

RHODE ISLAND DEPARTMENT OF HUMAN SERVICES

DATE: APRIL 30, 2009

NOTICE OF

PROPOSED ADOPTION OF RULES, REGULATIONS,
POLICIES, PROCEDURES, AND OTHER MATERIALS
RELATING TO THE ADMINISTRATION OF THE FOLLOWING PROGRAM(S):

In accordance with Title 42, Chapter 35, of the General Laws of the State of Rhode Island, notice is hereby given that the Department of Human Services (DHS) proposes to adopt rules, regulations, policies, procedures, and other materials relating to the following programs(s):

FAMILY INDEPENDENCE PROGRAM (FIP) REPEAL

The Family Independence Act (RIGL 40-5.1) was repealed effective July 1, 2008, and was replaced by The Rhode Island Works (RIW) Program (RIGL 40-5.2). Effective July 1, 2009, The Family Independence Program policies in Section 0800, et al, are repealed and replaced by the Rhode Island Works Program policies in Sections 1400, et al.

For all assistance units that were receiving cash assistance on October 1, 2008, without any break in eligibility through June 30, 2009, the RI Works time limits will take effect on July 1, 2009.

A Fiscal Note is available upon request. In the development of the rules and regulations, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information. (Complies with 42-35-3(3).) The health, safety, and welfare of the public preclude any economic impact that may be incurred as a result of these regulations.

Interested persons may inspect said proposed rules, regulations, policies, procedures, summary of policies, and other related materials on the R.I. Secretary of State's website at www.sec.state.ri.us/ProposedRules/ or on the Department of Human Services website at www.dhs.ri.gov, or in the Office of Policy Development, Department of Human Services, Louis Pasteur Building, Bldg. 57, Howard Avenue, Cranston, Rhode Island 02920, between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday.

Interested persons may submit data, views, or written arguments to the Office of Legal Counsel, Department of Human Services, Louis Pasteur Building, Bldg. 57, 600 New London Avenue, Cranston, Rhode Island 02920, within thirty (30) days of the date of this notice.

In accordance with the Rhode Island General Laws 42-35-3, an oral hearing will be granted on these rules if requested by twenty-five (25) persons, or an agency, or by an

association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

SCOPE OF CHANGE

The Family Independence Act (RIGL 40-5.1) was repealed effective July 1, 2008, and was replaced by The Rhode Island Works (RIW) Program (RIGL 40-5.2). Effective July 1, 2009, The Family Independence Program policies in Section 0800, et al, are repealed and replaced by the Rhode Island Works Program policies in Sections 1400, et al.

For all assistance units that were receiving cash assistance on October 1, 2008, without any break in eligibility through June 30, 2009, the RI Works time limits will take effect on July 1, 2009.

SUMMARY OF CHANGE

The Family Independence Act (RIGL 40-5.1) was repealed effective July 1, 2008, and was replaced by The Rhode Island Works (RIW) Program (RIGL 40-5.2). Effective July 1, 2009, The Family Independence Program policies in Section 0800, et al, are repealed and replaced by the Rhode Island Works Program policies in Sections 1400, et al.

For all assistance units that were receiving cash assistance on October 1, 2008, without any break in eligibility through June 30, 2009, the RI Works time limits will take effect on July 1, 2009.

~~0804~~ ~~STANDARD FILING UNIT~~

~~0804.05~~ ~~PERSONS INCLUDED IN FILING UNIT~~

~~REV:05/1997~~

~~The assistance filing unit consists of the group of persons living together in a single household who are included in the application for assistance and in the assistance payment if eligibility is established.~~

~~An application on behalf of a dependent child must include as applicants certain relatives living in the same household as the dependent child. If otherwise eligible, the individuals specified below must be included in the assistance filing unit.~~

~~"Otherwise eligible" means that an individual meets the non-financial requirements for cash assistance such as age, residence, citizenship, enumeration, etc., and is not ineligible, for example, due to receipt of SSI or the imposition of a sanction. When applied to the filing unit, "otherwise eligible" indicates that the unit is eligible by virtue of meeting all requirements for cash assistance.~~

~~Parents~~

~~Any biological or adoptive parent living in the same household as the dependent child must be included in the filing unit. In two parent cases, both parents must be included in the unit if otherwise eligible. If the biological or adoptive parent is married, her/his spouse must also be included in the filing unit.~~

~~-~~

~~----- Siblings~~

~~-~~

~~Blood related or adoptive brothers and sisters living in the same household as the dependent child must also be included in the filing unit if they meet the age and deprivation requirements.~~

~~-~~

~~Brothers or sisters of half blood must also be included. A half brother or sister is a sibling related through one parent only.~~

~~-~~

~~The children of a stepparent must also be included in the unit.~~

~~0804.05.05 ----- Income and Resources~~

~~REV:05/1997~~

~~-~~

~~All of the income and resources of individuals required to be included in the assistance filing unit and of those whom the parent has opted to include must be considered in determining eligibility and the amount of the assistance payment. A child with RSDI benefits, for example, may not be excluded from the assistance unit merely by virtue of receipt of those benefits.~~

