

CHAPTER 3-000 CALCULATION OF ADC BENEFITS: The Department determines a unit's initial payment eligibility as follows:

1. Calculate gross earned income;
2. Subtract 20 percent;
3. Subtract child care paid out-of-pocket;
4. Subtract the remaining earned income from the appropriate Standard of Need (see 468-000-209);
 - a. If the result of step 4 is greater than or equal to the appropriate payment standard deny the application unless adding a financially responsible individual to the existing ADC unit (see 468 NAC 2-024).
 - b. If the result of step 4 is less than the appropriate payment standard, calculate payment grant amount as follows:
 - i. Calculate gross earned income;
 - ii. Subtract 50 percent;
 - iii. Subtract child care paid out-of-pocket;
 - iv. Subtract the remaining earned income from the appropriate Standard of Need (see 468-000-209);
 - v. Compare the result of step iv to the appropriate payment standard and from the lesser amount, subtract unearned income;
 - vi. The result of step v. is the amount of the grant.

3-001 Prorated Payment: When an application for assistance is approved during the initial 30 day period, the first month's payment begins with date of application, if all eligibility factors are met. If eligibility is determined during the additional 30 day period, the payment is prorated from the date the department receives sufficient information to verify eligibility. For administrative efficiency, a standard 30-day month is used in determining prorated payments.

3-001.01 Individual Added to the Unit: When an individual is added to a unit that is already receiving a grant, the payment of the new individual begins with the date the addition to the unit was requested if all eligibility factors are met.

3-001.02 Individual Removed from the Unit: When an individual leaves an ADC unit, s/he is not considered prospectively in determining the unit size. If there is not time to recalculate and give timely notice, the worker must remove the individual the next month. If the client reported timely, there is no overpayment for the month that the individual left; if there is not time to remove the individual the following month because of the timely notice provision, there is no overpayment for that month, either.

3-001.03 Client Receiving Other TANF Assistance: A client is ineligible to receive an ADC/TANF grant in the same month from two entities, i.e., a state and a tribe.

3-001.03A Client Moving From Another State: An applicant may have received assistance from another state in the same month that s/he applies in Nebraska. If the applicant received a grant for a partial month from a state that divides monthly issuance into two or more grants, the grant from the other state is considered income in determining the first month's eligibility. Payment begins with the first day of the month of application if all eligibility factors are met.

3-001.03B Client Receiving Tribal TANF Assistance: An applicant is ineligible to receive an ADC grant in the same month s/he received a TANF-funded grant from a Native American Tribe.

3-002 Rounded Down Payment: When the grant amount is not a whole dollar figure, the computer rounds down the grant to the next lower whole dollar amount. A case that would be eligible for a grant of less than \$1 (which would be rounded down to 0) is still considered a grant case. See 468 NAC 3-003 for payments of \$9.99 or less.

3-003 Minimum Payment: An ADC cash payment is not issued if the amount would be less than \$10 before any adjustment is made. A unit that is denied an ADC cash payment solely because of the \$10 minimum payment is still considered an ADC cash assistance case. The unit is not subject to Employment First requirements and is non-time limited. The adult(s) or minor parent head-of-household included in the ADC unit may choose to volunteer to participate in Employment First (see 468 NAC 2-020.03 and 2-020.09B1a(4)). The worker must send a Notice of Action notifying the client that s/he will not receive a payment because of the minimum payment provision. An ADC cash payment is issued if an individual is added to an existing unit and the combined unit (the original unit plus the added individual) is eligible for an ADC cash payment of \$10 or more.

3-004 Family Members Included in ADC Grant: The following individuals are considered in determining the grant unit and appropriate standard of need:

1. Children age 17 and younger, beginning with the first day of the month of the mother's third trimester of pregnancy (in the case of a multiple pregnancy, the unit includes no more than one unborn child during the final trimester);
2. Children age 18 who are full-time students regularly attending a secondary school (see 468 NAC 2-007 and 2-020);
3. Parent(s), including both parents in a two-parent family; or
4. Parent(s)/needy caretaker relative - when the person is the only eligible individual remaining in the unit with all children receiving SSI or an adoption subsidy and not included in the ADC unit.

