



Modifications From Agency

**State of Wisconsin
Department of Children and Families**

Wisconsin Works Time Limits and Extensions

Chapter DCF 101

CR 18-016

The Wisconsin Department of Children and Families proposes to amend s. DCF 101.18 (2) (a); to repeal and recreate ss. DCF 101.09 (2) (n) and 101.18 (2) (b); and to create s. DCF 101.095, relating to Wisconsin works time limits and extensions.

Analysis Prepared by the Department of Children and Families

Statutory authority: Section 49.145 (1) and (2) (n) 3., Stats., as affected by 2015 Wisconsin Act 55; s. 227.11 (2) (a) (intro.), Stats.

Nonstatutory authority: 2015 Wisconsin Act 55, Sec. 9106

Statutes interpreted: Section 49.145 (2) (n), Stats., as affected by 2015 Wisconsin Act 55; s. 49.148 (1m), Stats.; 45 CFR 264.1

Related statute or rule: Sections 49.147 (3) (c), (4) (b), and (5) (b) 2., Stats., and ch. DCF 101

Explanation of Agency Authority

Section 49.145 (1), Stats., provides that the department may promulgate rules establishing additional eligibility criteria and specifying how eligibility criteria are to be administered.

Section 49.145 (2) (n) 3., Stats., as affected by 2015 Wisconsin Act 55, provides that a Wisconsin works agency may extend the time limit only if the Wisconsin works agency determines, in accordance with rules promulgated by the department, that the individual is experiencing hardship or that the individual's family includes an individual who has been battered or subjected to extreme cruelty.

Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Section 9106 of 2015 Wisconsin Act 55 provides that when implementing the 48-month time limit under s. 49.145 (2) (n) 1. (intro.) and a. and 3., Stats., as affected by this act, for an individual participating in Wisconsin works on the effective date of this subsection, the department of children and families may allow the individual to continue to participate in some or all components of Wisconsin works longer than the 48-month time limit for an appropriate amount of time necessary to allow the individual to transition out of Wisconsin works, as determined by the department of children and families.

Summary of the Proposed Rule

The proposed rule applies to the lifetime benefit limit for cash assistance funded by the federal Temporary Assistance for Needy Families program. The limit applies to cash assistance received in a Wisconsin works employment position, a comparable TANF-funded program in another state, and the JOBS program under s. 49.193, 1997 Stats., on or after October 1, 1996.

The proposed rule incorporates the change to s. 49.145 (2) (n), Stats., as affected by 2015 Wisconsin Act 55, that reduced of the total number of months an individual may participate in a program that provides TANF cash assistance from 60 months to 48 months.

Extension Criteria

2015 Wisconsin Act 55 also affected the criteria for granting an extension to the Wisconsin works (W-2) lifetime limit. Prior to the Act 55 change, s. 49.145 (2) (n) 3., Stats., provided that a W-2 agency may extend the 60-month benefit limit only if the W-2 agency determined that “unusual circumstances exist that warrant an extension of the participation period.”

The current rule provides that the “unusual circumstances that may warrant an extension of the 60-month participation period” are any of the following:

- The individual is unable to work because of a personal disability, or is needed at home to care for a severely incapacitated member of the Wisconsin works group.
- The individual has significant limitations to employment, including the following:
 - Low achievement ability, learning disability, or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment.
 - Family problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment.
- The individual has made all appropriate efforts to find work and is unable to find employment because local labor market conditions preclude a reasonable job opportunity.

With the Act 55 changes, s. 49.145 (2) (n) 3., Stats., provides that a W-2 agency may extend the 48-month lifetime limit if the W-2 agency determines that “the individual is experiencing hardship or the individual’s family includes an individual who has been battered or subjected to extreme cruelty.”

The proposed rule specifies that hardship means any of the following:

- The individual is unable to work due to a personal disability or incapacitation.

