except as provided in subsection 3, if an eligible child lives in the home of a relative who is not the child's parent, the relative is ineligible if the relative's spouse also lives in the home.
2. If an eligible child lives in the home of a relative who is not the child's parent, and the spouse of that relative does not also live in the home, the relative:
 - a. Must be excluded from the household if the relative's income and assets would cause the household to be ineligible; and
 - b. May be included in the household if the relative requests inclusion and the relative's income and assets do not cause the household to be ineligible.
3. Except as provided in subsection 5, if an eligible child lives in the home of a relative who is not the child's parent, but who is, and could in the absence of that child be, a member of a household which includes the spouse of the relative, the eligible child must be added as a member of the household of the relative.
4. Except as provided in subsection 5, if two or more eligible children are living in the home of an ineligible relative who is not a parent of either child, all eligible children must be included in a single household.
5. An individual who is a caretaker relative in a household may act as a temporary payee for a child who is a member of another household and with respect to whom the individual is a relative, while that child lives temporarily with the individual, to preserve the child's usual living arrangement with that child's caretaker relative who is:
 - a. Hospitalized; or
 - b. Incarcerated for ninety days or less.
6. If two or more relatives, who are each eligible caretakers for one or more children but who are not married to each other and who have no children in common living in the household, live together, each caretaker and the child or children with respect to whom that caretaker is a relative must be budgeted as a household.
7. If a child lives with a relative who receives supplemental security income benefits, budgeting is based on the number of eligible individuals in the household.
8. If a child lives with a parent whose needs are deleted from the benefit due to the parent's failure to cooperate in obtaining support and in establishing paternity or in the job opportunities and basic skills program, the parent's income and assets must be considered in determining eligibility for the remaining members of the household. The income of the parent is subject to any applicable income disregards.
9. If an eligible caretaker leaves a child in the care of another individual while the caretaker pursues an educational program in another community, budgeting for the household must be done as if the unit resided together.

10. a. If a member of a household is hospitalized or residing in a halfway house, a drug and alcohol treatment facility, the North Dakota state hospital, a nursing home, or a swing bed facility, and there is a medical plan that the individual may return to the household:
 - (1) No reduction in assistance may be made for the first three full months if the individual receives a cash grant, but the needs of the individual must be reduced thereafter to a forty-five dollar clothing and personal needs allowance; and
 - (2) Effective the first day of the month following the date of admittance to the institution, the needs of a household member admitted to a veterans administration hospital or any state institution other than the North Dakota state hospital must be deleted.
- b. For periods when the needs of an individual must be reduced, the individual's share of assistance is limited to the amount of the clothing and personal needs allowance, effective with the first month the reduction may be made. This budgeting arrangement must continue as long as the medical plan calls for the individual to return to the household, but may not exceed nine months.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-64. Essential services.

1. The human service zone may determine that a service, which the family cannot perform independently because of infirmity or illness, is essential to the well-being of the household.
2. "Essential service" includes housekeeping services and child care during a caregiver's illness or hospitalization, attendant services, and extraordinary costs of accompanying a member of the family to a distant medical or rehabilitation facility, arising out of a special need or condition of a member of the household or an ineligible caretaker who is not a parent of a child in the household and may include other expenses and services, provided:
 - a. The need is unforeseen and due to no fault of the household;
 - b. The department is the payer of last resort; and
 - c. The household receives prior approval from the department.
3. The cost of essential services, which is a special item of need:
 - a. May be provided for in the cash grant only if the cost has been established through negotiations with the provider of the services; and
 - b. Must be budgeted and paid retrospectively or by supplemental payments.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-65. Catastrophic events and unforeseen circumstances.

1. The human service zone may authorize vendor payments for the replacement of food, clothing, furniture, household equipment, and supplies, as a special item of need, at a level comparable to that maintained by the household prior to a flood, fire, storm, or other disaster, if:

- a. The availability of replacements, at no or nominal cost to the household, from sources such as the American red cross, has been determined and assistance with replacements coordinated; and
 - b. The loss of items for which replacement is sought has been determined.
2. The human service zone may authorize reimbursement for an unforeseen expense incurred by a recipient for a payment made in a situation that was beyond the individual's control.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-66. Medical insurance premiums.