3-005 Family Members Not Included in the Grant

3-005.01 Those Who Refuse Potential Income: The needs of an individual other than the parent/caretaker relative are not included in the grant if s/he refuses to apply for:

1. Categorical assistance for which s/he is apparently entitled; or
2. Benefit payments from a program not administered by the Department to which s/he is apparently entitled.

If the parent/caretaker relative refuses to apply for potential income, see 468 NAC 2-020.009B1.

It is the worker's responsibility to explain the application procedure and benefits to the apparently eligible family member and explain the consequences of not applying.

3-005.02 Those Who Receive Other Assistance

3-005.02A Parent: The parent of an ADC child is not included in the ADC grant when:

1. The parent is receiving an SSI payment;
2. The parent is receiving or is eligible to receive AABD; or
3. The parent is a Department ward.

The parent's income is not included in the budget computations for the unit if the parent receives SSI or is a Department ward. If the parent receives RSDI but not SSI, income in excess of the parent's AABD budgetary need is allocated to the ADC unit.

3-005.02B Ward: If a ward who is receiving a foster care payment is in the home of an assistance unit, the ward is not included in the unit and his/her income is not included in the budget computations for the unit.

If the family has an adopted child(ren) for whom they are receiving an adoption subsidy that is administered by the Department (either IV-E or child welfare), the child(ren) is not included in the assistance unit. The subsidy is not counted as income to the family.

3-005.02B1 Child of a Ward: If a ward who is receiving a foster care payment has a child living with him/her in a foster home, group home, or child caring institution, the ward's child may receive a separate foster care grant (see 479 NAC 2-002.10). The ward's child is not eligible for a grant from ADC funds. Neither the ward nor the ward's child is included in the foster family's ADC unit.

3-005.02B2 Department Ward With Specified Relative: The following situation is an exception to the regulations in 468 NAC 3-005.02B and 3-005.02B1: If a Department ward is placed in the home of a specified relative who is a licensed or approved foster care provider and the specified relative is receiving ADC, the relative has the choice of adding the ward to the ADC unit or receiving a foster care payment for the ward (see 468-000-322). The case manager/worker must explain the payment options to the foster parent. If the ward has a child, the child goes with the ward, i.e., if the ward is in the ADC unit, the ward's child is also in the ADC unit; if the ward receives a foster care payment, the ward's child also receives a foster care payment.

If the ward loses his/her eligibility for ADC, e.g., an 18-year-old who is not in school, the ADC case is closed and a foster care case is opened (see 479 NAC 2-000). The grant for the ward's child would also be changed from ADC to FC (see 468 NAC 3-005.02B1).

3-005.03 Those Who Receive SSI: The needs of any family members who are receiving SSI benefits are not included in the ADC unit.

SSI regulations require that SSI benefits due must be reduced by the amount of ADC paid or to be paid up to the date given by the ADC worker for terminating the ADC grant. Failure to reduce the SSI payment before the date provided by the ADC worker constitutes an SSI overpayment. ADC payments to SSI recipients following that date are ADC overpayments and must be recovered.

3-005.04 Those Who Refuse to Cooperate

3-005.04A Removal from Grant Unit: The needs of a dependent child are not considered in the ADC standard of need if the child is a mandatory participant who refuses to cooperate with Employment First and is sanctioned.

3-005.04B Removal from Grant Unit: A parent or needy caretaker relative, guardian, or conservator is not eligible to receive a grant for himself/herself if the individual fails or refuses to provide information about or obtain third party medical payments (see 468 NAC 4-002.03C).

3-005.04C 25 Percent Reduction in Grant: The grant is reduced by 25 percent if a parent fails or refuses to cooperate with the Child Support Enforcement Unit. The needs of a needy caretaker relative, guardian or conservator who fails or refuses to cooperate with CSE are removed from the Grant unit.

3-005.05 Intentional Program Violation (IPV): Effective January 1, 2004, an individual who is found to have committed IPV is disqualified according to the following regulations.

