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benefit, using a functional screening and a financial eligibility and cost-sharing screening prescribed by the department. If the applicant is a family care spouse, the agency shall notify both spouses in accordance with the requirements of s. 49.455 (7), Stats.

(b) *Notice.* The agency shall notify the applicant in writing of its determination. If a delay in processing the application occurs because of a delay in securing necessary information, the agency shall notify the applicant in writing that there is a delay in processing the application, specify the reason for the delay, and inform the applicant of his or her right to appeal the delay by requesting a fair hearing under s. DHS 10.55.

(7) **ENROLLMENT.** The agency shall complete and transmit, as directed by the department, all enrollment forms and materials required to enroll persons who are eligible and who choose to enroll in a care management organization.

(8) **FRAUD.** When the agency director or designee has reason to believe that an applicant or enrollee, or the representative of an applicant or enrollee, has committed fraud, the agency director or designee shall refer the case to the district attorney.

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00; CR 04-040: am. (6) (a) Register November 2004 No. 587, eff. 12-1-04.

DHS 10.32 General conditions of eligibility. (1) CONDITIONS. To be eligible for the family care benefit, a person shall meet all of the following conditions:

(a) *Age.* The person is at least 18 years of age or will attain the age of 18 years on any day of the calendar month in which the person applies.

(b) *Residency.* The person is a resident of a county, family care district or service area of a tribe in which the family care benefit is available through a care management organization. This requirement does not apply to a person who is either of the following:

1. An enrollee who was a resident of the county, family care district or tribal area when he or she enrolled in family care, but currently resides in a long-term care facility outside the service area of the CMO under a plan of care approved by the CMO.

2. An applicant who, on the date that the family care benefit first became available in the county, was receiving services in a long-term care facility funded under any of the programs specified under s. DHS 10.33 (3) (c) administered by that county.

(c) *Family care target group.* The person has a physical disability, is a frail elder, or has a developmental disability.

(d) *Functional eligibility.* The person meets the functional eligibility conditions under s. DHS 10.33.

(e) *Financial eligibility.* The person meets the financial eligibility conditions under s. DHS 10.34.

(f) *Cost sharing.* The person pays any cost sharing obligations as required under s. DHS 10.34 (4).

(g) *Acceptance of medical assistance if eligible.* If the person is eligible for medical assistance, he or she applies for and accepts the medical assistance.

(h) *Other non-financial conditions.* The person meets the nonfinancial conditions of eligibility for medical assistance under s. DHS 103.03 (2) to (9).

(i) *Divestment.* The person is not currently ineligible for the family care benefit, under the provisions of ss. 49.453 and 49.454 (2) (c) and (3) (b), Stats., and s. DHS 103.065 because he or she divested assets. The divestment provisions of ss. 49.453, 49.454 (2) (c) and (3) (b), Stats., and s. DHS 103.065 apply to all family care applicants and enrollees, regardless of whether they are eligible for medical assistance.

(2) **PROVISION OF NECESSARY INFORMATION.** A client or person acting on behalf of a client shall provide full, correct and truthful information necessary to determine family care eligibility, entitlement status and cost sharing requirements, including the following:

(a) A declaration of assets on a form prescribed by the department.

(b) A declaration of income on a form prescribed by the department.

(c) Information related to the person's health and functional status, as required by the department.

(3) **REPORTING OF CHANGES REQUIRED.** An enrollee shall report to the county agency any change in circumstances that would affect his or her eligibility under this section, including income and asset changes that would affect cost sharing obligations, as specified under s. DHS 10.34 (3) (f).

(4) **REVIEW OF ELIGIBILITY.** Enrollees' eligibility for the family care benefit shall be re-determined annually or more often when a county agency has information indicating that a change has occurred in an enrollee's circumstances that would affect his or her eligibility or cost sharing requirements.

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00; CR 04-040: am. (1) (b) 2. and (c) Register November 2004 No. 587, eff. 12-1-04; corrections in (1) (h) and (f) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

* **DHS 10.33 Conditions of functional eligibility.**

(1) **DEFINITIONS.** In this section:

(a) "Appropriately means suitable in terms of time and place.

(b) "Long-term or irreversible condition" means a physical or cognitive impairment that is expected to last for more than 90 days or result in death within one year.

(c) "Requires ongoing care, assistance or supervision" means a person cannot safely or appropriately perform one or more ADLs or IADLs, as is evidenced by findings from functional screening.

(d) "Safely" means without significant risk of harm to oneself or others.

(2) **DETERMINATION OF FUNCTIONAL ELIGIBILITY.** (a) *Determination.* Functional eligibility for the family care benefit shall be determined pursuant to s. 46.286 (1), Stats., and this chapter, using a uniform functional screening prescribed by the department. To have functional eligibility for the family care benefit, the functional eligibility condition under par. (b) shall be met and, except as provided under sub. (3), the functional capacity level under par. (c) or (d) shall be met.

(b) *Long-term condition.* The person shall have a long-term or irreversible condition.

(c) *Comprehensive functional capacity level.* A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.

2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.

3. The person cannot safely or appropriately perform 5 or more IADLs.

4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.

5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.

6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:

a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.

