

CHAPTER 223
DISABILITY SERVICES

Chapter rescission date pursuant to Iowa Code section 17A.7: 7/1/30

441—223.1(231) Eligibility for LTSS disability services. To be eligible for disability services system funding, an individual will meet the following financial and needs-based eligibility criteria.

223.1(1) Financial eligibility.

a. An adult with disabilities will have an income equal to or less than 200 percent of the federal poverty level.

b. A family of a child with disabilities will have an income equal to or less than 200 percent of the federal poverty level.

c. A person who is eligible for federally funded services and other support will apply for such services and support.

d. Income will be verified using the best information available.

e. Financial eligibility will be reviewed on an annual basis and may be reviewed more often in response to increases or decreases in income.

f. An individual who is eligible for medical assistance must apply for and exhaust such funding for services and support prior to utilization of disability service system funding.

223.1(2) Resource requirements. There are no resource limits for the family of a child seeking children's disability services. An adult seeking disability services must have resources that are equal to or less than \$2,000 in countable value for a single-person household or \$3,000 in countable value for a multiperson household or follow the most recent federal supplemental security income guidelines.

a. The countable value of all countable resources, both liquid and nonliquid, shall be included in the eligibility determination, except as exempted in this subrule.

b. A transfer of property or other assets within five years of the time of application with the result of qualifying, or with the intent to qualify, for assistance may result in denial or discontinuation of funding.

c. The following resources are exempt:

(1) A homestead, including equity in a family home or farm that is used as the individual household's principal place of residence. The homestead shall include all land that is contiguous to the home and the buildings located on the land.

(2) One automobile used for transportation.

(3) Tools of an actively pursued trade.

(4) General household furnishings and personal items.

(5) Burial account or trust limited in value as to that allowed in the medical assistance program.

(6) Cash surrender value of life insurance with a face value of less than \$1,500 on any one person.

(7) Any resource determined excludable by the Social Security Administration as a result of an approved Social Security Administration work incentive.

d. If an individual does not qualify for federally funded or state-funded services or other support but meets all income, resource, and functional eligibility requirements of this chapter, the following types of resources are also exempt from consideration in eligibility determination:

(1) A retirement account that is in the accumulation stage.

(2) A medical savings account.

(3) An assistive technology account.

(4) A burial account or trust limited in value as to that allowed in the medical assistance program.

223.1(3) Needs-based eligibility.

a. An individual must be a resident of Iowa, or, if the individual is a minor, the custodial parent must be a resident of Iowa.

b. An individual must have a disability and reside in or be at risk of residing in institutional settings due to the individual's disability.

c. The results of a standardized functional assessment must support the type and frequency of disability services identified in the individual's case plan. A functional assessment must be completed

within 60 days of application for services. The standardized functional assessment methodology will be developed by the department.

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441—223.2(231) Option for waiting lists for disability services. The department will maintain a waiting list of individuals denied access to the program due to lack of available funds. Waiting list information will include the date on which the individual was placed on the waiting list. If additional funds become available, the department will contact individuals on the list.

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441—223.3(231) Access standards. DAPs shall meet the following access standards.

223.3(1) Support for community living. The first appointment shall occur within 30 days of the completion of the functional assessment determining need for a home health aide, home and vehicle modification, respite, or supportive community living.

223.3(2) Support for employment. The initial referral shall take place within seven days of the completion of the functional assessment determining need for day habilitation, job development, supported employment, or prevocational services.

223.3(3) Service coordination. An individual shall receive service coordination within ten days of the initial request for such service.

223.3(4) Service limitations. The following limitations apply for an individual receiving disability services:

a. A service limit equal to that established for the home- and community-based services waiver for individuals with disabilities in the medical assistance program created in Iowa Code chapter 249A.

b. A provider reimbursement payment will not be less than that provided through the home- and community-based services waiver for individuals with disabilities in the medical assistance program created in Iowa Code chapter 249A.

223.3(5) Additional access standards. Additional minimum access standards for STSS and LTSS will be defined in the DAP's district plan and approved by the department.

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441—223.4(231) Appeal rights.

223.4(1) Definitions. For the purposes of this rule, the following definitions apply.

“Agency action” includes the whole or part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.

“Appellant” means any person bringing an appeal under this chapter, including any person's authorized representative as defined in subrule 223.4(14).

“Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

“Reviewer” means the individual assigned by the department to review an appeal record and issue a written decision on behalf of the department. The department's reviewer will be screened from the underlying case and will not have prior knowledge of the facts that precipitated the appeal.

223.4(2) Appeal. A person that disagrees with the department's agency action related to an eligibility determination or denial of disability services may request an appeal within 120 calendar days of the date of the determination or denial.

a. The following actions may be appealed:

- (1) The determination that eligibility criteria have not been met.
- (2) The denial or limited authorization of a requested service, including the type or level of service.
- (3) The decision to reduce, suspend, or terminate previously authorized services.
- (4) The denial, in whole or in part, of payment for a service that was provided.
- (5) The failure of the department to act within the required time frames.

b. Appeal requests submitted by regular mail are considered filed on the date postmarked on the envelope sent to the department or, when a postmarked envelope is not available, on the date the appeal is stamped received by the department. Appeal requests sent electronically are considered filed on the date on which the electronic submission was completed.

c. In computing any time period specified in this rule, the period:

(1) Excludes the day of the event that triggers the period;

(2) Includes every day of the time period (including Saturdays, Sundays, and holidays on which the department is closed); and

(3) Includes the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues until the end of the next day that is not a Saturday, Sunday, or legal holiday.