- The individual needs to remain at home to care for a member of the individual's Wisconsin works group whose incapacity is so severe that without in-home care provided by the individual the health and well-being of the Wisconsin works group member would be significantly affected.
- The individual has significant limitations to employment, including the following:
 - Low achievement ability, learning disability, or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment.
 - Family problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment.
- The individual has made all appropriate efforts to find work and is unable to find employment because local labor market conditions preclude a reasonable job opportunity.
- The individual is unable to work due to current participation in a substance abuse treatment program certified to provide treatment for substance abuse under ss. DHS 75.10 to 75.15 or psychosocial rehabilitation services as approved by the department.

These criteria are based on a State option to the federal 60-month limit on TANF cash assistance under 45 CFR 264.1 (c).

The proposed rule specifies that an individual or a member of the individual's Wisconsin works group has been battered, or subjected to extreme cruelty based on the fact that the individual or member of the Wisconsin works group has been subjected to any of the following:

- Physical acts that resulted in, or threatened to result in, physical injury to the individual.
- Sexual abuse.
- Sexual activity involving a dependent child.
- Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.
- Threats of, or attempts at, physical or sexual abuse.
- Mental abuse.
- Neglect or deprivation of medical care.

The proposed rule also provides that an extension to the lifetime limit shall be approved for a period of no more than 6 consecutive months. A Wisconsin works agency may determine the appropriate number of extensions to the 48-month limit.

Statutory Update

In addition, the proposed rule incorporates a statutory update to s. 49.148 (1m) (a) 1., Stats., as affected by 2011 Wisconsin Act 32, that reduced the eligibility period for benefits for the custodial parent of an infant from the first 12 weeks to the first 8 weeks after the infant is born.

Summary of Factual Data and Analytical Methodologies

When drafting the proposed rule, the department considered extension criteria most commonly available in other states and data on Wisconsin works participants that have received more than 48 months of assistance.

Summary of Related Federal Requirements

Existing federal regulations establish a time limit for receiving TANF benefits but also grant states significant flexibility in creating time limit policies. 45 CFR 264.1 (a) prohibits states from using federal TANF funds to provide assistance to most families beyond 60 cumulative months. This federal regulation also allows states to set a time limit of less than 60 months. 45 C.F.R. 260.31 defines ‘assistance’ as cash payments, vouchers, and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., food, clothing, shelter, utilities, household goods, personal care items, and other general incidental expenses).

Under 45 CFR 264.1 (c), states may extend assistance to a limited number of families beyond the 60-month time limit, but this number cannot exceed 20 percent of the State's average monthly caseload. States may only extend assistance if families have experienced hardship, as defined by the State, or if the family includes someone who has been battered or subjected to extreme cruelty based on the fact that the individual has been subjected to any of the following:

- i. Physical acts that resulted in, or threatened to result in, physical injury to the individual.
- ii. Sexual abuse.
- iii. Sexual activity involving a dependent child.
- iv. Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.
- v. Threats of, or attempts at, physical or sexual abuse.
- vi. Mental abuse.
- vii. Neglect or deprivation of medical care.

45 CFR 264.1 (b), provides that only months of assistance that are paid (in whole or in part) with Federal TANF funds count towards the federal 60-month lifetime limit. In addition, States may not count toward the five-year federal limit any of the following:

- i. Any month of receipt of assistance by an individual who is not the head-of-household or married to the head-of-household.
- ii. Any month of receipt of assistance by an adult while living in Indian country (as defined in section 1151 of title 18, United States Code) or a Native Alaskan Village where at least 50 percent of the adults were not employed.
- iii. Any month for which an individual receives only noncash assistance.

If a state does not comply with the federal 60-month lifetime limit requirements, 45 CFR 264.2 provides that the State Family Assistance Grant (SFAG) will be reduced by 5 percent in the succeeding fiscal year. A state may avoid the penalty by demonstrating reasonable cause or correcting the violation under a corrective compliance plan. 45 CFR 264.3 (b) provides that a state may receive reasonable cause for failing to comply with the five-year limit on Federal

assistance because it granted federally recognized good cause domestic violence waivers, within the meaning of 45 CFR 260.52 (c) and 45 CFR 260.55.

