

CHAPTER 256J

MINNESOTA FAMILY INVESTMENT PROGRAM

256J.01	Establishing Minnesota family investment program.	256J.415	Notice of time limit 12 months prior to 60-month time limit expiring.
256J.02	Federal temporary assistance for needy families block grant.	256J.42	60-month time limit; exemptions.
256J.021	Separate state program for use of state money.	256J.425	Hardship extensions.
256J.06	Community involvement.	256J.45	Orientation.
256J.08	Definitions.	256J.46	Sanctions.
256J.09	Applying for assistance.	256J.49	Employment and training services; definitions.
256J.10	MFIP eligibility requirements.	256J.50	County duties.
256J.11	Citizenship.	256J.51	Employment and training service provider; alternate approval process.
256J.12	Minnesota residence.	256J.515	Overview of employment and training services.
256J.13	Minor child in assistance unit; physical presence.	256J.521	Assessment; employment plans.
256J.14	Eligibility for parenting or pregnant minors.	256J.53	Postsecondary education; limitations on approval, job search requirement.
256J.15	Other eligibility conditions.	256J.531	Basic education; English as a second language.
256J.20	Property limitations.	256J.54	Minor parents; employment plan.
256J.21	Income limitations.	256J.545	Family violence waiver criteria.
256J.24	Family composition; assistance standards; exit level.	256J.55	Participant requirements, rights, and expectations.
256J.26	Persons ineligible; vendor payments.	256J.56	Employment and training services component; exemptions.
256J.28	Provisions related specifically to food stamp or food support assistance.	256J.561	Universal participation required.
256J.29	Ineligibility for state-funded programs.	256J.57	Good cause; failure to comply; notice; conciliation conference.
256J.30	Applicant and participant requirements and responsibilities.	256J.61	Reporting requirements.
256J.31	Applicant and participant rights and county agency responsibilities.	256J.62	Universal participation in employment services.
256J.315	County and tribal cooperation.	256J.626	MFIP consolidated fund.
256J.32	Documenting, verifying, and recertifying eligibility.	256J.645	Indian tribe MFIP employment services.
256J.33	Prospective and retrospective determination of MFIP eligibility.	256J.65	The self-employment investment demonstration program (SEID).
256J.34	Calculating payments; significant change; income averaging.	256J.66	On-the-job training.
256J.35	Amount of assistance payment.	256J.67	Community work experience.
256J.36	Allocation for unmet need of other household members.	256J.68	Injury protection for work experience participants.
256J.37	Treatment of income and lump sums.	256J.69	Grant diversion.
256J.38	Correction of overpayments and underpayments.	256J.72	Nondisplacement in work activities.
256J.39	Payment provisions; vendor payments.	256J.74	Relationship to other programs.
256J.395	Vendor payment of shelter costs and utilities.	256J.75	County of financial responsibility policies.
256J.396	Support from parents of minor caregivers living apart.	256J.751	County performance management.
256J.40	Fair hearings.	256J.77	Aging of cash benefits.
			CHILD ONLY TANF PROGRAM
		256J.88	Child only TANF program.
			DIVERSIONARY WORK PROGRAM
		256J.95	Diversionary work program.

256J.01 ESTABLISHING MINNESOTA FAMILY INVESTMENT PROGRAM.

Subdivision 1. **Implementation of Minnesota family investment program (MFIP).** Except for section 256J.95, this chapter and chapter 256K may be cited as the Minnesota family investment program (MFIP). MFIP is the statewide implementation of components of the Minnesota family investment plan (MFIP) authorized and formerly codified in section 256.031 and Minnesota family investment plan-Ramsey County (MFIP-R) formerly codified in section 256.047.

Subd. 2. **Implementation of temporary assistance for needy families (TANF).** The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, eliminates the entitlement program of aid to families with dependent children (AFDC) and replaces it with block grants to states for temporary assistance for needy families (TANF). TANF provides cash assistance for a limited time to families with children and to pregnant women. Minnesota's TANF assistance will be provided through a statewide expansion of MFIP. The modifications specified in this chapter are necessary to comply with the new federal law and to improve MFIP. Eligible applicants and recipients of AFDC, family general assistance, and food stamps will be converted

MINNESOTA STATUTES 2004

to the MFIP program. Effective January 1, 1998, any new application received for family cash assistance will be processed under the rules of this chapter. Case maintenance conversion for existing AFDC and FGA cases to MFIP-S as described in this chapter will begin January 1, 1998, and continue through March 31, 1998.

