



## Clearinghouse Rule 18-016

### State of Wisconsin Department of Children and Families

#### Wisconsin Works Time Limits and Extensions

#### Chapter DCF 101

The Wisconsin Department of Children and Families proposes to repeal ss. DCF 101.09 (2) (n) and 101.095 (9); to amend ss. DCF 101.09 (2) (n) (intro.) and (2) (nm) and 101.18 (2); and to create ss. DCF 101.09 (2) (nm) and 101.095, relating to Wisconsin works time limits and extensions.

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#### Analysis Prepared by the Department of Children and Families

**Statutes interpreted:** Sections 49.145 (2) (n) 1. and 3., Stats., as affected by 2015 Wisconsin Act 55

**Statutory authority:** Section 49.145 (2) (n) 3., Stats., as affected by 2015 Wisconsin Act 55

**Related statute or rule:** Sections 49.145; 49.147 (3) (c), (4) (b), and (5) (b) 2.; and 49.148 (1m) (c), Stats.; ch. DCF 101.

#### Explanation of Agency Authority

Section 49.145 (2) (n) 1., Stats., as affected by 2015 Wisconsin Act 55, reduces the time an individual can participate in a program funded under the federal Temporary Assistance for Needy Families (TANF) paying TANF cash assistance from 60 months to 48 months. This eligibility requirement affects any adult member of the Wisconsin works group who has participated in, or has received benefits under, any of the following or any combination of the following:

- a. The JOBS (job opportunities and basic skills) program under s. 49.193, 1997 Stats., on or after October 1, 1996.
- b. A Wisconsin works employment position.
- c. Any program in this state or in any other state funded by a federal block grant for temporary assistance for needy families under title I of P.L. 104-193, if the individual received benefits attributable to funds provided by the federal government.

Section 49.145 (2) (n) 2., Stats., provides that except as provided in sub. 4., in calculating the number of months in which the individual participated, the Wisconsin works agency shall include any month in which any adult member of a Wisconsin works group participated in a Wisconsin works employment position, if the individual was a member of that Wisconsin works group during that month.

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 49.145 (2) (n) 4., Stats., provides that in calculating the number of months that count toward the 48-month limit, a Wisconsin works agency shall exclude, to the extent permitted under federal law, any month during which any adult in the Wisconsin works group participated in any activity listed under sub. 1. a. to c. while 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, at least 1,000 individuals were living on the reservation or in the village or Indian country and at least 50 percent of the adults living on the reservation or in the village or Indian country were unemployed.

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 49.148 (1m), Stats., as affected by 2011 Wisconsin Act 32, reduced the eligibility period for benefits for a custodial parent of an infant from the first 12 weeks to the first 8 weeks or less after the child is born, if the parent is eligible under s. 49.145 (2) and (3), Stats., unless another parent in the Wisconsin works group is eligible for or participating in a Wisconsin works employment position or is employed in unsubsidized employment.

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 Rules**

The proposed rules apply to the lifetime benefit limit for cash assistance funded by the federal Temporary 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 rules incorporate changes in 2015 Wisconsin Act 55 that reduce the total number of months an individual may participate in a program that provides TANF cash assistance from 60 months to 48 months and provide new criteria for determining extensions to the lifetime benefit limit.

Before the Act 55 changes, s. 49.145 (2) (n) 3., Stats., provided that a Wisconsin works (W-2) agency may extend the 60-month benefit limit only if the W-2 agency determines that “unusual circumstances exist that warrant an extension of the participation period.” With the Act 55 changes, this provision now allows a Wisconsin works (W-2) agency to 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.”

Under the current rule, 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.

Under the proposed rule, the 60-month benefit limit and the current rule on extensions of the limit for “unusual circumstances” will continue to apply to any individual who was first determined eligible for a Wisconsin works employment position before the effective date of this rule until 2 years after the effective date of the rule.

For individuals who are first determined eligible for a Wisconsin works employment position on or after the effective date of this rule, the 48-month benefit limit will apply and extensions will be determined on the standard in s. 49.145 (2) (n) 3., Stats., as affected by 2015 Wisconsin Act 55. This standard allows an extension to the 48-month benefit limit if the W-2 agency determines, in accordance with rules promulgated by the department, 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, based on an independent assessment by a medical professional, division of vocational rehabilitation or similar agency or business, due to a temporary physical or mental impairment, short-term illness, short-term recovery

period following an accident, or other personal disability anticipated to improve so that the individual is able to attain employment.