Comparison to Rules in Adjacent States

Illinois

Participation in Illinois' TANF program is limited to a cumulative total of 60 months in a lifetime. The criteria for an exception to the 60-month lifetime limit on the receipt of TANF cash benefits, include any of the following:

- The client has an application for Supplemental Security Income (SSI) pending and the Department determines the client is probably eligible for SSI.
- The client has a medical barrier that prevents the client from obtaining or retaining employment of at least 30 hours per week.
- The client is in an approved education and training program that will be completed in 6 months or less after the client's 60th month.
- The client is in an intensive service program to help overcome a barrier to work and the client's involvement in the program precludes the ability to obtain or retain employment of at least 30 hours per week.
- The client has a severely disabled child approved for a waiver under the Home & Community Based Care Program.
- The client is the only adult in the assistance unit and is the primary caregiver for a child under age 18, or is the primary caregiver for his or her spouse and the demands of caregiving do not allow the caregiver to obtain or retain employment.

Iowa

Participation in Iowa's TANF program is limited to a cumulative total of 60 months in a lifetime. A family may receive TANF-funded assistance beyond the 60-month lifetime limit if the family qualifies for a hardship exemption. Iowa defines "Hardship" as a circumstance that prevents the family from being self-supporting, including any of the following:

- Domestic violence. "Domestic violence" means that the family includes someone who has been battered or subjected to extreme cruelty.
- Lack of employability.
- Lack of suitable childcare.
- Chronic or recurring medical conditions or mental health issues, or an accident or disease, when verified by a professional. The applicant or recipient must follow a treatment plan to address the condition or issue.
- Housing situations that make it difficult or impossible to work.
- Substance abuse issues. A family requesting a hardship exemption due to substance abuse shall be required to obtain clinical assessment and follow an intensive treatment plan.
- Having a child whose circumstances require the parent to be in the home.
- Other circumstances which prevent the family from being self-supporting.

There is no limit to the number of extensions that may be approved.

Michigan

Participation in Michigan's TANF program is limited to a cumulative total of 48 months in a lifetime. Michigan does not allow individuals to extend participation beyond the state lifetime benefit limit.

Minnesota

Participation in Minnesota's TANF program is limited to a cumulative total of 60 months in a lifetime. The criteria for an extension to the 60-month lifetime limit on the receipt of TANF cash benefits, include any of the following:

- Participants who are employed and are participating in work activities at least 30 hours per week or 55 hours per week for a two-parent family.
- Participants who have verification from their health care provider that the number of hours they may work is limited due to illness or disability may qualify for a hardship extension as long as they work at least the number of hours specified by the health care provider.
- Participants who are hard to employ, including all of the following:
 - Persons who have conditions that limit their ability to obtain and retain employment, including developmental disability, mental illness, learning disability, and IQ below 80.
 - Persons who are otherwise unemployable.
 - Persons who have family violence waiver.
- Participants with an illness, injury, or incapacity that is expected to last more than 30 days that severely limits the participant's ability to obtain or maintain suitable employment. Also, participants who are needed to care for a person in their family who meets this criteria.

Analysis Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis

The impact of the proposed rule is limited to agencies administering the Wisconsin works program and families and individuals participating in the Wisconsin works program. No current Wisconsin works agency is a small business as defined s. 227.114 (1), Stats.

The primary impact of the proposed rule is on applicants to, and participants in, the Wisconsin works program who are eligible to receive benefits and services. All reporting and compliance requirements apply only to agencies administering these programs and participants in these programs.

Effect on Small Business

The proposed rule does not affect small businesses under s. 227.114 (1), Stats.

