

Emergency Rules

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 40—Family Support Division Chapter 2—Income Maintenance

EMERGENCY AMENDMENT

13 CSR 40-2.315 Work Activity and Work Requirements for Recipients of Temporary Assistance. The department is amending section (1), removing section (3), and adding new sections (3)–(6).

PURPOSE: The amendment rewrites section (3) to identify new work activity requirements for the Temporary Assistance (TA) program that were created by SB 24. It also adds a new section (4), which addresses work activity sanctions and new requirements for participants who are already sanctioned. Portions of section (3) have been re-designated as sections (5) and (6). Since the definition of work activities will now appear in an emergency amendment to 13 CSR 40-2.300 – which governs all definitions for TA – it has been removed from this rule.

EMERGENCY STATEMENT: This emergency amendment is necessary because the health and welfare of impoverished Missouri families and children will be negatively impacted if such regulation is not enacted. This regulation is required for the Family Support Division (FSD) to implement changes to the Temporary Assistance (TA) program enacted in SB 24 (2015) and codified at sections 208.026 and 208.040, RSMo. The Family Support Division has a compelling governmental interest to implement changes to the TA work requirements that go into effect August 28, 2015. Participants in the TA program must meet these new requirements to qualify for benefits. The amendments to the regulation are necessary to enable the division to implement the new statutory requirements in the manner required by law. Many of these changes require new regulations or amendments to existing regulations. The TA program provides vital assistance to Missouri families and children. This includes not just cash assistance for necessities, but critical job training and work ready resources to lift families out of poverty. Without a working regulatory framework in place, the families and children that this program assists will not receive the full aid available through the program as envisioned by the legislature. For example, over nine thousand six hundred (9,600) Missourians are currently sanctioned at a rate of twenty-five percent (25%) for non-cooperation with work requirements. The twenty-five percent (25%) sanction that was formerly codified in section 208.040, RSMo, no longer exists, and is replaced by a fifty percent (50%) sanction, which is imposed according to the new sanction policy outlined in this rule. Once sanctioned, these individuals will stop receiving TA if they do not meet work requirements for four (4) consecutive weeks during the ten (10) week period the sanction is imposed. The Family Support Division is also required to apply this policy to all of its TA applications effective August 28, 2015, and approximately two thousand (2,000) to three thousand (3,000) families apply for TA every month. Due to the changes, FSD is compelled to revise the exemptions to work requirements in order to maximize the TA recipient's ability to receive employment and training services and ensure FSD continues to receive the entire Temporary Assistance for Needy Families (TANF) block grant. An overview of this rule was shared with advocates concerned with the Senate Bill 24 implications on TA participants. The advocates had an opportunity to express concerns, and their concerns were considered in the final drafting of this rule. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Family Support Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 18, 2015, becomes effective August 28, 2015, and expires February 23, 2016 .

(1) For the purpose of the administration of the Temporary Assistance Program, unless otherwise expressly provided in these rules, a parent or caretaker receiving assistance must engage in work activities when the Division of Family Services has determined that the individual is ready to engage in work or when the individual has received assistance for a total of twenty-four (24) months, whichever is earlier.

[(A) Work activities are defined as:

- 1. Unsubsidized employment;*
- 2. Subsidized private sector employment;*
- 3. Subsidized public sector employment;*
- 4. Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;*
- 5. On-the-job training;*
- 6. Job search and job readiness assistance;*
- 7. Activities permitted under a federally approved waiver granted to the Department of Social Services at the time of filing this rule;*
- 8. Vocational educational training (not to exceed twelve (12) months with respect to any individual);*
- 9. Job skills training directly related to employment;*
- 10. In the case of a recipient who has not received a high school diploma or a certificate of high school equivalency, education directly related to employment; and*
- 11. Satisfactory attendance at a secondary school or, in the case of a recipient who has not completed secondary school or received such a certificate, in a course of study leading to a certificate of general equivalence.]*

[(3) Sanctions.

(A) If an individual in a family subject to work participation requirements refuses to engage in a work activity, without good cause, as required in accordance with this section, the Division shall—

- 1. Reduce the amount of temporary assistance otherwise payable to the family, pro rata;*
- 2. The division shall not reduce assistance provided through the Temporary Assistance Program because of a refusal to work if the individual is a single custodial parent caring for a child who is not yet six (6) years of age and if the individual has demonstrated the inability to work as determined by the division because of the unavailability of affordable, appropriate, suitable child care, within a reasonable distance from the home or work site.*

A. Affordable—When determining whether child care is affordable, no recipient shall be required to accept child care if the only available child care requires the family to personally pay more than twenty percent (20%) of their gross household income (less medical insurance premiums) for child care. This twenty percent (20%) includes both the family's sliding fee and any additional co-payment the family would be required to pay. This twenty percent (20%) does not include federal, state, or local child care subsidy.