1. The human service zone may authorize payment for the cost of premiums for health insurance carried by the household, as a special item of need. Payment may be made for only one policy of health insurance. If the policy covers individuals who are not members of the household, payment is limited to:
 - a. If the household or insurer provides information that describes the manner in which the insurance company allocates premium charges between the insureds, the allocation attributable to the members of the household; or, if that allocation is unavailable; and
 - b. The total premium amount, divided by the number of individuals covered, and then multiplied by the number of covered members of the household.
2. For purposes of this section, "premiums for health insurance" includes payments made for insurance, health care plans, or nonprofit health service plan contracts that provide benefits for hospital, surgical, medical care and dental or vision insurance, but do not include payments made for coverage that is:
 - a. Limited to disability or income protection coverage;
 - b. Automobile medical payment coverage;
 - c. Supplemental to liability insurance;
 - d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or
 - e. Credit accident and health insurance.
3. Payment for the cost of premiums for health insurance:
 - a. May be provided in the cash grant only if the cost or pro rata cost has been established; and
 - b. Must be budgeted and paid in the month in which the human service zone is informed of the insurance and receives verification of the cost.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-67. Child restraint systems.

The human service zone may authorize payment, as a special item of need, to members of the household for the verified cost of an approved child restraint system designed to secure a child while riding in a passenger vehicle.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-68. High school graduate or general equivalency diploma incentive payment.

The human service zone may authorize a one-time payment of an amount determined by the department, as a special item of need, to each individual in the household upon completion of high school or receipt of general equivalency diploma.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011; January 1, 2014.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-68.1. Housing allowance.

The human service zone may authorize, as a special item of need, an amount determined by the department when a family has an independent living arrangement and the members of the family have sole responsibility for all housing costs.

History: Effective January 1, 2011; amended effective January 1, 2014.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-69. Unrestricted payment of assistance - Exceptions.

1. The usual method of providing assistance under this chapter is through payments by check or credit on account, immediately redeemable at par, made to the caretaker relative or legal guardian at regular intervals, with no restrictions on the use of the funds. This practice is followed because recipients of assistance do not, by virtue of their need for assistance, lose the capacity to select how or when the needs of the household must be met. If the caretaker relative or other members of the household manage funds in a manner that is clearly detrimental to members of the household, or if the caretaker relative is subject to sanction for nonconformance to program requirements, protective payments may be used to assist the household in financial management.
2. a. A determination that there is a detrimental mismanagement of funds may be based on:
 - (1) Continued failure to plan for and make necessary expenditures during periods for which assistance is provided;
 - (2) Continued failure to provide children in the household with proper food, clothing, or housing so as to threaten the chances of those children for healthy growth and development;
 - (3) Persistent failure to pay the cost of rent, food, utilities, school supplies, or other essentials;
 - (4) Repeated loss of housing due to nonpayment of housing costs; or

- (5) Repeated failure to pay debts that result in attachments of or levies against current income.
- b. The fact that debts are not paid on a timely basis may not be the sole basis for a determination that there is detrimental mismanagement of funds unless relevant factors, including the following, have been considered:
 - (1) Whether the family has experienced an emergency or extraordinary event that reasonably required the expenditure of funds ordinarily used to meet the needs of the household;
 - (2) Whether reasonable payments on necessarily incurred debt exceeds the family's income; or
 - (3) Whether the family has withheld payment on a debt as a part of a legitimate dispute concerning the amount of the debt or the terms or performance of a contract out of which the debt arises.
3. a. The human service zone may select, appoint, and remove a protective payee to receive and manage a household's cash grant. In making a selection, the human service zone shall consider any individual nominated by the caretaker relative.
- b. The protective payee is a fiduciary responsible for assuring that the cash grant is expended to achieve the maximum reasonable benefit for the assistance and for working cooperatively with the human service zone.
- c. The protective payee may be furnished information about the household, from the human service zone's records, sufficient to allow the protective payee's role to be carried out. The information furnished to the protective payee under this section remains confidential information subject to the provisions of North Dakota Century Code section 50-06-15.
- d. The status of a household for which a protective payee has been appointed must be reviewed by the human service zone as often as necessary, but no less often than every six months, to determine if:
 - (1) The protective payee is performing satisfactorily;
 - (2) The household should be restored to unrestricted money payment status; and
 - (3) Some other arrangement should be sought for the care of children who are members of the household.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-70. Payee.

