

EFFECTIVE
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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

473 NAC 2

TITLE 473 SOCIAL SERVICES FOR THE AGED AND DISABLED

CHAPTER 2 APPLICATION AND ELIGIBILITY

001. APPLICATION FOR SERVICES. Anyone may contact the Department by telephone, in writing, or in person to obtain information, explore eligibility, or to apply for services. Individuals may apply for themselves or as an authorized representative of another person.

001.01 APPLICATION PROCESS. Applicants must apply for services using a form approved by the Department. Applications must be signed and complete. Applications may be submitted in person, by mail, by fax, or by electronic submission. Applicants who require assistance with the application may ask the Department for assistance. Incomplete or unsigned applications may be denied.

001.02 INTERVIEWS. An interview is required at initial eligibility determination. Interviews may be conducted face-to-face or telephonically. The Department determines if a face-to-face interview is necessary. If a face-to-face interview cannot be conducted at a local office, the Department will consider an interview at a mutually agreeable alternate location. The interview must be attended by at least one of the following:

- (A) An adult applicant;
- (B) The applicant's legal guardian or conservator; or
- (C) An adult representing the applicant.

001.03 FAILURE TO COOPERATE. If an applicant fails to keep appointments, fails to contact the Department when requested, or fails to provide requested information, then the application may be denied.

002. ELIGIBILITY. To be eligible the applicant must meet the following eligibility rules:

002.01 RESIDENCY, CITIZENSHIP, AND ALIEN STATUS. Only Nebraska residents are eligible for program services. Applicants and recipients must be United States citizens or qualified aliens as defined in Nebraska Revised Statute (Neb. Rev. Stat.) § 4-111 and sign an attestation form verifying lawful presence in the United States. The Department must be able to verify the recipient's status.

002.02 ELIGIBILITY BASED ON FAMILY SIZE. The Department considers an applicant's family size in determining eligibility for services. A family is a unit consisting of one or more adults and any children related by blood, marriage, or adoption who reside in the same household. An unborn is included if proof of pregnancy is provided. Foster children may be

included when determining the size of the foster family. The following are considered separate families:

- (A) Unmarried adults who reside together;
- (B) Children living with non-legally responsible relatives;
- (C) Emancipated minors;
- (D) Minor parents; and
- (E) Biological parents or usual caretakers with a child in substitute care and children, if any, residing in the home.

002.03 CATEGORIES OF ELIGIBILITY FOR ADULTS. Individuals must meet one of the categories noted below to be eligible:

002.03(A) CURRENT SUPPLEMENTAL SECURITY INCOME OR STATE SUPPLEMENTAL. Applicants who currently receive assistance through the Title XVI Supplemental Security Income Program, the Supplemental Security Income Extended Benefits Program, or the Nebraska State Supplemental Program are eligible as current aged, current blind, or current disabled.

002.03(B) LOW INCOME. This section discusses categories of eligible low income applicants who are either Aged, Blind or Disabled.

002.03(B)(i) LOW INCOME AND AGED. An individual age 60 or older whose family income is within income guidelines of this chapter.

002.03(B)(ii) LOW INCOME AND BLIND. An individual age 19 through 59 who has a visual impairment, who meets the definition for low income disabled and whose family income is within the income guidelines of this chapter.

002.03(B)(iii) LOW INCOME AND DISABLED. An individual eligible as low income and disabled must have a family income which is within the income guidelines of this chapter and a physical or mental impairment which substantially prevents the applicant from engaging in useful occupations within the individual's competence. The impairment must be verifiable by medical findings of:

- (1) Physical impairment includes loss or defects of the extremities, malfunctioning of the organs of the body or physiological disturbances with structural damages; or
- (2) Mental impairment includes conditions characterized by a marked and consistent failure to adjust to the emotional, social, or individual demands of living which require that the individual have assistance in essential activities of daily living.

002.03(C) WITHOUT REGARD TO INCOME. An individual who is not eligible as a current recipient or as low income but who is actively working with Adult Protective Services is eligible without regard to income on a time-limited basis.

002.04 MAXIMUM ALLOWABLE INCOME. For an applicant to be determined eligible as low income and aged, low income and blind, or low income and disabled, the applicant's income must not exceed the maximum allowable monthly income for an individual or for a family of

two or more. As of January 1, 2021, the current base level income is \$1,216 per month for an individual or \$1,362 for a family of two or more. A cost of living adjustment to the base level income is calculated each fall when the new cost of living adjustment is released by the Social Security Administration. If the applicant's income is verified as equal to or less than this amount, the applicant is income-eligible for the various services outlined in this title.

