

§ 233.101 Dependent children of unemployed parents.

(a) Requirements for State Plans. Effective October 1, 1990 (for Puerto Rico, American Samoa, Guam, and the Virgin Islands, October 1, 1992), a State plan must provide for payment of AFDC for children of unemployed parents. A State plan under title IV-A for payment of such aid must:

(1) Include a definition of an unemployed parent who is the principal earner which shall apply only to families determined to be needy in accordance with the provisions in § 233.20 of this part. Such definition must have a reasonable standard for measuring unemployment and, at a minimum, include any such parent who:

(i) Is employed less than 100 hours a month; or

(ii) Exceeds that standard for a particular month, if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month; except that at the option of the State, such definition need not include a principal earner who is unemployed because of participation in a labor dispute (other than a strike) or by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law.

(2) Include a definition of a dependent child which shall include any child of an unemployed parent (as defined by the State pursuant to paragraph (a)(1) of this section) who would be, except for the fact that his parent is not dead, absent from the home, or incapacitated, a dependent child under the State's plan approved under section 402 of the Act.

(3) Provide for payment of aid with respect to any dependent child (as defined by the State pursuant to paragraph (a)(2) of this section) when the conditions set forth in paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this section are met.

(i) His or her parent who is the principal earner has been unemployed for at least 30 days prior to the receipt of such aid;

(ii) Such parent has not without good cause, within such 30-day period prior to the receipt of such aid, refused a bona fide offer of employment or training for employment. Before it is determined that such parent has refused a bona fide offer of employment or training for employment without good cause, the agency must make a determination that such offer was actually made. (In the case of offers of employment made through the public employment or manpower agencies, the determination as to whether the offer was bona fide, or whether there was good cause to refuse it, shall be made by the title IV-A agency. The IV-A agency may accept the recommendations of such agencies.) The parent must be given an opportunity to explain why such offer was not accepted. Questions with respect to the following factors must be resolved:

(A) That there was a definite offer of employment at wages meeting any applicable minimum wage requirements and which are customary for such work in the community;

(B) Any questions as to the parent's inability to engage in such employment for physical reasons or because he has no way to get to or from the particular job; and

(C) Any questions of working conditions, such as risks to health, safety, or lack of worker's compensation protection.

(iii) Such parent:

(A) Has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section), within any 13-calendar-quarter period ending within one year prior to the application for such aid, or

(B) Within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified under the terms of paragraph (a)(3)(v) of this section for such compensation under the State's unemployment compensation law.

(iv) A "quarter of work" with respect to any individual means a period (of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31):

(A) In which an individual received earned income of not less than \$50 (or which is a "quarter of coverage" as defined in section 213(a)(2) of the Social Security Act) or participated in a program under part 250 of this chapter; or

(B) At State option (as specified in the plan), in one or more subdivisions of the State, in which he or she attended, full-time, an elementary school, a secondary school, or a vocational or technical training course that is designed to prepare the individual for gainful employment, or in which the individual participated in an educational or training program established under the Job Training Partnership Act, provided that an individual may qualify for no more than four quarters of work under this paragraph for purposes of the requirement set forth in paragraph (a)(3)(iii)(A) of this section; and

(C) A calendar quarter ending before October 1990 in which an individual participated in CWEP under section 409 of the Social Security Act or the WIN program established under title IV-C of the Social Security Act (as in effect for a State immediately before the effective date of that State's JOBS program).

(v) An individual shall be deemed "qualified" for unemployment compensation under the State's unemployment compensation law if he or she would have been eligible to receive such benefits upon filing an application, or he performed work not covered by such law, which, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such benefits upon filing an application.

(vi)(A) The "parent who is the principal earner" means, in the case of any child, whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes the month in which an application is filed for aid under this part on the basis of the unemployment of a parent. If the State cannot secure primary evidence of earnings for this period, the State shall designate the

principal earner, using the best evidence available. The earnings of each parent are considered in determining the principal earner regardless of when their relationship began. The principal earner so defined remains the principal earner for each consecutive month for which the family receives such aid on the basis of such application. This requirement applies to both new applicants and current AFDC unemployed parent families who were eligible and receiving aid prior to October 1, 1981.