B. Appropriate—At a minimum, to be considered an appropriate provider, a provider must—

(I) Be licensed by the Missouri Department of Health; or

(II) If exempt from licensure, be registered by the Division of Family Services. In order to be registered by the Division of Family Services, a provider must comply with the terms set forth in 13 CSR 40-32.010(8) and (9). Grandparents, great-grandparents, aunts, uncles, and siblings of the child needing care (as long as the sibling does not reside in the child's home) are exempt from the minimum

Emergency Rules

health and safety requirements but are required to be registered.

C. Suitable—A provider is suitable if the recipient does not believe the child is at risk of abuse or neglect while being provided care by the provider. A recipient must not be required to use a provider with whom the recipient has reason to believe the child is at risk of abuse or neglect. If other adults are residing in the household but the recipient does not believe the other adult is suitable, the recipient must provide a reasonable statement as to why the other adult(s) is unavailable or places the child at risk of abuse or neglect.

D. Within a reasonable distance—When determining whether a provider is within a reasonable distance, the division shall consider the following:

(I) Availability of personal transportation;

(II) Distance from public transportation to care and work; and

(III) What is reasonable within the community.

(B) Good Cause.

1. The following constitute good cause for failure to participate or accept employment:

A. The employment would result in the family of the recipient experiencing a net loss of cash income;

B. Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income and cash assistance;

C. Court-required appearance or incarceration;

D. Emergency family crisis which renders participation unreasonable;

E. Breakdown in transportation arrangements with no readily accessible alternate means of transportation;

F. Breakdown in the child care arrangement or availability of child care not suited for special needs of the child for whom it is intended; or

G. Lack of identified social services necessary for participation and set forth in the self-sufficiency pact referenced in 13 CSR 40-2.370.]

(3) If the division determines after an investigation that a participant is not cooperating with a work activity requirement as provided for in 13 CSR 40-2.310 or this regulation, the division shall schedule a face-to-face meeting with the participant to explain potential sanctions and the requirements to avoid a sanction.

(A) The division shall send notice of the scheduled meeting to the participant at least ten (10) business days before the meeting date. The notice shall include the date, time, and place designated by the division for the participant to appear. If the participant is unable to attend the meeting, the participant must contact the division to reschedule the meeting prior to the scheduled meeting time, and request an alternative meeting date, time, or place. The meeting must occur prior to or during the same calendar week as the original meeting, unless good cause exists. When good cause exists, the participant may only request to schedule one (1) additional appointment which will be within a reasonable amount of time not to exceed ten (10) business days from the original meeting date.

(B) "Good cause" includes a mistake or conduct beyond the control of the TA participant that is not intentionally or recklessly designed to impede an eligibility determination under these or any other TA regulations. Good cause includes, but is not limited to:

1. A court-required appearance or incarceration lasting less than thirty (30) days;

2. An emergency family crisis that renders the participant unable to meet at the scheduled place, date, or time; and

3. A breakdown in transportation arrangements with no readily accessible alternate means of transportation.

(C) The participant shall have six (6) weeks from the first business day of the week following the meeting with the division to comply with the work activity requirements, as required by the division. The participant's TA benefits shall not be sanctioned during the six (6) week period.

(D) If the participant fails to appear for the scheduled face-to-face meeting and does not contact the division prior to the meeting to reschedule the meeting as described in section (3), the participant shall have six (6) weeks from the first business day of the week following the most recent scheduled meeting with the division to comply with the work activity requirements, as required by the division. The participant's TA benefits shall not be sanctioned during the six (6) week period.

(E) If the participant does not comply with the work activity requirements during the six (6) week period, as described in either subsection (3)(C) or (3)(D), the division shall apply a sanction terminating fifty percent (50%) of the full amount of TA benefit for which the participant and the participant's family is otherwise eligible, for a period of no more than ten (10) weeks. If the participant complies with the work activity requirements during the six (6) week period, described in either subsection (3)(C) or (3)(D), the division will take no further action against the participant's TA benefits.

(F) During this ten (10) week period, the participant shall remain in sanction status and the division shall attempt to schedule a second face-to-face meeting with the participant as provided for in section (3). To end the sanction, the participant shall perform work activities for a minimum average of thirty (30) hours per week for one (1) month.

(G) Failure to complete the requirements in subsection (3)(F) shall result in the participant's TA case being closed.

(H) A participant whose case is closed under subsection (3)(G) will attend a temporary assistance eligibility interview if the individual wishes to re-apply for TA. The individual shall complete a minimum average of thirty (30) hours of work activities per week within one (1) month of the temporary assistance eligibility interview. The completion of work activities is a pre-requisite for any further eligibility for TA.