Each household shall have a designated payee who must be the primary individual unless there is a protective payee.

History: Effective December 9, 1996; amended effective January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-71. Making payment - Correcting overpayments and underpayments.

1. A payment of a cash grant is deemed to be complete as of 12:01 a.m. on the first day of the month for which it is issued.
2. Except as provided in subsection 3, a payment check must be endorsed by the payee, or an attorney-in-fact for the payee, with a signature, written in ink, in the same form as the indicated payee.
 - a. If the payee is a guardian, the endorsement must so indicate and must name the ward.
 - b. If the endorsement is by an attorney-in-fact of the payee, the endorsement must so indicate and must name the attorney-in-fact.
3. If the payee dies or becomes absent before a properly issued check has been endorsed, an endorsement may be made:
 - a. By the payee's spouse or surviving spouse, if that spouse has been living with the payee, and, if there is no such spouse;
 - b. By a temporary payee, and, if there is no such spouse or temporary payee; or
 - c. By the director of the human service zone.
4. A payment check endorsed under subsection 3 must include, immediately below the endorsement, a statement of approval dated and signed by the director of the human service zone.
5. A payment check may be issued to replace a lost, stolen, or destroyed payment check only if:
 - a. An indemnity bond is executed by the payee and delivered to the department's finance office; and
 - b. A stop-payment order is placed against the payment check alleged to be lost or destroyed.
6. Any overpayment, whether resulting from recipient or administrative error, or from assistance granted pending a decision on an appeal adverse to the appellant, and whenever made, is subject to recovery. Except as provided in subsection 7, an overpayment must be collected from any household that includes a member who benefited from, or who was responsible for, the overpayment, by reducing the cash grant, to that household, by an amount equal to ten percent of the standard of need.
7. If a court order, entered in a matter that considered the circumstances leading to the overpayment, requires restitution of an amount less than the amount of the overpayment, or requires periodic payments of restitution greater or less than the monthly amount determined under subsection 6, the amount of restitution and periodic payments so ordered must be used to calculate reduction, in the cash grant amount, used to recover an overpayment.
8. Unless the overpayment was the result of fraud, including fraud involving the crimes of theft and making false statements in a governmental matter, or an intentional program violation, the human service zone may suspend efforts to collect overpayments when no individual who benefited from, or was responsible for, the overpayment is a member of a household:
 - a. If the amount of the overpayment is less than thirty-five dollars; or

- b. When recovery is determined not to be cost effective after an effort to recover has failed, including, at a minimum, a written communication describing the amount and basis for the overpayment, and requesting repayment.
9. The county agency shall promptly correct any underpayment for a current member of a household, or to an individual who would be a current member of a household but for the error that led to the underpayment.

History: Effective December 9, 1996; amended effective January 1, 2003; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-72. Intentional program violation - Disqualification penalties.