Agency Contact Person

Margaret McMahon, Director, Bureau of Working Families, Division of Family and Economic Security, Department of Children and Families, (608) 422-6273, margaret.mcmahon@wisconsin.gov.

SECTION 1. DCF 101.09 (2) (n) is repealed and recreated to read:

DCF 101.09 (2) (n) The individual, or any other adult member of the individual's Wisconsin works group, has not exceeded the lifetime limit on program participation or receipt of benefits under s. DCF 101.095.

SECTION 2. DCF 101.095 is created to read:

DCF 101.095 Lifetime limit on program participation or receipt of benefits. (1)
LIFETIME LIMIT OF 48 MONTHS. Beginning on the date on which an individual has attained the age of 18, the total number of months in which the individual, or any other adult member of the Wisconsin works group, has participated in or received benefits under, any combination of the following may not exceed 48 months, whether or not consecutive, except as otherwise provided in this section:

- (a) The JOBS program under s. 49.193, 1997 Stats., on or after October 1, 1996.
- (b) A Wisconsin works employment position.
- (c) Any TANF-funded program in this state or any other state, if the individual received benefits attributable to funds provided by the federal government while in that program.

Note: Sections 49.148 (1m) (c), Stats., and DCF 101.18 specify the criteria for determining whether receipt of a custodial parent of an infant grant in a month is considered participation in a Wisconsin works employment position for that month.

(2) ADULT WISCONSIN WORKS GROUP MEMBERS. Except as provided in sub. (4), if an individual was an adult member of a Wisconsin works group during a month in which any member of the Wisconsin works group participated in a W-2 employment position, the W-2 agency shall include that month in the calculation of the total number of months of the individual's participation or receipt of benefits for purposes of this section.

(3) MONTHS INCLUDED. A W-2 agency shall include a month in which a JOBS program participant or W-2 participant received a reduced monthly AFDC or W-2 benefit or no monthly AFDC or W-2 benefit due to a sanction under the JOBS program or s. DCF 101.18 (1) (b) or (c) or 101.21 in the calculation of the total number of months of the individual's participation or receipt of benefits for purposes of this section.

(4) MONTHS EXCLUDED. When calculating the the total number of months of an individual's participation or receipt of benefits for purposes of this section, a W-2 agency shall exclude, to the extent permitted under federal law, any month in which the individual was living on a federally recognized American Indian reservation, in an Alaskan Native village, or in Indian country, as defined in 18 USC 1151, occupied by an Indian tribe, if during that month, all of the following applied:

(a) At least 1,000 individuals were living on the reservation or in the village or Indian country.

(b) At least 50 percent of the adults living on the reservation or in the village or Indian country were unemployed.

(5) CRITERIA FOR EXTENSION OF THE 48-MONTH LIFETIME LIMIT. A W-2 agency may, subject to subs. (6) and (7), extend the 48-month lifetime limit under sub. (1) if the agency determines that the individual meets the conditions in par. (a) or (b) as follows:

(a) *Hardship.* The individual is experiencing hardship due to any of the following:

1. The individual is unable to work due to a personal disability or incapacitation.

2. The individual needs to remain at home to care for a member of the individual's

Wisconsin works group whose incapacity is so severe that without in-home care provided by the

individual the health and well-being of the Wisconsin works group member would be significantly affected.

3. The individual has significant limitations to employment such as any of the following:

a. Low achievement ability, learning disability, or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment but are not sufficient to meet the criteria for eligibility for supplemental security income under 42 USC 1383c or social security disability insurance under 42 USC 401 to 433.

b. Family problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment.