002.04(A) SOURCES OF INCOME. All sources of income not excluded in this Title are counted as income.

002.04(B) INCOME EXCLUSIONS. The following sources of income are not considered when determining eligibility:

- (i) Money received from participation in the Foster Grandparent Program authorized by the ACTION Program;
- (ii) Money awarded by the Indian Claims Commission or the Court of Claims;
- (iii) Alaska Native Claims Settlement Act payments to the extent the payments are exempt from taxation under section 21(a) of the Act;
- (iv) Money received from the sale of property such as stocks, bonds, a house or a car unless the person was engaged in the business of selling the property in which case the net proceeds would be counted as income from self-employment;
- (v) Withdrawals of bank deposits;
- (vi) Tax refunds;
- (vii) Gifts;
- (viii) Earned Income Credits and Advanced Earned Income Credits;
- (ix) Lump sum inheritances or insurance payments;
- (x) Capital gains;
- (xi) The value of the allotment of benefits under the Supplemental Nutrition Assistance Program;
- (xii) The value of United States Department of Agriculture donated foods;
- (xiii) The value of supplemented food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;
- (xiv) Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (xv) Earnings of a child age 18 or younger who is a full-time student or a part-time student who is not employed full-time. Summer earnings of a child age 18 or younger are excluded if the child plans to return to school in the fall;
- (xvi) Loans;
- (xvii) Any grant to a student for educational purposes;
- (xviii) Work study for an undergraduate student;
- (xix) Home produce used for household consumption;
- (xx) Earnings received by a youth age 18 or younger under a Job Training Partnership Act Program;
- (xxi) Workforce Innovation and Opportunity Act allowance paid for supportive services such as transportation, meals, special tools, and clothing;
- (xxii) Volunteers In Service to America living allowances and stipends;
- (xxiii) Reimbursement from the Senior Companion Program;
- (xxiv) Low Income Home Energy Assistance Program funds;

- (xxv) Housing assistance provided by Housing and Urban Development or by a local housing program;
- (xxvi) Assistance received under the Disaster Relief Act of 1974 or under a federal law because of a presidentially declared major disaster;
- (xxvii) Payments to a client participating in training or school attendance subsidized by Vocational Rehabilitation within the Nebraska Department of Education;
- (xxviii) Payments made by the Veterans Administration under the Veterans Education and Employment Assistance Act for education expenses of a veteran; and
- (xxix) Payments made by an absent parent to a child care provider, landlord or mortgage holder on behalf of the applicant or recipient.

002.04(C) TYPES OF INCOME. The following types of income are considered when determining eligibility:

002.04(C)(i) IRREGULAR INCOME. Irregular income is income, earned or unearned, which varies in amount from month to month or which is received at irregular intervals. This may be due to irregular employment, but even when an individual works regularly, the income may be irregular because of factors such as seasonal increases or decreases in employment and earnings such as day labor or sales work on a commission basis. The Department averages three consecutive months of irregular income, if available, to project future income unless there has been a significant change. Small, irregular earnings which are not computable or predictable are not considered.

002.04(C)(ii) IN-KIND INCOME. In-kind income is any non-monetary consideration received by a client in place of income for services provided or as a payment of an obligation.

002.04(C)(iii) LUMP SUM INCOME. Lump sum income is money received on a one-time basis. The lump sum amount is divided by six months and the result is added to the gross monthly income to determine eligibility. If that amount exceeds the income maximum, the applicant is ineligible for that six month period.

002.04(C)(iv) EARNED INCOME. Earned income is money received from wages, tips, salary, commissions, self-employment, or items of need received in lieu of wages.

002.04(C)(v) UNEARNED INCOME. The Program considers unearned income in determining eligibility. Unearned income includes but is not limited to:

- (1) Social Security benefits;
- (2) Railroad retirement benefits;
- (3) Child support;
- (4) Unemployment compensation; and
- (5) Returns from savings or investments.

002.04(C)(vi) TREATMENT OF PAYMENT BY ABSENT PARENT. When an absent parent makes a payment for child care, rent, or mortgage payment whether court-ordered, or through an informal arrangement, the payment is:

- (1) Treated as income if paid to the client; or

- (2) Excluded if paid to the provider, a lender, or the landlord.

003. NEEDS ELIGIBILITY. Social services are authorized based on the applicant or recipient's income eligibility and needs and are not provided based on demand. Need for a particular service implies that the provision of that service will assist the applicant, recipient, or the family members toward achieving one of the five program goals:

- (A) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;
- (B) Achieving or maintaining self-sufficiency, including reduction or prevention of dependency;
- (C) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;
- (D) Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; or
- (E) Securing referral or admission for institutional care when other forms of care are not appropriate.