Subd. 3. Relationship to other statutes and rules. MFIP-S replaces eligibility for families with children and pregnant women under the general assistance program, governed by sections 256D.01 to 256D.21 and Minnesota Rules, parts 9500.1200 to 9500.1270.

Subd. 4. Changes to waivers. The commissioner of human services may negotiate and obtain changes in the federal waivers and terms and conditions contained in MFIP, MFIP-R, and MFIP-S. The commissioner may also terminate federal waivers by directing so in the applicable state plan.

Subd. 5. Compliance system. The commissioner shall administer a compliance system for the state's temporary assistance for needy families (TANF) program, the food stamp or food support program, general assistance, medical assistance, general assistance medical care, emergency general assistance, Minnesota supplemental aid, preadmission screening, child support program, and alternative care grants under the powers and authorities named in section 256.01, subdivision 2. The purpose of the compliance system is to permit the commissioner to supervise the administration of public assistance programs and to enforce timely and accurate distribution of benefits, completeness of service and efficient and effective program management and operations, to increase uniformity and consistency in the administration and delivery of public assistance programs throughout the state, and to reduce the possibility of sanction and fiscal disallowances for noncompliance with federal regulations and state statutes.

History: 1997 c 85 art 1 s 1; 1999 c 159 s 77; 1Sp2001 c 9 art 10 s 66; 1Sp2003 c 14 art 1 s 8,106; 2004 c 288 art 4 s 28

256J.02 FEDERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT.

Subdivision 1. Commissioner's authority to administer block grant funds. The commissioner of human services is authorized to receive, administer, and expend funds available under the TANF block grant authorized under title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Subd. 2. Use of money. State money appropriated for purposes of this section and TANF block grant money must be used for:

(1) financial assistance to or on behalf of any minor child who is a resident of this state under section 256J.12;

(2) the health care and human services training and retention program under chapter 116L, for costs associated with families with children with incomes below 200 percent of the federal poverty guidelines;

(3) the pathways program under section 116L.04, subdivision 1a;

(4) welfare to work transportation authorized under Public Law 105-178;

(5) reimbursements for the federal share of child support collections passed through to the custodial parent;

(6) reimbursements for the working family credit under section 290.0671;

(7) program administration under this chapter;

(8) the diversionary work program under section 256J.95;

(9) the MFIP consolidated fund under section 256J.626; and

(10) the Minnesota Department of Health consolidated fund under Laws 2001, First Special Session chapter 9, article 17, section 3, subdivision 2.

Subd. 3. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 4. Authority to transfer. Subject to limitations of title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of

1996, as amended, the legislature may transfer money from the TANF block grant to the child care fund under chapter 119B, or the Title XX block grant.

Subd. 5. **Indirect cost liability.** Notwithstanding the provisions of section 16A.127, the statewide and agency indirect cost liability identified as part of the TANF grant for any current fiscal year shall be limited to no more than the amount received in fiscal year 1996.

History: 1997 c 85 art 1 s 2; 1998 c 407 art 6 s 18; 1999 c 245 art 6 s 5; 2000 c 488 art 10 s 6; 1Sp2003 c 14 art 1 s 9; art 11 s 11

256J.021 SEPARATE STATE PROGRAM FOR USE OF STATE MONEY.

Beginning October 1, 2001, and each year thereafter, the commissioner of human services must treat MFIP expenditures made to or on behalf of any minor child under section 256J.02, subdivision 2, clause (1), who is a resident of this state under section 256J.12, and who is part of a two-parent eligible household as expenditures under a separately funded state program and report those expenditures to the federal Department of Health and Human Services as separate state program expenditures under Code of Federal Regulations, title 45, section 263.5.

History: 1Sp2001 c 9 art 10 s 5; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 10

256J.03 [Repealed, 1999 c 245 art 1 s 20]

256J.06 COMMUNITY INVOLVEMENT.

The MFIP program must be administered in a way that, in addition to the county agency, other sectors in the community such as employers from the public and private sectors, not-for-profit organizations, educational and social service agencies, program participants, labor unions, and neighborhood associations are involved.

History: 1997 c 85 art 1 s 3; 1Sp2001 c 9 art 10 s 66

256J.08 DEFINITIONS.

Subdivision 1. **Scope of definitions.** The terms used in this chapter have the following meanings unless otherwise provided for by text.

Subd. 2. **Absent parent.** "Absent parent" means a minor child's parent who does not live in the same home as the child.