- 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.

The proposed rule specifies that an individual who has been battered or subjected to extreme cruelty means that the individual is temporarily unable to work because the individual or a member of the Wisconsin works group has been battered, or subjected to extreme cruelty based on the fact that the individual or member of the W-2 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.
- Threats of, or attempts at, physical or sexual abuse.

These criteria are based on a State option to the federal 60-month limit on TANF cash assistance under 45 CFR 264.1 (c) (2) (i), (ii), and (v). The focus for an extension of a W-2 employment position is a current or recent act or threat that prevents the W-2 participant from engaging in employment.

The proposed rules also provide that an extension to the 48-month lifetime limit shall be approved for a period of no more than 6 consecutive months, and a Wisconsin works agency may not approve more than 2 extensions to the 48-month limit.

In addition, the proposed rules incorporate 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 rules, 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. The lower lifetime limit, maximum of 2 6-month extensions to the lifetime limit, and removal of local labor market conditions as an extension approval reason will each reduce the proportion of families beyond the federal 60-month lifetime limit therefore lowering the risk of a penalty.

### **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 60<sup>th</sup> 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 these proposed rules 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 rules 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 rules do not affect small businesses under s. 227.114 (1), Stats.

**Agency Contact Person**

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**Place Where Comments are to be Submitted and Deadline for Submission**

Comments may be submitted to Debra Cronmiller, Bureau of Working Families, Division of Family and Economic Security, Department of Children and Families, 201 E. Washington Avenue, Madison, WI 53708, or [dcfpublichearing@wisconsin.gov](mailto:dcfpublichearing@wisconsin.gov). The comment deadline is March 27, 2018.

**SECTION 1. DCF 101.09 (2) (n) (intro.) is amended to read:**

**DCF 101.09 (2) (n) (intro.)** Beginning on the date on which the 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 actively participated in the JOBS program, has participated in a Wisconsin works employment position, or has participated in any TANF-funded program in this state or any other state and has received TANF cash assistance while in that program does not exceed 60 months. The months need not be consecutive. For purposes of determining the number of monthly benefit payments permitted under s. 49.145 (2) (n), Stats., and this section, a JOBS program participant or W-2 participant shall be considered to have received a monthly benefit in a month in which, as a result of a sanction under the JOBS program or s. DCF 101.18 (1) (b) or (c) or 101.21, a reduced monthly AFDC or W-2 benefit or no monthly AFDC or W-2 benefit is paid. Participation in the job opportunities and basic skills program under s. 49.193, 1997 Stats., on or after October 1, 1996, counts toward the 60-month limit. A Wisconsin works agency may extend the time limit only if the Wisconsin works agency determines that unusual circumstances exist that warrant an extension of the participation period. The department may review, approve, or overturn a W-2 agency's decision related to an extension of the 60-month limit. This paragraph applies only to an individual who was first determined eligible for a Wisconsin works employment position before the effective date of this rule [LRB inserts date]. In this paragraph, "unusual circumstances" means any of the following:

**SECTION 2. DCF 101.09 (2) (n), as affected by this rule, is repealed.**

**SECTION 3. DCF 101.09 (2) (nm) is created to read:**

**DCF 101.09 (2) (nm)** The individual, or any other adult member of the Wisconsin works group, has not exceeded the 48-month lifetime limit on program participation established under s. DCF 101.095. This paragraph does not apply to an individual who was first determined eligible for a Wisconsin works employment position before the effective date of this rule [LRB inserts date].