- 1. For purposes of this section:
 - a. "Intentional program violation" means an individual's intentional action or failure to act which consists of:
 - (1) Making a false or misleading statement or misrepresenting, concealing, or withholding facts;
 - (2) Violating provisions of North Dakota Century Code chapter 50-09, this chapter, or any state statute relating to the acquisition or use of assistance provided under North Dakota Century Code chapter 50-09 or this chapter; or
 - (3) Being convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence of the individual to receive temporary assistance for needy families, Medicaid, supplemental nutrition assistance program benefits, or supplemental security income simultaneously from two or more states;
 - (4) Using a temporary assistance for needy families debit card in any liquor store; any casino, gambling casino, or gaming establishment, or any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state of entertainment in violation of Pub. L. 112-96, provided access to the funds is not otherwise available through an automated teller machine, financial institution, or other means within a reasonable distance of the recipient's residence; and
 - b. An individual intends all results reasonably foreseeable from the actions the individual takes or fails to take.
- 2. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court must be subject to the penalties provided in this section. Additionally:
 - a. If a court judgment includes a temporary assistance for needy families disqualification period, the human service zone shall impose the disqualification period according to the temporary assistance for needy families disqualification time frames; or
 - b. If a court judgment does not include a disqualification period, the human service zone shall pursue any appropriate disqualification according to temporary assistance for needy families disqualification requirements.
- 3. An individual who waives the individual's right to appear at an intentional program violation hearing must be subject to the penalties provided in this section.

4. During any period of disqualification:
 - a. The individual's needs may not be taken into account when determining the household's need and amount of assistance;
 - b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the household;
 - c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible; and
 - d. The overpayment is recovered through a reduction, at the rate of twenty percent of the standard of need, excluding special items of need.
5. The duration of the penalty described in this section must be:
 - a. One year for the first offense;
 - b. Two years for the second offense;
 - c. Permanent for the third and any subsequent offense; and
 - d. Ten years for individuals who were convicted in federal or state court of fraudulently misrepresenting residence.
6. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction, but in no event may the duration of the period for which the penalty was imposed be subject to review.
7. In cases when a disqualification penalty and other sanctions or penalties apply:
 - a. The disqualification penalties in this section must be in addition to, and may not be substituted for, any other sanctions or penalties that may be imposed for the same offense; and
 - b. The disqualification penalties imposed under this section affect only the individual concerned and cannot substitute for other sanctions imposed under this chapter.
8. A disqualification penalty imposed on an individual by another state may be continued in this state and may be used to determine the appropriate duration of a disqualification penalty imposed under this section.
9. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
10. The department shall issue a written notice informing the individual of the period of disqualification and the amount of assistance the household may receive during the disqualification period.
11. Overpayments must be recovered from the assistance unit which was overpaid, any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or any individual members of the overpaid assistance unit whether or not currently a recipient.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; January 1, 2014.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-72.1. Denial of assistance for fugitive felons, probation and parole violators, and certain convicted drug offenders.

1. An individual may not be included in the cash grant if the individual is:
 - a. Fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of such state; or
 - b. Violating a condition of probation or parole imposed under federal or state law.
2. An individual may not be included in the cash grant for a period of seven years from the date of the most recent felony conviction, if the individual is convicted of a felony offense for an act which occurred after August 22, 1996, which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)]. The disqualification does not apply to alcohol-related convictions.
3. During any period of disqualification:
 - a. The individual's needs may not be taken into account when determining the household's need and amount of assistance;
 - b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the household; and
 - c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible.

History: Effective January 1, 2003; amended effective June 1, 2005; January 1, 2014.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02; 50-09-29

75-02-01.2-73. Health tracks.

The human service zone may authorize an amount to be determined by the department, as a special item of need, to all members of a household, under age twenty-one, who complete a health tracks screening. This amount may only be authorized and issued once every twelve months, beginning with the date of the screening.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011; January 1, 2014.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-74. Assessment and case plan.

Repealed effective January 1, 2011.

75-02-01.2-75. Temporary assistance for needy families social contract.

Repealed effective January 1, 2011.

75-02-01.2-76. Social contract.

Repealed effective January 1, 2011.

75-02-01.2-77. Annual reassessment.

Repealed effective January 1, 2011.

75-02-01.2-78. Mandatory contract requirements.

Repealed effective January 1, 2003.

75-02-01.2-79. Sanctions for noncompliance with temporary assistance for needy families program requirements.