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b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

(d) *Intermediate functional capacity level.* A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:

1. One or more ADL.
2. One or more of the following critical IADLs:
 - a. Management of medications and treatments.
 - b. Meal preparation and nutrition.
 - c. Money management.

(3) **GRANDFATHERING.** If a person does not meet either of the functional capacity levels under sub. (2) (c) or (d), the department shall deem the person functionally eligible for the family care benefit if all of the following apply:

(a) The person has a long-term or irreversible condition.

(b) The person is in need of services included in the family care benefit.

(c) On the date that the family care benefit became available in the county of the person's residence, he or she was a resident in a nursing home or had been receiving for at least 60 days, under a written plan of care, long-term care services that were funded under any of the following:

1. The long-term support community options program under s. 46.27, Stats.
2. Any home and community-based waiver program under 42 USC 1396n (c), including the community integration program under s. 46.275, 46.277 or 46.278, Stats.
3. The Alzheimer's family caregiver support program under s. 46.87, Stats.
4. Community aids under s. 46.40, Stats., if documented by the county under a method prescribed by the department.
5. County funding, if documented under a method prescribed by the department.

History: Cr Register, October, 2000, No. 538, eff. 11-1-00; CR 04-040: am. (1) (c) and (2) (a), (c) and (d) Register November 2004 No. 587, eff. 12-1-04.

DHS 10.34 Financial eligibility and cost sharing.

(1) **DEFINITIONS.** In this section:

(a) "Actual maintenance costs" means the sum of the following:

1. Shelter costs determined according to s. 49.455 (4) (d) 1. and 2., Stats.
2. An amount equal to the maximum food stamp allotment for a household of one under 7 USC 2017.
3. An allowance for clothing as determined by the department.

(b) "Certification period" means a 12-month period for which financial eligibility and cost sharing requirements for the family care benefit are determined for a non-MA eligible person.

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

(d) "Earned income" has the meaning given under s. DHS 101.03 (51).

(e) "Unearned income" has the meaning given under s. DHS 101.03 (180).

(2) **INDIVIDUALS ELIGIBLE FOR MEDICAL ASSISTANCE.** A person who is eligible for medical assistance under ch. 49, Stats., and chs. DHS 101 to 108 is financially eligible for the family care benefit.

Cost sharing requirements for the family care benefit for a medical assistance-eligible person are those that apply under ch. 49, Stats., and chs. DHS 101 to 108.

(3) **INDIVIDUALS NOT ELIGIBLE FOR MEDICAL ASSISTANCE.** (a) *Conditions of financial eligibility.* Eligibility under this subsection is effective beginning July 1, 2000. For persons who are not eligible for medical assistance, financial eligibility and cost sharing requirements for the family care benefit shall be determined pursuant to applicable provisions of s. 46.286 (1) (b) and (2), Stats., and this chapter. The maximum cost-sharing requirement for a non-MA-eligible person shall be determined by a county agency using a uniform financial eligibility and cost-sharing screening prescribed by the department. A non-MA-eligible person is financially eligible for the family care benefit if the projected cost of the person's care plan exceeds the person's maximum cost-sharing requirement.

(b) *Calculation of maximum cost share requirement at initial determination and annual re-determination of eligibility.* A non-MA-eligible family care enrollee shall contribute to the cost of his or her care an amount that is calculated as provided under this section. Treatment of assets, including assets in trusts, and income shall be as provided under ss. 49.454 and 49.47, Stats., and ss. DHS 103.06 and 103.07 unless specified otherwise in this section. All dollar amounts specified in this section shall be updated annually based on changes in the consumer price index. The following calculation shall determine the applicant's or enrollee's maximum cost-sharing requirement:

1. Determine total countable assets according to ss. 49.454 and 49.47, Stats., and s. DHS 103.06. If the applicant or enrollee is legally married, include the countable assets of both members of the couple.

2. Determine monthly net countable assets by subtracting from total countable assets the following allowances, as applicable, and dividing the result by 12:

a. Subject to subd. 6., if the applicant or enrollee is a family care spouse, the amount of the community spouse resource allowance under s. 49.455 (6) (b), Stats.

b. If the person resides in a nursing home, community-based residential facility or adult family home, an allowance of \$9,000.

c. If the person resides in his or her own home, including a residential care apartment complex or in the private home of a relative or other person, an allowance of \$12,000.

3. Determine countable monthly income by adding together all of the following:

a. Monthly unearned income less a \$20 disregard from unearned income, or if the person has less than \$20 of unearned income, the remainder from earned income.

b. Total monthly earned income, less the first \$200, and then less two-thirds of any remaining earned income.

4. Add together the monthly net countable assets and the countable monthly income.

5. Deduct from the amount calculated under subd. 4. all of the following:

a. Subject to subd. 6., if the person is a family care spouse, the community spouse monthly income allowance under s. 49.455 (4) (b), Stats.

b. The amount of any payments the person is required to pay by court order.

c. If the person resides in a nursing home, community-based residential facility or adult family home, a personal maintenance allowance of \$65.

d. If the person resides in his or her own home, including a residential care apartment complex or the home of another person, a personal maintenance allowance equal to the greater of the combined benefit amount available under 42 USC 1381 to 1383 and s. 49.77 (3s), Stats., or actual maintenance costs, as defined under sub. (1) (a), up to the maximum personal maintenance allowance