3-005.05A Disqualification Hearing: A disqualification hearing will be initiated by the Central Office whenever sufficient documentary evidence has been established to substantiate that a household member has committed one or more acts of intentional program violation. An intentional program violation consists of any action by an individual to purposely:

1. Make a false statement to the local office, either verbally or in writing, to obtain benefits to which the household is not entitled;
2. Conceal information to obtain benefits to which the household is not entitled; or
3. Alter verification documents to obtain benefits to which the household is not entitled.

The worker must inform the household in writing of the disqualification penalties for committing IPV each time the household applies for benefits. The penalties are listed in clear, prominent, and boldface lettering on the application form or attachment.

3-005.05B Initiating the Disqualification Hearing

3-005.05B1 Reporting Requirements: The worker must report cases of suspected IPV to the Special Investigations Unit (SIU), Central Office.

3-005.05B2 Central Office Guidelines: The Central Office uses the following guidelines in determining the need for a disqualification hearing:

1. A disqualification hearing must be initiated regardless of the current eligibility status of the individual;
2. The burden of proving IPV is on the Department; and
3. The Central Office will not initiate a disqualification hearing against an accused individual whose case is currently being referred for prosecution or after any action taken against the accused individual by a court, if the factual issues of the case arise out of the same, or related, circumstances.

3-005.05B3 Disqualification Hearing Procedures: See 465 NAC 2-007.06.

3-005.05C IPV Disqualification: If an individual is found to have committed an IPV, a period of disqualification must be imposed. The period may be determined by the Director after an administrative disqualification hearing, or without a hearing if the individual waives his or her right to a hearing. The period of disqualification is:

1. For a first violation, up to one year;
2. For a second violation, up to two years; and
3. For a third violation, permanent disqualification.

The disqualification applies only to the individual found to have committed the IPV.

These penalties will also be imposed if the individual is found by a court to have committed IPV.

3-005.06 Undocumented Aliens: An undocumented alien is not included in the grant. An undocumented alien parent's income and resources are used in eligibility and budget computations.

3-005.07 Incarcerated Individuals: Any individual who is incarcerated is ineligible to be included in the ADC unit. If the incarcerated individual is the parent or needy caretaker relative in an ongoing case, s/he may be the payee for the unit for a maximum of three months. After three months if the parent or needy caretaker relative is still incarcerated, the case must be closed. An application may be taken with a specified relative, or guardian or conservator (see 468 NAC 2-006.02) as payee for the child(ren).

An applicant who is incarcerated and is the parent or needy caretaker relative may be the payee for the unit for a maximum of one month if s/he is maintaining a home for the child(ren). After one month, the case must be closed and an application may be taken with a specified relative, or guardian or conservator (see 468 NAC 2-006.02) as payee for the child(ren). An incarcerated applicant whose only child is an unborn may be eligible to receive ADC cash payment for the unborn in the last trimester.

3-006 Standard Filing Unit: The parent does not have a choice of whom s/he wants to include in the grant unit. All parents and dependent children must be included in the grant unit, except:

1. An unborn child during the first two trimesters of the mother's pregnancy;
2. Recipients of SSI or AABD;
3. Sanctioned individuals;
4. Undocumented aliens;
5. An alleged father when the parents are unmarried and paternity has not been established;
6. A parent and his/her child when unmarried parents are living together, have a child in common, and the household does not qualify for a grant as a single unit. (See 468 NAC 2-006.07A1 for eligibility of the other family members, see 468-000-305 for examples of the standard filing unit); and
7. Department wards, children of Department wards (for exceptions see 468 NAC 3-005.02B2), and children who are receiving an adoption or guardianship subsidy.

All siblings who meet the definition of a dependent child must be included in the unit. The income and resources of all unit members, sanctioned or undocumented alien parents, and sanctioned 16 or 17-year-olds are used in determining eligibility. See 468 NAC 2-007.01 for determination of the unit for a minor parent.

3-007 Budget Computation

3-007.01 Budgeting Process: ADC budgeting measures the household's income for maintenance against the appropriate need and payment standards. The standard of need and payment standard are based on the number of eligible individuals in the unit.

3-007.02 Budget of an ADC Unit and Other Clients in a Household (Living as a Family Unit): When an ADC unit shares a household with individuals who are receiving assistance from another categorical program, the cases are budgeted separately. The worker must show the income of each client or ADC unit on its own budget.