**SECTION 4. DCF 101.09 (2) (nm), as created by this rule, is amended to read:**

**DCF 101.09 (2) (nm)** The individual, or any other adult member of the Wisconsin works group, has not exceeded the 48-month lifetime limit on program participation established under s. DCF 101.095. ~~This paragraph does not apply to an individual who was first determined eligible for a Wisconsin works employment position before the effective date of this rule [LRB inserts date].~~

**SECTION 5. DCF 101.095 is created to read:**

**DCF 101.095 Time limit on program participation. (1) 48-MONTH LIFETIME LIMIT.** Beginning on the date on which the 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 of the following or any combination of the following does not exceed 48 months, whether or not consecutive:

- (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 and 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), in calculating the number of months in which the individual participated under sub. (1), the W-2 agency shall include any month in which any adult member of a W-2 group participated in a W-2 employment position, if the individual was a member of that W-2 group during that month.

(3) MONTHS INCLUDED. For purposes of determining the number of monthly benefit payments permitted under s. 49.145 (2) (n), Stats., or s. 101.09 (2) (n), and this section, a JOBS program participant or W-2 participant shall be considered to have received a monthly benefit in a month in which, as a result of a sanction under the JOBS program or s. DCF 101.18 (1) (b) or (c) or 101.21, a reduced monthly AFDC or W-2 benefit or no monthly AFDC or W-2 benefit is paid.

(4) MONTHS EXCLUDED. In calculating the number of months under sub. (1) or s. 101.09 (2) (n), a W-2 agency shall exclude, to the extent permitted under federal law, any month in which any adult in the W-2 group participated in any activity listed under sub. (1) (a) to (c) while 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 extend the 48-month lifetime limit under sub. (1) only 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, based on an independent assessment by a medical professional, division of vocational rehabilitation or similar agency or business, due to a temporary physical or mental impairment, short-term illness, short-term recovery period following an accident, or other personal disability anticipated to improve so that the individual is able to attain employment.

2. 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.

(b) *Battered or subjected to extreme cruelty*. The individual is temporarily unable to work because the individual or a member of the Wisconsin works group has been battered, or subjected to extreme cruelty based on the fact that the individual or member of the W-2 group 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. Threats of, or attempts at, physical or sexual abuse.

(6) LENGTH OF THE EXTENSION PERIOD. An extension to the 48-month lifetime limit granted by the Wisconsin works agency under sub. (1) shall be approved for a period of no more than 6 consecutive months.

(7) MAXIMUM NUMBER OF LIFETIME LIMIT EXTENSION PERIODS. A Wisconsin works agency may grant no more than 2 extensions to the lifetime limit under sub. (1).

(8) DEPARTMENT REVIEW. The department may review, approve, or overturn a W-2 agency's determination regarding an extension of the 48-month time limit.

(9) EXCEPTION TO APPLICABILITY. Notwithstanding any provisions of this section to the contrary, subs. (1) and (5) to (7) do not apply to an individual who was first determined eligible for a Wisconsin works employment position before the effective date of this rule [LRB inserts date].

**Note:** An individual who was first determined eligible for a Wisconsin works employment position before [LRB inserts effective date] remains subject to the 60-month benefit limit, extension criteria for "unusual circumstances," and no limit to the maximum number of extensions until [LRB inserts date that is 2 years after effective date].

**SECTION 6. DCF 101.095 (9), as created by this rule, is repealed.**

**SECTION 7. DCF 101.18 (2) is amended to read:**

**DCF 101.18 (2) CUSTODIAL PARENT OF INFANT.** (a) A custodial parent of a child who is ~~12~~ 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~~ 48-month time limit under s. DCF 101.09 (2) (n) and time limits for participation in a particular Wisconsin works 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.

(b) Receipt of a grant under this subsection constitutes participation in a Wisconsin works employment position for purposes of the ~~60~~ 48-month time limit under s. DCF 101.09 (2) (n) and time limits for participation in a particular Wisconsin works employment position under s. DCF 101.16 (2) (e), (3) (e), or (4) (c), if the child 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 the child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2), or (3), Stats., in which the mother did not indicate a freely given agreement to have sexual intercourse or of incest in violation of s. 944.06 or 948.06, Stats., and that incest or sexual assault has been reported to a physician and to law enforcement authorities.

**SECTION 8. EFFECTIVE DATE.** This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats., except as follows:

- (1) The repeal of ss. DCF 101.09 (2) (n) and 101.095 (9) and the amendment of s. DCF 101.09 (2) (nm) [by Sections 2, 4, and 6] take effect on the date that is 2 years after the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.