4. The individual has made all appropriate efforts to find work and is unable to find employment because local labor market conditions preclude a reasonable job opportunity. In this subdivision, “reasonable job opportunity” means a job that pays at least minimum wage and conforms to all applicable federal and state laws. The W-2 agency shall document at least one of the following:

a. The inability of W-2 participants with similar skills, or engaged in job searches in similar geographic and occupational areas, to find unsubsidized jobs.

b. The unavailability of jobs in labor market sectors that match the individual’s skills, as supported by specific examples of layoffs in these labor market sectors or by labor market data published by the department of workforce development or the United States department of labor.

c. The unavailability of jobs in the labor market within a reasonable distance and travel time of the individual’s home, as supported by specific examples of layoffs in this labor market or by labor market data published by the department of workforce development or the United States bureau of labor statistics.

5. The individual is unable to work to due to current participation in a substance abuse treatment program certified to provide treatment for substance abuse under ss. DHS 75.10 to 75.15 or psychosocial rehabilitation services as approved by the department.

(b) *Battered or subjected to extreme cruelty.* The individual's Wisconsin works group includes a member who has been battered or subjected to extreme cruelty based on the fact that the member has been subjected to any of the following:

1. Physical acts that resulted in, or threatened to result in, physical injury to the individual.
2. Sexual abuse.
3. Sexual activity involving a dependent child.
4. Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.
5. Threats of, or attempts at, physical or sexual abuse.
6. Mental abuse.
7. Neglect or deprivation of medical care.

(6) LENGTH OF THE EXTENSION PERIOD. A Wisconsin Works agency may grant an extension to the lifetime limit on program participation or benefit receipt under this section for a time period of no more than 6 consecutive months.

(7) MAXIMUM NUMBER OF EXTENSION PERIODS. A Wisconsin works agency may determine the appropriate number of extensions to the lifetime limit on program participation or benefit receipt under this section.

(8) DEPARTMENT REVIEW. The department may review, approve, or overturn a W-2 agency's determination regarding an extension of the lifetime time limit on program participation or benefit receipt under this section.

SECTION 3. DCF 101.18 (2) (a) is amended to read:

DCF 101.18 (2) CUSTODIAL PARENT OF INFANT. (a) A custodial parent of a child who is ~~42~~ 8 weeks old or less and who meets the eligibility requirements under s. DCF 101.09 (2) and (3) may receive a monthly grant in the amount provided under s. 49.148 (1m), Stats. A Wisconsin works agency may not require a participant under this subsection to participate in a trial job, CSJ, or transitional placement. ~~Receipt of a grant under this subsection does not constitute participation in a Wisconsin works employment position for purposes of the 60 month time limit under s. DCF 101.09 (2) (n) and time limits for participation in a particular W-2 employment position under s. DCF 101.16 (2) (e), (3) (e) or (4) (c), if the child is born to the participant not more than 10 months after the date that the participant was first determined to be eligible for AFDC or for a Wisconsin works employment position.~~

SECTION 4. DCF 101.18 (2) (b) is repealed and recreated to read:

DCF 101.18 (2) (b) For purposes of the lifetime limit on program participation and benefit receipt under ss. DCF 101.09 (2) (n) and 101.095 and the time limits for participation in a particular Wisconsin works employment position under s. DCF 101.16 (2) (e), (3) (e), or (4) (c), receipt of a grant under this subsection has the following effect:

1. The grant does not constitute participation in a Wisconsin works employment position if the child described in sub. (1) is born to the participant not more than 10 months after the date that the participant was first determined to be eligible for AFDC or for a Wisconsin works employment position.
2. The grant constitutes participation in a Wisconsin works employment position if the child described in sub. (1) is born to the participant more than 10 months after the date that the

participant was first determined to be eligible for AFDC or for a Wisconsin works employment position, unless any of the following conditions are met:

- a. The child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2), or (3), Stats., or in violation of s. 948.02 or 948.025, Stats., and the sexual assault has been reported to a physician and to law enforcement authorities.
- b. The child was conceived as a result of incest in violation of s. 944.06 or 948.06, Stats., and the incest has been reported to a physician and to law enforcement authorities.

SECTION 5. EFFECTIVE DATE. This rule shall take effect on November 1, 2021.