~~-~~

~~Moreover, if s/he is a member of the unit, the benefits must be counted in the eligibility determination.~~

~~0804.10 ----- PERSONS EXCLUDED FROM FILING UNIT~~

~~REV:08/2004~~

~~-~~

~~Parents and siblings must be included in the assistance unit unless they are otherwise ineligible for cash assistance.~~

~~-~~

~~Individuals excluded from the filing unit include the following categories.~~

~~-~~

~~----- SSI Recipients~~

~~-~~

~~SSI recipients are excluded from the filing unit. The income and resources of an SSI recipient, including the SSI itself, are not counted as the income and resources of a cash assistance unit.~~

~~-~~

~~----- Aliens Not Meeting Alienage Requirements~~

~~-~~

~~Aliens considered ineligible solely because they do not meet alienage requirements are excluded. The income and resources of ineligible alien family members are counted in determining the assistance unit's eligibility and payment amount. The work expense and dependent care disregards are applied to earned income and an amount is allocated to meet the alien's own needs by subtracting the cash assistance standard for a plan size excluding the alien from the standard for a plan size including the alien.~~

~~—
If the ineligible alien who is a parent has dependents also ineligible solely because they do not meet alienage requirements, an amount is allocated to meet their needs by using the methodology specified above. The net income is then applied to the needs of the cash assistance unit. See Section 0824.60 for further discussion.~~

~~— Aliens Ineligible Due to Sponsorship~~

~~— Aliens ineligible solely because of sponsorship by an agency or organization or because of the application of sponsor to alien deeming provisions are excluded.~~

~~— Parents and Siblings Who Fail to Cooperate~~

~~— Parents and other assistance unit members ineligible either because they are statutorily barred or disqualified as a result of the imposition of a sanction for failure to cooperate, e.g., with the child support enforcement program, are excluded.~~

~~— The income and resources of statutorily barred parents are counted in determining the assistance unit's eligibility and payment amount. Their income and resources are counted as outlined in Section 0824.50.15.05.~~

~~— The income and resources of a disqualified individual, parent, or child, are counted in determining the assistance unit's eligibility and payment amount. None of the earned income disregards is applied, and no amount is allocated to meet the ineligible individual's own needs. See Section 0824.50.15.10 for further discussion.~~

~~— Parents Who Have Reached Their FIP Time Limit~~

~~— Parents and other assistance unit members ineligible because they have reached their FIP lifetime time limit are also excluded.~~

~~— The income and resources of parents who have reached their lifetime time limit are counted in determining the assistance unit's eligibility and payment amount. Their income and resources are counted as outlined in Section 0824.50.15.05.~~

~~— Parents and Siblings With Lump Sum Income~~

~~— Parents and other assistance unit members previously eligible but currently ineligible for cash assistance due to receipt of lump sum income are excluded. Some members of the same household, not affected by the receipt of such income, may be eligible for cash assistance. (See Section 0824.35 for further discussion.) The income of those members of the household ineligible due to receipt of lump sum income, insofar as the income is already allocated to meet the needs of the ineligible members, is not counted in determining the assistance unit's eligibility and payment amount.~~

~~— However, additional income of a parent or other assistance unit member, received during the period of ineligibility and not factored into the determination of that period, is counted in determining the eligibility and payment amount of a newborn or other additional member of the~~

~~household for whom cash assistance is requested and for whom the parent has a support obligation.~~

~~—~~

~~Further, the resources of a parent, even though excluded from the assistance unit, are always considered available to a dependent child in the same household; thus, non-excluded resources of the parent in excess of one thousand dollars (\$1,000) render the child ineligible for cash assistance.~~

~~—~~

~~When an excluded individual becomes eligible to receive cash assistance, e.g., a sanction is cured, s/he must be included in the assistance unit. For ending penalties for failure to comply with his or her employment plan, the individual must meet the requirements outlined in Section 0812.45. For child support enforcement sanction cures, the individual should be included in the payment beginning on the date of compliance with the child support agency.~~

~~0804.15~~ — ~~OPTIONAL INCLUSION IN FILING UNIT~~

~~REV:07/2001~~

~~—~~

~~The parent(s) of an adopted child(ren) for whom the parent receives adoption subsidy payments has the option to include or exclude such child(ren) from the assistance filing unit. If the parent(s) includes the child(ren) in the filing unit, any and all income and/or resources (including any adoption subsidy payments) of the adoptive child must be used to calculate eligibility for, as well as, the amount of, assistance to which the household may be entitled.~~

~~0804.20~~ — ~~INELIGIBILITY OF INCOMPLETE FILING UNIT~~

~~REV:05/1997~~

~~—~~

~~Failure to include an individual required to be in the filing unit or to provide information necessary for determining eligibility and amount of cash assistance results in ineligibility for the entire filing unit. In either situation, the agency has insufficient information to determine the eligibility of the unit.~~

~~—~~

~~Any payment made to an ineligible assistance unit constitutes an overpayment and must be recovered. See Section 0830 for further discussion of overpayments.~~