1. Temporary assistance for needy families participants who fail or refuse to comply with program requirements, without good cause, may be sanctioned. Actions or failures to comply that may result in sanctions include:
 - a. Failure or refusal to participate in the job opportunities and basic skills or tribal native employment works programs;
 - b. Failure or refusal to cooperate in obtaining child support or establishing paternity; and
 - c. Quit a job or refused an offer of employment without good cause.
2. All sanctions are first imposed against the responsible individual and will result in removal of the individual's financial needs from the household's temporary assistance for needy families grant, for a period of one month in an ongoing case, or in the case of a new application subject to a job opportunity and basic skills program sanction, for a period of up to four months.
3. If the sanctioned individual does not cure the sanction prior to the end of the sanction penalty month, the sanction may progress to closure of the entire temporary assistance for needy families case.
 - a. A sanction penalty month runs from the effective date of a sanction through the last day of that month.
 - b. If a sanction, based on noncooperation with the job opportunities and basic skills program leads to closure of the entire temporary assistance for needy families case, the household shall, at a minimum, be ineligible for assistance in the month following the sanction penalty month, and until the responsible individual cures the sanction.
 - c. If a sanction, based on noncooperation with the child support agency leads to closure of the entire temporary assistance for needy families case, the household shall be ineligible for assistance in the month following the sanction penalty month.
4. Sanctions under temporary assistance for needy families follow a noncooperating individual.
5. A job opportunities and basic skills program sanction, or a tribal native employment works program sanction, is cured only when the responsible individual demonstrates, to the satisfaction of the human service zone, that the failure to cooperate or participate, as required, has been corrected for at least ten consecutive days.

6. A child support sanction may only be considered cured upon notification from the child support agency to the eligibility worker that the sanctioned individual is cooperating in obtaining child support and, if necessary, establishing paternity.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-80. Good cause determination.

1. Except with respect to a sanction imposed for failure to obtain child support, or establish paternity, an individual shall be provided an opportunity to present the good cause reason for a failure or refusal to cooperate prior to the imposition of a sanction.
2. The eligibility worker or the individual's job opportunities and basic skills employment contractor may oversee the good cause determination process. If the individual is not cooperating with the job opportunities and basic skills program, the employment contractor is responsible to oversee the good cause determination process and must inform both the individual and the eligibility worker of the outcome of the good cause determination process.
3. Within two days after the employment contractor learns of a failure or a refusal to comply, the eligibility worker or employment contractor, as appropriate, shall send written notice to the individual to offer an opportunity to show good cause. A good cause determination must state that:
 - a. The individual is responsible to call or meet with the employment contractor within seven days, from the print date of the notice, to show good cause; and
 - b. A sanction will be imposed if the individual does not contact the employment contractor or eligibility worker, as appropriate, within the required time or does not show good cause for the individual's failure or refusal to comply.
4. If an individual fails or refuses to participate in the good cause determination process, or if it is determined that the individual did not show good cause for the initial failure or refusal to participate as required in the temporary assistance for needy families program, the eligibility worker shall notify the individual of the sanction.
5. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

History: Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; January 1, 2009; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-81. Good cause for failure to complete temporary assistance for needy families social contract.

Repealed effective January 1, 2011.

75-02-01.2-82. Job opportunities and basic skills program - Definitions.

For purposes of the job opportunities and basic skills program:

1. "Eligible individual" means an adult or minor child head of household receiving assistance or a nonrecipient parent living with a child receiving assistance.