3-007.03 Budget of an ADC Unit Living with an AABD or SDP Parent: See 468-000-303.

3-007.04 ADC Budget with Child, Spousal, and Cash Medical Support

3-007.04A Initial and Continuing Eligibility: Any child, spousal, and cash medical support, including arrears, (see definitions in 468 NAC 1-004) paid to the Nebraska Child Support Payment Center or paid directly to the client by the noncustodial parent before the approval date is considered in determining eligibility. The total amount of child, spousal, and cash medical support received by the client is considered. The worker must use in the budget the actual amount of support received and retained by the client.

To determine initial eligibility, the worker considers the total anticipated monthly child/spousal support.

For ongoing eligibility of an active ADC grant case, the worker considers the actual dollar amount of child, spousal, and cash support paid directly to the client by the noncustodial parent or paid to the Nebraska Child Support Payment Center and assigned to the Department. See 468 NAC 2-015.01 and 2-015.02 for eligibility and budgeting regulations. See 468 NAC 2-015.01 for regulations on projecting income. Spousal support that is not linked to child support is not assigned.

If the average monthly child, spousal, or cash medical support collection exceeds the family's ADC payment, the ADC grant is to be closed.

Child support (for months where the family did not receive an ADC grant) which is distributed to the custodial parent is counted as unearned income on the ADC budget. To determine the amount which is reflected on the ADC budget, the worker must use a three-month average of the amount distributed.

3-007.04A1 Overpayment Due to Child Support: If the client receives child/spousal support before the approval date but it has not been budgeted, there is a IV-A overpayment. If the client receives child/spousal support after the approval date, the support is not counted in the budget because it is assigned. Child support that is received and retained by the client after approval of the case constitutes a IV-D overpayment.

3-007.04B Disbursed Collections: The following child support collections are returned to the court-ordered payee:

1. Child/spousal support collection for children not receiving an ADC grant; and
2. Current child/spousal support collection if the ADC grant is zero.

A payment received by the client is used in the first month possible, considering the unit's budgeting procedures.

3-008 Payments for Assistance

3-008.01 Source of Funds: Assistance payments are made from federal and/or state funds by state payment.

3-008.02 Non-Restricted Payments: ADC assistance payments are made with no restriction on the use of the funds.

3-008.02A Federal TANF Payment Restrictions: Pursuant to Sec. 4004 of Public Law 112-96, effective 02/22/2012 it is a violation of Federal law to access TANF funds from an ATM located at or via a point-of-sale purchase at the following types of businesses:

1. Liquor stores;
2. Casinos, Gambling Casinos or Gaming Establishments; or
3. Any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

3-008.03 Temporary Payee: For situations requiring a temporary payee, see 468 NAC 2-006.01D.

3-008.04 Protective Payments: A protective payee is assigned temporarily when the worker has documented that the assistance is being mismanaged and is not being used in the best interests of the child. The protective payee must be an interested third party who is concerned with the welfare of the child and family.

3-008.04A Selection of Payee: The client must participate and consent to the extent possible in the selection of the payee for protective payments.

The payee must be a responsible and dependable person with the ability to relate positively to the client. The payee may be a relative, friend, neighbor, or a member of the clergy or of a church or community service group. The payee must be either geographically close to the client or have means of transportation for frequent contact.

The payee must not be:

1. A Department administrator;
2. A Department employee who determines eligibility for a categorical program for the client in question; or
3. Landlords, grocers, or other vendors of goods and services dealing directly with the client.

All other community resources must be explored before a worker may accept the payee assignment.

Care must be taken that the protective payee has ability in ordinary household budgeting; experience in purchasing food, clothing, and household supplies within a restricted income; and knowledge of effective household practices.

3-008.04A1 Service Provider: The worker must obtain Central Office approval before a service provider who contracts with the Department may act as protective payee for a client s/he serves.

Exception: Central Office approval is not required for a Family Support worker to act as a protective payee.

3-008.04B Responsibilities of Payee: Responsibilities of protective payees include:

1. Paying maintenance needs from the ADC grant (i.e., rent, utilities, food, clothing, etc.);
2. Explaining to the client how the grant will be spent;
3. Keeping records of payments received and disbursements of funds; and
4. Treating confidentially all personal information concerning the family.