~~0804.25~~ — ~~PARENT IN HOME WHO IS NOT PROVIDING CARE~~

~~REV:05/1997~~

~~—~~

~~When the natural or adoptive parent is in the home, the Department presumes that the parent is functioning as the caretaker relative, i.e., the parent is providing day to day care and control of her/his minor dependent child. However, this presumption may be rebutted by another adult living in the home.~~

~~—~~

~~DHS has the responsibility to make the final determination as to which adult is actually functioning as the caretaker relative.~~

~~—~~

~~If DHS determines that a parent is unable to provide day to day care of the child and that another relative is providing such care, the~~

~~assistance unit consists of the dependent child, the adult parent (if otherwise eligible), and the relative of proper degree of relationship (see Section 0806.15) who is providing the day to day care of the child. The non parent caretaker relative is not required to be the legal guardian of the dependent child.~~

~~An otherwise eligible parent must continue to be included in the filing unit even though s/he is not functioning as the caretaker.~~

~~If otherwise eligible, the needs of all three (3) persons in this situation would be included in the cash assistance payment.~~

~~The following guidelines are offered to assist DHS eligibility staff in making the factual determination of whether or not the parent is providing for the day to day care of the child. Such determinations involve two steps:~~

~~(1) An applicant's statement that s/he is actually caring for the child despite the presence of a parent in the home; and~~

~~(2) Documentation to support the contention that the natural/adoptive parent is incapable of providing care. When there is no evidence to document the claim of parental inability to provide care, the case is referred to a Family Independence Program case worker for evaluation. Acceptable forms of documentation are:~~

~~(a) Evidence of physical or mental inability on the part of the parent to care for the child as supported by receipt of RSDI, SSI, Veterans Administration benefits due to total disability, Workers Compensation, or Medical Assistance, etc.; or~~

~~(b) Evidence from another agency (e.g., DCYF, MHRH, Corrections, licensed mental health agency, licensed substance abuse treatment facility) or evidence from a treating physician or mental health professional, that the parent is not able to function as the caretaker; or~~

~~(c) Evidence that the non parent caretaker is providing day to day care such as school records or day care records which list the caretaker as the contact person; medical or dental records which indicate that the caretaker has scheduled appointments for the child; or the presence in the home of a homemaker or home health aide to care for the parent at any time during the last six months; or~~

~~(d) Payment to the caretaker relative of the child's other income such as child support, RSDI, SSI, etc.; or~~

~~(e) Appointment of the caretaker relative as guardian,~~

~~custodian, or conservator by a court of
appropriate jurisdiction; or~~

~~(f) Any other evidence provided by the applicant
verifying that s/he is providing day to day care
and control of the dependent child.~~

0804.30 CASE EXAMPLES OF FILING UNIT

REV:04/2004

~~This section provides examples of standard assistance filing units.~~

~~EXAMPLE 1~~

~~A family unit consists of a 10 year old child, Dennis, for whom cash assistance is requested, his mother, 20 year old brother, fully employed stepfather, 5 year old half brother, and 12 year old stepsister. The filing unit must consist of Dennis, his mother, his stepfather, half brother, and stepsister.~~

~~Explanation:~~

~~Dennis's brother is excluded by age. The remaining household members must be included in the filing unit along with their income and resources.~~

~~EXAMPLE 2~~

~~Miss H and Mr. L, who are not married, and their 3 year old son live together. Mr. L 's paternity has been adjudicated. He loses his job and applies for cash assistance for the whole family. The filing unit is comprised of all three (3) persons.~~

~~Explanation:~~

~~The child resides with both parents, and therefore both parents must be included in the filing unit. Assuming that they meet all the requirements for cash assistance, i.e., that they are "otherwise eligible," all three (3) members of the household are included in the assistance unit.~~

~~EXAMPLE 3~~

~~Mrs. T applies for cash assistance only for herself and two (2) children by a previous marriage. She has one child by her present husband; he has two (2) by a previous marriage and receives child support for them. All live together in the same household. Mr. T is unemployed, receives ESB, and would prefer to exclude himself, his two children, and his child by Mrs. T from the filing unit. However, all the individuals identified above must be included.~~

~~Explanation:~~

~~The blood relationship of Mrs. T's children and Mr. T's children to their child in common require the inclusion of all members of the conjoint families in the filing unit. Mr. T's ESB and child support must be considered as income.~~

~~EXAMPLE 4~~

~~An active assistance unit consists of a child and his paternal grandmother, who is the cash assistance payee and included in the payment. The child's mother, daughter in law of the payee, who is disabled and unable to care for her child, moves in with them.~~

~~She must be included in the assistance unit, if otherwise eligible, and her income and resources must be taken into account.~~

~~Explanation:~~

~~Although the grandmother may continue as payee and remain in the payment as the person exercising care and control of the child, the child's mother must be included in the unit as long as she remains a member of the household. The grandmother has the option of excluding herself from the unit.~~

~~Note: When a caretaker relative seeks to be included in the assistance unit as loco parentis despite the presence in the home of the child(ren)'s parent(s), the Department has the responsibility of determining which person is functioning as the caretaker relative (see Sec. 0804.25).~~