Subd. 3. **Agency error.** "Agency error" means an error that results in an overpayment or underpayment to an assistance unit and is not caused by an applicant's or participant's failure to provide adequate, correct, or timely information about income, property, household composition, or other circumstances.

Subd. 4. **Appeal.** "Appeal" means a written statement from an applicant or participant who requests a hearing under section 256J.31.

Subd. 5. **Applicant.** "Applicant" means a person who has submitted to a county agency an application and whose application has not been acted upon, denied, or voluntarily withdrawn.

Subd. 6. **Application.** "Application" means the submission by or on behalf of a family to a county agency of a completed, signed, and dated form, prescribed by the commissioner, that indicates the desire to receive assistance.

Subd. 7. **Assistance unit or MFIP assistance unit.** "Assistance unit" or "MFIP assistance unit" means a group of mandatory or optional people receiving or applying for MFIP benefits together.

Subd. 8. **Authorized representative.** "Authorized representative" means a person who is authorized, in writing, by an applicant or participant to act on the applicant's or participant's behalf in matters involving the application for assistance or participation in MFIP.

Subd. 9. **Basic needs.** "Basic needs" means the minimum personal requirements of subsistence and is restricted to food, clothing, shelter, utilities, and other items for

which the loss, or lack of basic needs, is determined by the county agency to pose a direct, immediate threat to the physical health or safety of the applicant or participant.

Subd. 10. **Budget month.** "Budget month" means the calendar month which the county agency uses to determine the income or circumstances of an assistance unit to calculate the amount of the assistance payment in the payment month.

Subd. 11. **Caregiver.** "Caregiver" means a minor child's natural or adoptive parent or parents and stepparent who live in the home with the minor child. For purposes of determining eligibility for this program, caregiver also means any of the following individuals, if adults, who live with and provide care and support to a minor child when the minor child's natural or adoptive parent or parents or stepparents do not reside in the same home: legal custodian or guardian, grandfather, grandmother, brother, sister, half-brother, half-sister, stepbrother, stepsister, uncle, aunt, first cousin or first cousin once removed, nephew, niece, person of preceding generation as denoted by prefixes of "great," "great-great," or "great-great-great," or a spouse of any person named in the above groups even after the marriage ends by death or divorce.

Subd. 11a. **Child only case.** "Child only case" means a case that would be part of the child only TANF program under section 256J.88.

Subd. 12. **Client error.** "Client error" means an error that results in an overpayment or underpayment and is due to an applicant's or participant's failure to provide adequate, correct, or timely information concerning income, property, household composition, or other circumstances.

Subd. 13. **Commissioner.** "Commissioner" means the commissioner of human services or the commissioner's designated representative.

Subd. 14. **Corrective payment.** "Corrective payment" means an assistance payment that is made to correct an underpayment.

Subd. 15. **Countable income.** "Countable income" means earned and unearned income that is not excluded under section 256J.21, subdivision 2, or disregarded under section 256J.21, subdivision 3.

Subd. 16. **Counted earnings.** "Counted earnings" means the earned income that remains after applicable disregards under section 256J.21, subdivision 4, have been subtracted from gross earned income.

Subd. 17. **County agency.** "County agency" means the agency designated by the county board to implement financial assistance for current programs and for MFIP and the agency responsible for enforcement of child support collection, and a county or multicounty agency that is authorized under sections 393.01, subdivision 7, and 393.07, subdivision 2, to administer MFIP.

Subd. 18. **County board.** "County board" means a board of commissioners; a local services agency as defined in chapter 393, a board established under the Joint Powers Act, section 471.59, or a human services board under chapter 402.

Subd. 19. **County of financial responsibility.** "County of financial responsibility" means the county that has financial responsibility for providing public assistance as specified in chapter 256G.

Subd. 20. **County of residence.** "County of residence" means the county where the caregiver has established a home.

Subd. 21. **Date of application.** "Date of application" means the date on which the county agency receives an applicant's signed application.

Subd. 22. **Deem.** "Deem" means to treat all or part of the income of an individual who is not in the assistance unit, but who is financially responsible for members of the assistance unit, as if it were income available to the assistance unit.

Subd. 23. **Department.** "Department" means the Minnesota Department of Human Services.

Subd. 24. **Disregard.** "Disregard" means earned income that is not counted when determining initial eligibility or ongoing eligibility and calculating the amount of the assistance payment for participants. The commissioner shall determine the amount of the disregard according to section 256J.24, subdivision 10.