2. "Employment contractor" means the job opportunities and basic skills program agency or staff person responsible for directing and monitoring a participant's planning and activities that relate to the job opportunities and basic skills program. The employment contractor is responsible for completing orientation and an assessment. After orientation and the assessment are completed, the employer contractor assists the participant in the development and execution of an employability plan and oversees the participant's involvement in the job opportunities and basic skills program.
3. "Minimum required hours" means the number of hours per week during which a participant must be engaged in approved work activity.
4. "Participant" means a member of a household who is not exempt from participating in the job opportunities and basic skills program or who, if exempt, has volunteered to participate in that program.
5. "Satisfactory progress" in any postsecondary education or training program means the participant is maintaining progress minimally sufficient to allow continuation of the course of study or training under the standards of the education or training facility.
6. "Work-eligible individual" includes anyone listed in subdivision a, but does not include anyone listed in subdivision b:
 - a. Included individuals are:
 - (1) Any adult receiving assistance under temporary assistance for needy families;
 - (2) Any minor child head of household receiving assistance under temporary assistance for needy families;
 - (3) Any minor parent head of household receiving assistance under temporary assistance for needy families; or
 - (4) Any nonrecipient parent living with a child receiving assistance, including any parent:
 - (a) Sanctioned due to noncompliance with work requirements; or
 - (b) Disqualified due to an intentional program violation, status as a fleeing felon, a drug felony conviction, parole or probation violation, or noncompliance with the child support agency.
 - b. Individuals not included are:
 - (1) A minor parent who is not the head of household;
 - (2) A noncitizen who is ineligible to receive assistance due to that individual's immigration status;
 - (3) A parent providing care for a disabled family member living in the home;
 - (4) A dependent child who is under age sixteen;
 - (5) Unless the child is a single head of household, a dependent child who is age sixteen or over, enrolled as a full-time student, who will graduate by the child's nineteenth birthday;
 - (6) Those receiving supplemental security income; or

(7) Those receiving social security disability income.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-83. Job opportunities and basic skills program - Basic requirements.

Repealed effective January 1, 2009.

75-02-01.2-84. Job opportunities and basic skills program - Satisfactory participation.

1. Except as otherwise provided in this section, all work-eligible individuals and all eligible children, age sixteen or older, who have completed high school or received a general equivalency diploma, or who have neither completed high school nor received a general equivalency diploma and are not currently attending school, shall comply with work requirements no fewer than the minimum required hours each week. Work activity may be required in addition to the minimum required hours in an approved work activity.
2. A parent or other eligible caretaker relative of a child under age six, who is personally caring for that child full time, is deemed to comply with subsection 1 if engaged in an allowable work activity an average of at least the minimum required hours per week during each month.
3. A single head of household, under twenty years of age, who has not earned a high school diploma or its equivalent, but who maintains satisfactory attendance in school, is deemed to comply with subsection 1.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-06-05.1, 50-09

75-02-01.2-85. Job opportunities and basic skills program - Work requirements.

1. The work activities of the job opportunities and basic skills program include:
 - a. Unsubsidized employment;
 - b. Subsidized public or private sector employment;
 - c. On-the-job training;
 - d. Public or private work experience;
 - e. Job search and job readiness activities;
 - f. Community service;
 - g. Vocational training;
 - h. Education directly related to employment for a participant who has not completed high school or received a general equivalency diploma;
 - i. Satisfactory attendance at secondary school or in a course of study leading to a general equivalency diploma;

- j. Provision of child care services to another participant engaged in a community service program; and
 - k. Job skills training directly related to employment.
2. Work requirements include participation in work activities for periods of time necessary to allow a participant to complete tasks that will move the participant directly into employment.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-86. Job opportunities and basic skills program - Tribal native employment works program.

Tribal native employment works programs are available to enrolled or enrollable members of tribes who live in that tribe's service area, who receive a temporary assistance for needy families cash grant, and who reside in a county within which there is a tribal native employment works program. An individual who participates in a tribal native employment works program shall meet all work requirements described in this chapter. The human service zone shall:

- 1. Refer work-eligible individuals to the tribal native employment works program based on referral criteria established by a memorandum of understanding between the tribe and the department;
- 2. Provide child care payments to authorized tribal native employment works program participants, for activities which may be approved under the state child care and development fund plan submitted under the Child Care and Development Block Grant Act of 1996 [42 U.S.C. 9858], based on information furnished by the tribal program; and
- 3. Upon notification from the tribal program, consider sanctioning individuals for failure or refusal to participate in the program without good cause.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-87. Job opportunities and basic skills program - Exemptions from participation.