(4) Individuals who are already sanctioned by the division for non-cooperation with work activities as of August 28, 2015, shall comply with the following:

(A) Attend a face-to-face meeting with the division as set forth in subsection (3)(A);

(B) If the participant appears for the scheduled face-to-face meeting, the work requirement sanction in place prior to August 28, 2015, shall be ended. The participant shall have six (6) weeks from the first business day of the week following the meeting with the division to comply with the work participation activity requirements, as required by division;

(C) If the participant fails to appear for the scheduled face-to-face meeting required by subsection (3)(A), and does not contact the division prior to the meeting to reschedule the meeting, the participant shall have six (6) weeks from the first business day of the week following the originally scheduled meeting with the division to comply with the work activity requirements, as required by the division. The participant's TA benefits shall remain sanctioned at twenty-five percent (25%) during the six (6) week period;

(D) If the participant appears for the scheduled face-to-face meeting required by subsection (3)(A), and complies with the work activity requirements during the six- (6-) week period, no

Emergency Rules

further action will be taken;

(E) If the participant does not comply with the work activity requirements during the six (6) week period, as described in subsections (3)(B) and (3)(C), the division shall apply a sanction terminating a total of fifty percent (50%) of the TA benefit amount the household would otherwise receive. This sanction shall apply for a period of no more than ten (10) weeks;

(F) During this ten (10) week period, the division shall attempt to schedule a second face-to-face meeting with the participant as provided for in subsection (3)(A). To end the sanction, the participant shall perform work activities for a minimum average of thirty (30) hours per week for one (1) month;

(G) Failure to complete the requirements in subsection (4)(F) shall result in the participant's TA case being closed; and

(H) If the participant re-applies for TA after his or her case was closed under subsection (3)(G), the application cannot be approved until the applicant completes a minimum of thirty (30) hours for one (1) week within one (1) month of the TA application.

(5) The Division shall not reduce assistance provided through the Temporary Assistance Program because of a refusal to work if the individual is a single custodial parent caring for a child who is not yet six (6) years of age and if the individual has demonstrated the inability to work as determined by the division because of the unavailability of affordable, appropriate, suitable child care, within a reasonable distance from the home or work site.

(A) Affordable—When determining whether child care is affordable, no recipient shall be required to accept child care if the only available child care requires the family to personally pay more than twenty percent (20%) of their gross household income (less medical insurance premiums) for child care. This twenty percent (20%) includes both the family's sliding fee and any additional co-payment the family would be required to pay. This twenty percent (20%) does not include federal, state, or local child care subsidy.

(B) Appropriate—At a minimum, to be considered an appropriate provider, a provider must—

1. Be licensed by the Missouri Department of Health and Senior Services; or

2. If exempt from licensure, be registered by the Division of Family Services. In order to be registered by the Division of Family Services, a provider must comply with the terms set forth in 13 CSR 40-32.010(8) and (9). Grandparents, great-grandparents, aunts, uncles, and siblings of the child needing care (as long as the sibling does not reside in the child's home) are exempt from the minimum health and safety requirements but are required to be registered.

(C) Suitable—A provider is suitable if the recipient does not believe the child is at risk of abuse or neglect while being provided care by the provider. A recipient must not be required to use a provider with whom the recipient has reason to believe the child is at risk of abuse or neglect. If other adults are residing in the household but the recipient does not believe the other adult is suitable, the recipient must provide a reasonable statement as to why the other adult(s) is unavailable or places the child at risk of abuse or neglect.

(D) Within a reasonable distance—When determining whether a provider is within a reasonable distance, the division shall consider the following:

1. Availability of personal transportation;

2. Distance from public transportation to care and work;

and

3. What is reasonable within the community.

(6) Good Cause.

(A) The following constitutes good cause for failure to participate or accept employment:

1. The employment would result in the family of the recipient experiencing a net loss of cash income;

2. Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income, and cash assistance;

3. Court-required appearance or incarceration;

4. Emergency family crisis which renders participation unreasonable;

5. Breakdown in transportation arrangements with no readily accessible alternate means of transportation;

6. Breakdown in the child care arrangement or availability of child care not suited for special needs of the child for whom it is intended; or

7. Lack of identified social services necessary for participation and set forth in the self-sufficiency pact referenced in 13 CSR 40-2.370.

AUTHORITY: section[s] 207.020 and 208.040.5, RSMo 1994] 207.022, RSMo Supp. 2014, and sections 208.026 and 208.040, CCS HCS SS#2 SCS SB 24, First Regular Session, Ninety-eighth General Assembly, 2015. Emergency rule filed Feb. 18, 1998, effective March 1, 1998, terminated Aug. 10, 1998. Original rule filed Jan. 16, 1998, effective Aug. 1, 1998. Emergency amendment filed Aug. 18, 2015, effective Aug. 28, 2015, expires Feb. 23, 2016. An emergency amendment covering this same material will be published in the October 1, 2015, issue of the Missouri Register.