(B) If both parents earned an identical amount of income (or earned no income) in such 24-month period, the State shall designate which parent shall be the principal earner.

(4) Provide for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education to assure maximum utilization of available public vocational education services and facilities in the State to encourage the retraining of individuals capable of being retrained.

(5) Provide that the needs of the child's parent(s) shall not be taken into account in determining the needs and amount of assistance of the child's family:

(i) If and for so long as such child's parent(s), unless exempt under § 250.30(b) of this chapter, is not currently participating (or available for participation) in a program under part 250 of this chapter or, if they are exempt under § 250.30(b)(5) of this chapter (or because a JOBS program has not been established in the subdivision where they reside or they reside in a JOBS subdivision but there is no appropriate JOBS activity in which they can participate), are not registered with a public employment office in the State, and

(ii) With respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States but refuses to apply for or accept such unemployment compensation.

(6) Provide that medical assistance will be furnished under the State's approved plan under title XIX during any month in which an otherwise eligible individual is denied assistance solely by reason of the time limitation provided under paragraph (b)(3) of this section.

(b) *State Plan Options.* A State plan under title IV-A may:

(1) Require the principal earner or both parents to participate in an activity in the JOBS program under part 250 of this chapter, subject to the limitations and conditions of part 250 of this chapter, provided that the participation of each parent in all required activities under the JOBS program does not exceed 40 hours per week, per parent.

(2) Provide cash assistance after the performance of assigned program activities by parents required to participate in an activity in the JOBS program under part 250 of this chapter (as provided in paragraph (b)(1) of this section) so long as the State:

(i) Makes assistance payments at regular intervals at least monthly,

(ii) Prescribes a set of criteria which defines goals or standards for each assigned activity in the JOBS program which must be completed by the participant prior to payment, and

(iii) Prior to, or concurrent with, assignment to an activity, notifies the participant of the prescribed goals or standards and that payment for a period will be withheld unless performance of each assigned activity for that period is completed.

(3) Provide for a State to operate a payment after performance system under which a family is issued an assistance payment after the applicable family member has successfully completed her obligation to participate in JOBS for a specific period. If the applicable family member fails without good cause to satisfy the obligation, the State may:

(i) Impose a sanction in accordance with the JOBS program rules at §§ 250.34, 250.35 and 250.36 of this chapter;

(ii) Reduce the family's assistance payment to which the specific period applies by the amount of the payment attributable to the family member for that period or do not make the payment to the family; or

(iii) Reduce the family's assistance payment to which the specific period applies (or the amount of the payment attributable to the family member for that period) in proportion to the number of required hours that were not completed.

For States that elect to implement paragraphs (b)(3) (ii) or (iii) of this section, the fair hearing requirements set forth at § 205.10(a)(4)(ii)(K) of this chapter apply.

(4) Limit the number of months that a family may receive AFDC-UP under this section when the following conditions are met:

(i) The State did not have on September 26, 1988, an approved AFDC-UP program under section 407 of the Social Security Act.

(ii) The family received such aid (on the basis of the unemployment of the parent who is the principal earner) in at least 6 of the preceding 12 months.

(iii) The State has in effect a program (described in the plan) for providing education, training, and employment services to assist parents in preparing for and obtaining employment throughout the year. Such a program may include education, training and employment activities under the JOBS program which are provided in part 250 of this chapter or under a State-designed program which provides:

(A) Education and instruction for individuals who have not graduated from a secondary school or obtained an equivalent degree,

(B) Training whereby an individual acquires market-oriented skills necessary for self-support, and

(C) Employment services which seek to place individuals in jobs.