3-008.04C Review of Payee: The worker must review as necessary the way in which a protective payee's responsibilities are being carried out.

3-008.04D In Mismanagement Cases: Protective payments are to be used only for those clients who have the capacity to learn to manage their funds and are not intended for those whose mental or physical limitations would prevent them from learning how to manage their own affairs.

The protective payments are designed for those persons who exhibit a deliberate mismanagement of money, or whose lack of experience or previous training in money management and budgeting creates mismanagement.

The worker must take into account whether:

1. The family has experienced some emergency or extraordinary event for which it was appropriate for available funds to be spent;
2. Expenses for necessary bills exceed the client's grant and other income; or
3. The family has withheld the payment as a reasonable exercise of consumer rights when there is a legitimate dispute as to whether terms of an agreement have been met.

It is necessary to identify children whose relatives have demonstrated such an inability to manage funds that payments have not been or are not currently being used in the best interests of the child.

Before a protective payee can be assigned, the client must have consistently mismanaged current ADC funds.

3-008.04D1 Evidence of Mismanagement: Evidence of persistent mismanagement of assistance payments consists of:

1. Continued inability to plan and spread necessary expenditures over the usual assistance planning period;
2. Continued evidence that the children are not properly fed or clothed and that expenditures for them are made in a way that threatens their chances for healthy growth and development;
3. Persistent and deliberate failure to meet obligations for rent, food, school supplies, and other essentials; or
4. Repeated evictions or incurrence of debts with attachments or levies made against current income.

The supervisor or local office administrator, after a review of the evidence presented by the worker, must decide whether protective payments are necessary.

3-008.04D2 Notification of Client: The worker must notify the client when:

1. A creditor requests a protective payment for mismanagement because the client has not paid his/her bills; or
2. The decision has been made not to use a protective payment when requested by a creditor.

3-008.04D3 Preliminary Services: Before assigning a protective payee, the agency must try to develop the client's ability to manage funds. The agency must give specialized services on family budgeting and purchasing, meeting financial obligations, debt management, etc. The worker must then advise the client that a continued misuse of the payments will result in protective payments. If the client continues to mismanage his/her assistance payments, the worker must arrange for a protective payee.

3-008.04D4 Role of Payee: The protective payee has a teaching and supervisory role. S/he should recognize the objectives of the protective payment plan and share the responsibility of planning and evaluation with the agency. This entails reports to the agency of funds spent for the family and of progress made by the client in learning better money management.

The worker must release information to the payee about the family members and their situation that is pertinent to the objectives of the plan. The payee must agree to safeguard all personal information concerning the family. A proper understanding of the rights of the client and confidential nature of the agency-client-payee relationship is of the utmost importance.

3-008.04D5 Services

3-008.04D5a: The worker will determine if there is need for protective services and offer all appropriate defined services.

3-008.04D5b: The worker must utilize the information to determine if protective payments are required and if protective payments should be continued.

3-008.04D5c: Services designed to improve management of funds must be provided to all protective payment cases. Such services should include instruction in household budgeting; purchasing of food, clothing, home furnishing, repair of clothing and equipment; balanced diets; and organization of the work of housekeeping.

3-008.04D5d: The worker must review and evaluate each case at least every six months to determine if the client has demonstrated sufficient improved ability to properly use payments so that protective payments are no longer necessary, or if the protective payment status should continue.

3-008.04D6 Case Record: The case record must include:

1. Evidence that the client had been advised that continued misuse of payments would result in protective payments;
2. Specific evidence that the client has shown persistent mismanagement of assistance payments;
3. A description of the plan and provision of services;
4. Information regarding the qualifications and choice of payee; and
5. Evaluation information giving specific reasons for determining whether protective payments should be continued or are no longer necessary.

3-008.04D7 Time Limit: Mismanagement cases must not remain on regular protective payment status for more than two years. After this period of time, if the client is unable to assume responsibility for the assistance grant, arrangement must be made for the appointment of a guardian or conservator.

3-008.04E Fair Hearing: The client must be given the opportunity to appeal the initial decision or continuance of protective payments and the choice of the protective payee.