An individual is exempt from participation in the job opportunities and basic skills program if the individual is:

- 1. A parent or other eligible caretaker relative age sixty-five or older;
- 2. A dependent child who is under age sixteen or a dependent child who is age sixteen or over and who is enrolled or has been accepted for enrollment as a full-time student for the next school term in an elementary or secondary school or in a vocational or technical school that is equivalent to secondary school and will graduate by the child's nineteenth birthday, unless the child is a single head of household;
- 3. A parent or other eligible caretaker relative of a child under two months of age who is personally caring for the child full time; or
- 4. A parent providing care for a disabled family member living in the home, provided that the need for such care is supported by documentation.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-88. Job opportunities and basic skills program - Referral.

1. Any individual not exempt from the job opportunities and basic skills program and anyone who volunteers must be referred to the program. Referrals may be made only after the individual is determined otherwise eligible for assistance.
2. The referred individual shall contact the job opportunities and basic skills program within seven calendar days from the print date of the referral to set up an appointment for program orientation, assessment, and employability planning and shall make a good-faith effort to complete program orientation, initial assessment, and employability planning within thirty days of the application date.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-89. Job opportunities and basic skills program - Orientation, assessment, and employability planning.

Repealed effective January 1, 2009.

75-02-01.2-90. Job opportunities and basic skills program - Supportive services and post temporary assistance for needy families supportive services.

1. Within the limits described in this section, supportive services may be made available to a participant who, but for supportive service, would be unable to enter into or remain in an allowable work activity. No supportive service may be provided without approval from the employment contractor or eligibility worker.
2. Post temporary assistance for needy families supportive services may be provided to assist employed former temporary assistance for needy families recipients to succeed in the workforce and avoid the need to receive further temporary assistance for needy families benefits.
3. Supportive services may include:
 - a. Relocation assistance provided to a job opportunities and basic skills participant if:
 - (1) The individual has a bona fide offer of employment, verified by the employment contractor, which will increase the individual's potential for increased earnings, job advancement, or permanent employment; or
 - (2) The individual requests and receives approval from the employment contractor to move from an area of the state with few employment opportunities to another area of the state with greater employment opportunities, or to an area out of state with greater employment opportunities.
 - b. Monthly transportation assistance provided to participants in an approved work activity, if necessary for continued participation.

- c. Child care expense reimbursement in amounts consistent with the provisions of the state child care and development fund plan submitted under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858].
 - d. Assistance in the purchase of care for an incapacitated or disabled adult member of the participant's household, to whom the participant owes a legal duty to provide care, provided:
 - (1) There is no other person in the household who can provide the care; and
 - (2) The incapacitated or disabled adult household member cannot provide self-care.
 - e. Assistance in the purchase of employment-related clothing or personal needs determined by the employment contractor to be reasonable and necessary for the participant to enter employment.
 - f. Assistance in the purchase of tools or equipment determined by the employment contractor to be required for the participant to accept employment.
 - g. Assistance in the cost of repairs determined by the employment contractor to be reasonable and necessary to return a participant's vehicle to operable condition, provided:
 - (1) The vehicle is registered to a member of the household;
 - (2) The vehicle is needed by the participant to get to work or another approved work activity; and
 - (3) The general condition and value of the vehicle justifies repairs.
 - h. Assistance for defraying the cost of books, tuition, and fees associated with an allowable work activity, provided:
 - (1) Other educational fund sources have been explored and are exhausted; and
 - (2) The participant is a member of a household and eligible for assistance at the time funds are paid or obligated.
 - i. Assistance with payment for professional license fees and professional examination fees, if there is no other available source of funding, including fee waivers, and the professional license or examination is necessary to achieve an employment-related goal.
 - j. Assistance with expenses determined by the employment contractor to be reasonable and necessary for the individual to engage in employment or participate in employment interviews, including transportation, lodging, grooming, and clothing.
4. The maximum expenditures permitted for supportive services and transitional supportive services are limited to amounts and availability as the department may by order determine.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-91. Job opportunities and basic skills program - Educational activities related to secondary education, basic and remedial education, or education in English proficiency.