(iv) The State must guarantee child care necessary for an individual to participate in an approved, State-designed, non-JOBS program. The regulations at part 255 of this chapter apply to such care.

(v) The State has the option of providing necessary supportive services associated with an individual's participation in a State-designed, non-JOBS program. Federal financial participation is available under sections 403 (k) and (l) of the Social Security Act. The regulations at part 255 of this chapter apply to such supportive services.

(vi) The State must inform an AFDC-UP family at the time of application that AFDC-UP cash assistance will terminate due to a time limitation, that any family with a child who is (or becomes) deprived due to the death, continued absence, or incapacity of a parent may receive cash assistance under the AFDC program during the time limitation for AFDC-UP, and that a program of training, education, and employment services is available to prepare the family to become self-supporting.

(vii) Prior to termination due to a time limitation, the State must notify an AFDC-UP recipient family of the earliest month that it may receive AFDC-UP cash assistance again. This notification may be included in the notice of proposed action which is required pursuant to § 205.10(a)(4) of this chapter. To receive assistance again, the family must make a new application.

(viii) In establishing eligibility upon re-application following months of nonpayment due to the time limitation, an otherwise eligible family that does not receive aid in a month solely by reason of the option to limit assistance under this paragraph shall be deemed, for purposes of determining the period under paragraph (a)(3)(iii)(A) of this section, to be receiving AFDC-UP cash assistance in that month. This provision also applies if, at the time of the family's original application for assistance, eligibility was established based on the provisions of paragraph (a)(3)(iii)(B) of this section, but eligibility could have been established based on the provisions of paragraph (a)(3)(iii)(A) of this section.

(c) *Federal Financial Participation.* (1) Federal financial participation is available for payments authorized in accordance with the State plan approved under section 402 of the Act as aid to families with dependent children with respect to a child:

(i) Who meets the requirements of section 406(a)(2) of the Act;

(ii) Who is living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his (or their) own home;

(iii) Who has been deprived of parental support or care by reason of the fact that his or her parent who is the principal earner is employed less than 100 hours a month; or exceeds that standard for a particular month if his or her work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for 2 prior months and is expected to be under the standard during the next month;

(iv) Whose parent who is the principal earner:

(A) Has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section) within any 13-calendar-quarter period ending within 1 year prior to the application for such aid,

(B) Within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law; and

(v) Whose parent who is the principal earner:

(A) Is currently participating in or available to participate in an activity in the JOBS program under part 250 of this chapter, unless exempt, or is registered with the public employment office in the State if exempt from the JOBS program under § 250.30(b)(5) of this chapter; and

(B) Has not refused to apply for or accept unemployment compensation with respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States.

(2) The State may not include in its claim for Federal financial participation payments made as aid under the plan with respect to a child who meets the conditions set forth in paragraph (c)(1) of this section, where such payments were made:

(i) For any part of the 30-day period specified in paragraph (a)(3)(i) of this section;

(ii) For such 30-day period if during that period the parent refused without good cause a bona fide offer of employment or training for employment;

(iii) For any period beginning with the 31st day after the receipt of aid, if and for as long as no action is taken during the period to undertake appropriate steps directed toward the participation of the parent who is the principal earner in a program under part 250 of this chapter;

(iv) To the extent that such payments are made to meet the need of an individual who is subject to a sanction imposed, under part 250 of this chapter (for failure to meet the requirements for participation in the JOBS program).

(3) Federal financial participation is available for child care and supportive services expenditures associated with participation in an approved State-designed program (as provided in paragraph (b)(3)(iii) of this section) under titles IV-A and IV-F of the Act respectively. However, Federal financial participation is not available for any other costs, program or administrative, associated with State-designed programs.

(d) For all States (other than Puerto Rico, American Samoa, Guam, and the Virgin Islands) the provisions of this section are in effect through September 30, 1998. For Puerto Rico, American Samoa, Guam, and the Virgin Islands, the provisions of this section are in effect from October 1, 1992, through September 30, 1998.

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