

**441—41.23 (239B) Home, residence, citizenship, and alienage.****41.23(1) Iowa residence.**

a. A resident of Iowa is one:

(1) Who is living in Iowa voluntarily with the intention of making that person's home there and not for a temporary purpose. A child is a resident of Iowa when living there on other than a temporary basis. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(2) Who, at the time of application, is living in Iowa, is not receiving assistance from another state, and entered Iowa with a job commitment or seeking employment in Iowa, whether or not currently employed. Under this definition the child is a resident of the state in which the caretaker is a resident.

b. Residence is retained until abandoned. Temporary absence from Iowa, with subsequent returns to Iowa, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

**41.23(2) Suitability of home.** The home shall be deemed suitable until the court has ruled it unsuitable and, as a result of such action, the child has been removed from the home.

**41.23(3) Absence from the home.**

a. An individual who is absent from the home shall not be included in the assistance unit, except as described in paragraph "b."

(1) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(2) A parent whose absence from the home is due solely to a pattern of employment is not considered to be absent.

(3) A parent whose absence is occasioned solely by reason of the performance of active duty in the uniformed services of the United States is considered absent from the home, notwithstanding the provisions of subrule 41.22(5). "Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration, or Public Health Service of the United States.

b. The needs of an individual who is temporarily out of the home are included in the eligible group, if otherwise eligible. A temporary absence exists in the following circumstances:

(1) An individual is anticipated to be in the medical institution for less than a year, as verified by a physician's statement. Failure to return within one year will result in the individual's needs being removed from the grant.

(2) An individual is out of the home to secure education or training, as defined for children in 41.24(2)"e" and for adults in rule 441—93.8(239B), first sentence, as long as the caretaker relative retains supervision of the child.

(3) An individual is out of the home for reasons other than reasons in subparagraphs (1) and (2) and the payee intends that the individual will return to the home within three months. Failure to return within three months will result in the individual's needs being removed from the grant.

**41.23(4) Battered aliens.** A person who meets the conditions of eligibility under Iowa Code section 239B.2 and who meets either of the following requirements shall be eligible for participation in the family investment program:

a. The person is a conditional resident alien who was battered or subjected to extreme cruelty, or whose child was battered or subjected to extreme cruelty, perpetrated by the person's spouse who is a United States citizen or lawful permanent resident, as described in 8 CFR Section 216.5(a)(3).

b. The person was battered or subjected to extreme cruelty, or the person's child was battered or subjected to extreme cruelty, perpetrated by the person's spouse who is a United States citizen or lawful

permanent resident, and the person's petition has been approved or a petition is pending that sets forth a prima facie case that the person has noncitizen status under any of the following categories:

(1) Status as a spouse or child of a United States citizen or lawful permanent resident under the federal Immigration and Nationality Act, Section 204(a)(1)(A).

(2) Status as a spouse or child who was battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident under the federal Immigration and Nationality Act, Section 204(a)(iii), as codified in 8 United States Code Section 1154(a)(1)(A)(iii).

(3) Classification as a person lawfully admitted for permanent residence under the federal Immigration and Nationality Act.

(4) Suspension of deportation and adjustment of status under the federal Immigration and Nationality Act, Section 244(a), as in effect before the date of enactment of the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(5) Cancellation of removal or adjustment of status under the federal Immigration and Nationality Act, Section 240A, as codified in 8 United States Code Section 1229b.

(6) Status as an asylee, if asylum is pending, under the federal Immigration and Nationality Act, Section 208, as codified in 8 United States Code Section 1158.

**41.23(5) *Citizenship and alienage.***

*a. Eligible status.* A family investment program assistance grant may include the needs of a citizen or national of the United States or a qualified alien as defined at rule 441—40.21(239B).

(1) A person who is a qualified alien as defined at rule 441—40.21(239B) is not eligible for family investment program assistance for a five-year period beginning on the date of the person's entry into the United States with a qualified alien status.

(2) EXCEPTIONS: The five-year prohibition from family investment program assistance does not apply to:

1. A qualified alien residing in the United States before August 22, 1996.
2. A battered alien as described at subrule 41.23(4).
3. A qualified alien veteran who has an honorable discharge that is not due to alienage.
4. A qualified alien who is on active duty in the Armed Forces of the United States other than active duty for training.
5. A qualified alien who is the spouse or unmarried dependent child of a qualified alien described in numbered paragraph "3" or "4," including a surviving spouse who has not remarried.
6. A refugee admitted under Section 207 of the Immigration and Nationality Act (INA).
7. An alien granted asylum under Section 208 of the INA.
8. An alien admitted as an Amerasian as described in 8 U.S.C. Section 1612(a)(2)(A)(ii)(V).
9. A Cuban/Haitian entrant as described in 8 U.S.C. Section 1641(b)(7).
10. An alien whose deportation is withheld under Section 243(h) or Section 241(b)(3) of the INA.
11. An alien certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010.
12. An Iraqi or Afghan immigrant treated as a refugee pursuant to Section 1244(g) of Public Law 110-181 as amended to December 20, 2010, or to Section 602(b)(8) of Public Law 111-8 as amended to December 20, 2010.

*b. Attestation of status.* As a condition of eligibility, an attestation of citizenship or alien status shall be made for all applicants and recipients on Form 470-0462 or 470-0462(S), Financial Support Application, or Form 470-2549, Statement of Citizenship Status. Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS), Review/Recertification Eligibility Document, may be used to attest to the citizenship of dependent children who enter a recipient household. Failure to sign a form attesting to citizenship when required to do so creates ineligibility for the entire eligible group. The attestation may be signed by:

- (1) The applicant;

(2) Someone acting responsibly on the applicant's or recipient's behalf if the applicant or recipient is incompetent or incapacitated; or

(3) Any adult member of the assistance unit, when eligibility is determined on a family or household basis.

This rule is intended to implement Iowa Code sections 239B.2 and 239B.2B.

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