3-008.05 Revision of Budget and Payment: The worker must revise the assistance budget and modify the payment whenever changes in the client's circumstances indicate a need to reconsider requirements or resources.

3-008.06 Erroneous Payments: The following regulations apply to incorrect payments identified after October 31, 1981.

In cases which have both an underpayment and an overpayment, the worker may offset one against the other in correcting the payment.

3-008.07A Underpayments: All underpayments must be corrected. In no case may one month's corrected payment exceed the maximum payment which can be made for any one month. If the unit is already receiving the maximum payment, the worker may correct an underpayment with a retroactive payment. Retroactive payments are not considered income or a resource in the month paid or in the following month. If underpayments have not been corrected when a case is closed, corrective payments must be made if the payee is eligible for assistance at a later date.

3-008.07B Overpayments: The agency must take all reasonable steps necessary to promptly correct all overpayments regardless of cause. The worker must record in the case record all steps taken to recoup any overpayments.

The worker must first send a demand letter, giving the client the choice of reimbursing all or part of the overpayment or having future assistance reduced. If the client reimburses part of the overpayment, the remainder must be recouped by grant reduction. The worker must allow the client ten days to respond to the demand letter. If the client requests recoupment within the last ten days, the worker must take necessary action at that time. If the client does not respond within ten days, the worker must begin recoupment procedures in the first month possible, taking into account adequate and timely notice.

If the client chooses to repay but fails to do so, the worker must immediately take necessary action to recoup the overpayment.

If a case with an overpayment is closed, the agency must collect an overpayment of \$35 or more if the client becomes eligible for a grant at a future date. The worker must send a demand letter advising the client that s/he is still liable for the overpayment.

A grant that is not issued because of the \$10 minimum is not applied to an overpayment.

3-008.07B1 Identification of an Overpayment: There are two types of overpayments:

1. Agency/Administrative errors: Worker errors caused by inaccurate computation or the worker's failure to take action;
2. Client errors: Errors caused because the client supplies inaccurate or incomplete information or fails to provide information resulting in an overpayment.

All overpayments, regardless of cause, must be recouped (if there is an active ADC grant case) or recovery must be attempted (from a closed ADC case) if the outstanding overpayment amount is \$35 or more.

3-008.07B2 Recoupment Calculation: The following calculation is used to determine the amount of the allowable grant reduction for one month.

When an overpayment is determined to be due to client or agency/administrative error, the ADC grant is reduced by ten percent of the family's payment.

When the overpayment is determined to have occurred due to an Intentional Program Violation or due to fraud as determined by a court of law, the ADC grant is reduced by 20 percent of the family's payment.

In cases where child/spousal support is assigned, the payment must not be reduced below \$10.

3-008.07B3 Treatment of Child/Spousal Support in Determining Overpayments:
When a client receives a grant for which s/he is ineligible, following is the treatment of any child/spousal support collected during the month of ineligibility:

The collected child/spousal support for the month(s) of overpayment will be used to offset the grant overpayment. The worker waits until the month of ineligibility is over to ensure that all child/spousal support for the month is considered. Any support collected and kept is subtracted from the total overpayment to arrive at the amount of overpayment to be recouped.

3-008.07B4 Retroactive SSI Payment: The first month of ineligibility for ADC for an individual with continuing SSI entitlement is the month s/he receives an SSI retroactive payment unless the SSI payment has been reduced by the amount of ADC paid for that month. Since ineligibility for ADC does not begin before receipt of an SSI payment, ADC payments issued before the receipt of SSI do not constitute overpayments (see 468 NAC 3-005.03).

3-008.07B5 Ninety Percent of the Payment Maximum: See 468-000-209

3-008.07B6 Zero Grant: If the assistance grant is reduced to zero, members of the assistance unit are still considered a grant case. In cases where child support is assigned, the payment must not be reduced below \$10 to prevent termination of the assignment.

3-009 Child/Spousal Support Services: See Title 466.

3-010 Case Records: The case record of the ADC unit must be complete and must contain facts to substantiate each action with respect to assistance payments. Case records must be retained for four years from the closing of the case.

3-011 Fraud: See 465 NAC 2-007.