

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 217.6, 239B.4(6), and 249A.4, the Department of Human Services amends Chapter 41, “Granting Assistance,” and Chapter 46, “Overpayment Recovery,” Iowa Administrative Code.

These amendments implement policies that allow a family that includes an adult who is a nonqualified alien to apply for and receive Family Investment Program (FIP) assistance for more than 60 months for the family’s children who are U.S. citizens or qualified aliens if the family meets hardship criteria and all other FIP eligibility criteria.

Polk County District Court found that the Department violated the Iowa constitutional rights of U.S. citizens who are children whose parent(s) is a nonqualified alien by denying, because the parent(s) is a nonqualified alien, a hardship application for the household to receive FIP for more than 60 months for those U.S. citizen children.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2147C** on September 16, 2015. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on November 10, 2015.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 217.6, 239B.4(6), and 249A.4.

These amendments will become effective February 1, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **41.24(4)“b”** as follows:

b. Hardship applicants. While the eligibility decision is pending, unless the applicants are exempt from referral as defined in subrule 41.24(2), the department shall refer applicants who must qualify for a hardship exemption before approval of FIP to PROMISE JOBS to sign a family investment agreement as described in paragraph 41.24(4) “a” and shall treat applicants in accordance with subrule 41.30(3).

ITEM 2. Amend subrule 41.30(1) as follows:

41.30(1) Sixty-month limit. Assistance shall not be provided to a FIP applicant or recipient family that includes an adult who has received assistance for 60 calendar months under FIP ~~or any state program in Iowa~~ or under any program in another state that is funded by the federal Temporary Assistance for Needy Families (TANF) block grant unless the applicant or recipient family is eligible for a hardship as defined in subrule 41.30(3). The 60-month period need not be consecutive. In two-parent households or households that include a parent and a stepparent, the 60-month limit is determined when either a parent or stepparent has received assistance for 60 months.

a. An “adult” is any person who is a parent of the FIP child in the home, the parent’s spouse, or included as an optional member under ~~subparagraphs~~ subparagraph 41.28(1) “b”(1), or (2) and (3). ~~In two-parent households or households that include a parent and a stepparent, the 60-month limit is determined when either a parent or stepparent has received assistance for 60 months.~~

b. “Assistance₂” for the purpose of this rule, shall include any month for which the adult receives a FIP grant or a payment in another state using federal Temporary Assistance for Needy Families (TANF) funds that the other state deems countable toward the 60-month federal limit. Assistance received for a partial month shall count as a full month.

ITEM 3. Rescind and reserve paragraph **41.30(3)“a.”**

ITEM 4. Amend paragraph **41.30(3)“d”** as follows:

d. Eligibility for a hardship exemption.

(1) No change.

(2) Families with FIA-responsible persons who are not exempt from referral as defined in subrule 41.24(2) determined eligible for more than 60 months of FIP shall make incremental steps toward overcoming the hardship and participate to their maximum potential in activities reasonably expected to result in self-sufficiency.

(3) Barriers to economic self-sufficiency that an FIA-responsible person who is not exempt as defined in subrule 41.24(2) has that were known and existing before the family reached the 60-month limit shall not be considered as meeting eligibility criteria for hardship unless the individual complied with PROMISE JOBS activities offered to overcome that specific barrier.

ITEM 5. Amend paragraph **41.30(3)“e”** as follows:

e. Requesting a hardship exemption.

(1) Families ~~with adults as defined in subrule 41.30(1) who~~ that have or are close to having received 60 months of FIP assistance as defined in subrule 41.30(1) may request a hardship exemption. Requests for the hardship exemption shall be made on Form 470-3826 or Form 470-3826(S), Request for FIP Beyond 60 Months. In addition, families that have received FIP assistance for 60 months shall complete Form 470-0462 or Form 470-0462(S), Financial Support Application, as described at rule 441—40.22(239B) as a condition for regaining FIP eligibility. Failure to provide the required application within ten days from the date of the department’s request shall result in denial of the hardship request.

(2) No change.

(3) Requests for a hardship exemption shall not be accepted prior to the first day of the family’s fifty-ninth month of FIP assistance. The date of the request shall be the date an identifiable Form 470-3826 or Form 470-3826(S) is received in any department of human services or PROMISE JOBS office. An identifiable form is one that contains a legible name and address and that has been signed.

(4) No change.

(5) When an adult as defined in subrule 41.30(1) who has received FIP assistance for 60 months joins a recipient family that has not received 60 months of FIP assistance, eligibility shall continue only if the recipient family submits Form 470-3826 or Form 470-3826(S) and is approved for a hardship exemption as described in subrule 41.30(3) and meets all other FIP eligibility requirements.

(6) and (7) No change.

ITEM 6. Amend paragraph **41.30(3)“f”** as follows:

f. Determination of hardship exemption.

(1) A determination on the request shall be made as soon as possible, but no later than 30 days following the date an identifiable Form 470-3826 or Form 470-3826(S) is received in any department of human services or PROMISE JOBS office. A written notice of decision shall be issued to the family the next working day following a determination of eligibility or ineligibility for a hardship exemption. The 30-day time standard shall apply except in unusual circumstances, such as when the department and the family have made every reasonable effort to secure necessary information which has not been supplied by the date the time limit expired; or because of emergency situations, such as fire, flood or other conditions beyond the administrative control of the department.

(2) to (8) No change.

(9) Recipients whose FIP assistance is canceled at the end of the sixtieth month shall be eligible for reinstatement as described at 441—subrule 40.22(5) when Form 470-3826 or Form 470-3826(S) is received before the effective date of cancellation even if eligibility for a hardship exemption is not determined until on or after the effective date of cancellation.

(10) When Form 470-3826 or Form 470-3826(S) is not received before the effective date of the FIP cancellation and a Financial Support Application is required for the family to regain FIP eligibility, the effective date of assistance shall be no earlier than seven days from the date of application as described at rule 441—40.26(239B).

(11) Eligibility for a hardship exemption shall last for six consecutive calendar months. EXCEPTION: The six-month hardship exemption ends when FIP for the family is canceled for any reason and a Financial Support Application is required for the family to regain FIP eligibility. In addition, when FIP

eligibility depends on receiving a hardship exemption, the family shall submit a new Form 470-3826 or Form 470-3826(S). A new hardship exemption determination shall be required prior to FIP approval.

(12) and (13) No change.

ITEM 7. Amend subparagraph **41.30(3)“g”(6)** as follows:

(6) Any family that is not exempt from referral as defined in subrule 41.24(2), that has been granted a hardship exemption, and that does not follow the terms of the family’s six-month FIA will have chosen a limited benefit plan in accordance with 441—Chapters 41 and 93.

ITEM 8. Amend rule **441—46.21(239B)**, definition of “Procedural error,” as follows:

“*Procedural error*” means a technical error that does not in and of itself result in an overpayment.

Procedural errors include:

1. No change.
2. Failure to secure a properly signed Form 470-3826 or Form 470-3826(S), Request for FIP Beyond 60 Months, as described at 441—subrule 41.30(3).
3. to 5. No change.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/9/15.