223.4(3) Request. The person may request an appeal using a form prescribed by the department and in a manner prescribed by the department.

223.4(4) Acknowledgment of appeal. The department will send an acknowledgment of receipt of the appeal to the parties-in-interest to the appeal.

223.4(5) Acceptance or denial of appeal. The department will determine with reasonable promptness whether the person is entitled to an appeal. If a request for an appeal is denied, the department will provide written notice of and the reasons for the denial. On or before the thirtieth calendar day following the denial of appeal, the party requesting the appeal may provide additional information related to the appeal and request reconsideration of the denial of the appeal.

223.4(6) Documentation. If an appeal request is granted, the appellant may submit a written statement, supported by relevant documentation, to establish all pertinent facts and circumstances. Documents shall be submitted to the department within 14 calendar days of the date the appeal is acknowledged. The department's reviewer may request additional documents or information from the appellant as needed to assist the department's evaluation of the appeal.

223.4(7) Ex parte communication. The department's reviewer, the director, and all parties to the appeal are bound by the rules against ex parte communication set forth in Iowa Code section 17A.17 and rule 441—7.9(17A).

223.4(8) Withdrawal. An appellant may withdraw a request for appeal at any time. Requests to withdraw an appeal will be granted.

223.4(9) Department review. The department's reviewer will review the appeal record and issue a written proposed decision to all parties within 30 calendar days. The written proposed decision will include the reviewer's findings of fact and rationale for the decision.

223.4(10) Director's review.

a. *Time.* Parties may appeal the proposed decision to the director. A request for director's review shall be in writing and postmarked or received within 14 calendar days of the date on which the proposed decision was issued. A request for director's review may be accompanied by a brief written summary of the arguments in favor of granting a director's review.

b. *Granting or denial of review.* The department has full discretion to grant or deny a request for director's review. In addition, the director may initiate review of a proposed decision on the director's own motion at any time on or before the thirtieth calendar day following the issuance of the proposed decision. When the department grants a request for director's review, the parties will be notified of the decision, and a copy of the request will be included with the notification.

c. *Limited record.* A director's review will be limited to the issues and information contained in the record reviewed by the reviewer who issued the proposed decision.

d. *Oral arguments.* Upon specific request, the director may, at the director's discretion, permit parties to present oral arguments with the parties' requests for director's review.

e. *Decision issued.* The director will issue a final decision within the timelines prescribed by federal or state law. For all appeals for which there is no federal or state timeliness standard, the director will issue a final decision on or before the ninetieth day from the date the director grants review.

223.4(11) Final decisions.

a. No appeal or denial of director review. If there is no timely appeal from or review of the proposed decision, the proposed decision will be considered the final agency action and is subject to judicial review in accordance with Iowa Code section 17A.19.

b. Director decision issued. Any decision issued by the director after granting a director's review will be considered the final agency action and is subject to judicial review in accordance with Iowa Code section 17A.19.

c. Written notice of final decision. The parties-in-interest will be provided written notice of the department's final decision. The department will also notify the appellant of the right to seek judicial review, where applicable.

223.4(12) Interpreters. The department will provide translation and interpretation services to parties-in-interest, if requested. When a party-in-interest is illiterate or semiliterate, the reviewer will advise the party-in-interest of the party-in-interest's rights.

223.4(13) Persons living with disabilities. Persons living with disabilities will be provided assistance through the use of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act (as amended, effective December 31, 2023) and Section 504 of the Rehabilitation Act (as amended, effective October 1, 2016).

223.4(14) Authorized representatives.

a. Regulations. The provisions of this subrule only apply to the extent the standards expressed in this rule are not in conflict with other state or federal law.

b. Designation of authority. Legally recognized delegations of authority, such as guardianships, applicable designations of power of attorney, or similar designations, will be sufficient for a delegate to serve as authorized representative under this rule. A person that is not designated as a legally recognized delegation of authority but that otherwise seeks to act as an authorized representative for an individual in an appeal under this rule shall provide a written, signed designation of authority to the department with the request for appeal. The designation must provide the scope of the representation, applicable waivers for the release of confidential information, and any temporal or other limitations on the scope of representation. An authorized representative of a party-in-interest only represents the party-in-interest and has no independent right to appeal by virtue of the authorized representative's representation.

c. Appearance by attorney. Legal counsel appearing on behalf of any person in a proceeding under this rule shall enter an appropriate written appearance.

223.4(15) Not contested cases. Appeals brought under this chapter are not contested cases, appellants will not be granted a contested case hearing, and the provisions outlined in rule 441—7.3(17A) do not apply.

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These rules are intended to implement Iowa Code section 231.23.

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