003.01 NEEDS CRITERIA. The applicant or recipient has no defined service need when:

- (A) The applicant or recipient is able to perform or provide for the identified service needs in 473 NAC 4;
- (B) The applicant or recipient has family members or caregivers who have the responsibility or capability to meet identified service needs;
- (C) The applicant or recipient has other relatives, friends, or interested individuals who will provide needed identified services at no cost to the applicant or recipient or to the family;
- (D) The applicant or recipient has access to financial resources which may be used to meet the needs;
- (E) The applicant or recipient is residing in an institution except when transitioning from the institution or short-term care; or
- (F) The applicant or recipient does not meet the requirements specified for each service.

004. VERIFICATION. To determine initial or ongoing eligibility, the Department may need to verify information provided by the applicant or recipient. The applicant or recipient must cooperate with the verification process. Failure to cooperate with verification may result in services being denied or reduced, termination from the program, or establishment of an overpayment.

005. AUTHORIZATION. The service provider is responsible for providing the service authorized on the service authorization and in the provider agreement. Each provider from whom service is purchased must receive authorization before providing the service.

005.01 AUTHORIZATION FOR IN-HOME SERVICES. If an individual in-home service provider is authorized, the applicant or recipient must execute necessary documents to appoint the Department as agent for state and federal employment taxes and other withholding taxes.

005.02 TERMINATING AUTHORIZED SERVICES. When a service authorization is terminated before the end of the authorization period, the affected provider will be notified.

006. DUTY TO CONTACT THE DEPARTMENT. The recipient or the authorized representative must contact the Department when

- (A) There has been a change in the recipient's situation such as a change in address, change in income, change in family composition, change in health, or change in need for services; or
- (B) The recipient is dissatisfied or experiencing problems with the service delivery.

007. NOTICE OF AGENCY ACTION. The Department will mail the applicant or recipient a notification of agency action when

- (A) An applicant is determined ineligible for program services;
- (B) A recipient is found ineligible at the time of verification or redetermination;
- (C) A requested service is denied or provided services are to be reduced or terminated;
- (D) A provider has met standards to be approved as a provider; or
- (E) When a recipient's provider is disapproved or will not be reapproved.

007.01 ADVANCE NOTICE. When a provided service is to be reduced or terminated, the Department provides written notice to the recipient at least ten calendar days before the adverse action is effective.

007.02 ADEQUATE NOTICE. If the Department has verified possible recipient fraud, a notice of termination or reduction is sent to the recipient no later than the action's effective date.

007.03 SERVICE CONTINUATION DURING APPEAL. In cases where advance notice has been given, the recipient may appeal. If the appeal is requested in writing within ten days following the date the Department's notice was mailed, the adverse action will not be carried out until a fair hearing decision is made. In situations where only adequate notice is required, service is not continued pending a hearing decision.

008. SOCIAL SERVICE EXCEPTION. In limited circumstances, the Department may grant waivers of the requirements when necessary to:

- (A) Meet extraordinary needs of individuals eligible for services; or
- (B) Obtain providers for eligible applicants or recipients.

009. TIME-LIMITED SERVICE EXCEPTIONS. Approval for extension beyond the initial six month authorization period for the sole purpose of ongoing advocacy or follow-up will not be granted. The following services are time limited:

- (A) Services provided in conjunction with Adult Protective Services;
- (B) Adult Day Services; and
- (C) Homemaker.

010. ASSIGNMENT OF PAYEE, GUARDIANSHIP, OR CONSERVATOR STATUS. No employee of the Department may serve as a guardian or conservator for any recipient for whom the employee:

- (A) Determines eligibility;
- (B) Authorizes service provision;
- (C) Provides direct services; or
- (D) Has any other professional relationship which may be considered a conflict of interest.

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010.01 SERVICE WORKER AS PROTECTIVE PAYEE. A Department employee may act as a protective payee for a recipient only if the employee does not determine eligibility for a categorical program for the recipient. All other community resources must be explored before a services worker may accept the payee assignment.

010.02 PROVIDER AS PROTECTIVE PAYEE. The Department must approve before a service provider who contracts with the Department may act as protective payee for a recipient served by the service provider.

011. ELIGIBILITY REDETERMINATION. Eligibility redeterminations must be conducted at least once every twelve months. More frequent redeterminations may be necessary whenever the Department learns of a change in the recipient's circumstances or possible change in need for services. An interview may be necessary as part of the redetermination process.