Repealed effective January 1, 2009.

75-02-01.2-92. Job opportunities and basic skills program - Job skills training directly related to employment.

Repealed effective January 1, 2009.

75-02-01.2-93. Job opportunities and basic skills program - Unsubsidized employment.

Repealed effective January 1, 2009.

75-02-01.2-94. Job opportunities and basic skills program - Job search and job readiness.

Repealed effective January 1, 2009.

75-02-01.2-95. Job opportunities and basic skills program - Job development and job placement activities.

Repealed effective January 1, 2009.

75-02-01.2-96. Job opportunities and basic skills program - Vocational education.

Repealed effective January 1, 2009.

75-02-01.2-97. Job opportunities and basic skills program - Provision of child care services to another participant engaged in a community service program.

Repealed effective January 1, 2009.

75-02-01.2-98. Job opportunities and basic skills program - Work experience and community service program.

Repealed effective January 1, 2009.

75-02-01.2-99. Job opportunities and basic skills program - Work readiness activities.

Repealed effective January 1, 2003.

75-02-01.2-100. Job opportunities and basic skills program - On-the-job training.

Repealed effective January 1, 2009.

75-02-01.2-101. Job opportunities and basic skills program - Subsidized public or private sector employment.

Repealed effective January 1, 2009.

75-02-01.2-102. Job opportunities and basic skills program - Failure or refusal to participate.

A failure or refusal to participate in the job opportunities and basic skills program occurs any time the participant:

1. Misses a scheduled appointment for any program or approved work activity;

2. Is absent from a program or approved work activity when scheduled to be there;
3. States an unwillingness to participate in any program or approved work activity;
4. Fails to contact the employment contractor, within seven calendar days from the print date of the referral, to set up an appointment to begin involvement in the program;
5. Refuses, despite apparent ability, to maintain satisfactory progress in any program or approved work activity; or
6. Fails to comply with the requirements of the participant's employability plan.

History: Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2009.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-103. Job opportunities and basic skills program - Good cause for failure or refusal to comply with a referral to, or participate in, the job opportunities and basic skills program.

1. All work-eligible individuals must participate in the job opportunities and basic skills program unless good cause is granted by the eligibility worker. Good cause for failure or refusal to participate in the job opportunities and basic skills program exists when:
 - a. The household member is incapacitated with a physical or mental impairment verified by reliable medical evidence which, by itself or in conjunction with age, prevents the individual from working or participating in any job opportunities and basic skills program or work activity;
 - b. An individual whose substantially continuous presence in the household is necessary to care for another member of the household, to whom the individual seeking good cause for nonparticipation owes a legal duty to provide care, who has a condition, verified by reliable medical evidence, which does not permit self-care, care by another household member, or care provided as supportive services;
 - c. An individual has an illness or injury, verified by reliable medical evidence and reviewed every thirty days, which is serious enough to temporarily prevent entry into employment or participation in any job opportunities and basic skills program activity; or
 - d. In the case of a parent or other eligible caretaker relative of a child under age six, who is personally caring for the child full time and who demonstrates an inability to obtain needed child care for one or more of the following reasons:
 - (1) Child care is unobtainable at a location such that the usual commuting time from the parent's home to the location at which child care is provided, and on to the parent's worksite, is one hour or less;
 - (2) Suitable child care is unobtainable from a relative, from an approved child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, or from a child care provider not required to be licensed or registered under North Dakota Century Code chapter 50-11.1; or
 - (3) Child care is unobtainable, from a child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, at a rate equal to or less than two times the maximum allowable amount as determined by the child care assistance program.

2. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

History: Effective December 9, 1996; amended effective July 1, 1997; June 1, 2002; June 1, 2005; January 1, 2009; January 1, 2011.

General Authority: NDCC 50-09-02, 50-09-25

Law Implemented: NDCC 50-09-02

75-02-01.2-104. County administration.

Repealed effective April 1, 2020.