MINNESOTA STATUTES 2004

1337

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.08

Subd. 24a. **Disqualified.** "Disqualified" means being ineligible to receive MFIP due to noncooperation with program requirements. Except for persons whose disqualification is based on fraud, a disqualified person can take action to correct the reason for ineligibility.

Subd. 24b. **Diversionsary work program or DWP.** "Diversionsary work program" or "DWP" has the meaning given in section 256J.95.

Subd. 25. **Documentation.** "Documentation" means a written statement or record that substantiates or validates an assertion made by a person or an action taken by a person, agency, or entity.

Subd. 26. **Earned income.** "Earned income" means cash or in-kind income earned through the receipt of wages, salary, commissions, profit from employment activities, net profit from self-employment activities, payments made by an employer for regularly accrued vacation or sick leave, and any other profit from activity earned through effort or labor. The income must be in return for, or as a result of, legal activity.

Subd. 27. **Earned income tax credit.** "Earned income tax credit" means the payment which can be obtained by a qualified person from an employer or from the Internal Revenue Service as provided by section 290.0671 and United States Code, title 26, subtitle A, chapter 1, subchapter A, part 4, subpart C, section 32.

Subd. 28. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 28a. **Encumbrance.** "Encumbrance" means a legal claim against real or personal property that is payable upon the sale of that property.

Subd. 28b. **Employable.** "Employable" means a person is capable of performing existing positions in the local labor market, regardless of the current availability of openings for those positions.

Subd. 29. **Equity value.** "Equity value" means the amount of equity in real or personal property owned by a person and is determined by subtracting any outstanding encumbrances from the fair market value.

Subd. 30. **Excluded time.** "Excluded time" has the meaning given in section 256G.02.

Subd. 31. **Expedited issuance of the food stamp portion.** "Expedited issuance of the food stamp portion" means the issuance of the food stamp portion to eligible assistance units on the day of application as provided in section 393.07, subdivision 10a.

Subd. 32. **Fair hearing or hearing.** "Fair hearing" or "hearing" means the evidentiary hearing conducted by the department appeals referee to resolve disputes as specified in section 256J.40; or if not applicable, section 256.045.

Subd. 33. **Fair market value.** "Fair market value" means the price that an item of a particular make, model, size, material, or condition would sell for on the open market in the particular geographic area.

Subd. 34. **Family.** "Family" includes:

(1) the following individuals who live together: a minor child or a group of minor children related to each other as siblings, half siblings, stepsiblings, or adoptive siblings, together with their natural, adoptive parents, stepparents, or caregiver as defined in subdivision 11; and

(2) a pregnant woman with no other children.

Subd. 34a. **Family violence.** (a) "Family violence" means the following, if committed against a family or household member by a family or household member:

(1) physical harm, bodily injury, or assault;

(2) the infliction of fear of imminent physical harm, bodily injury, or assault; or

(3) terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subdivision 2.

(b) For the purposes of family violence, "family or household member" means:

(1) spouses and former spouses;

- (2) parents and children;
- (3) persons related by blood;
- (4) persons who are residing together or who have resided together in the past;
- (5) persons who have a child in common regardless of whether they have been married or have lived together at any time;
- (6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at anytime; and
- (7) persons involved in a current or past significant romantic or sexual relationship.

Subd. 34b. **Family violence waiver.** "Family violence waiver" means a waiver of the 60-month time limit for victims of family violence who meet the criteria in section 256J.545 and are complying with an employment plan in section 256J.521, subdivision 3.

Subd. 35. **Family wage level.** "Family wage level" means 110 percent of the transitional standard as specified in section 256J.24, subdivision 7.

Subd. 36. **Federal Insurance Contribution Act or FICA.** "Federal Insurance Contribution Act" or "FICA" means the federal law under United States Code, title 26, subtitle C, chapter 21, subchapter A, sections 3101 to 3126, that requires withholding or direct payment from earned income.

Subd. 37. **Financial case record.** "Financial case record" means an assistance unit's financial eligibility file.

Subd. 38. **Full-time student.** "Full-time student" means a person who is enrolled in a graded or ungraded primary, intermediate, secondary, GED preparatory, trade, technical, vocational, or postsecondary school, and who meets the school's standard for full-time attendance.

Subd. 39. **General educational development or GED.** "General educational development" or "GED" means the general educational development certification issued by the commissioner of education as an equivalent to a secondary school diploma under Minnesota Rules, part 3500.3100, subpart 4.

Subd. 40. **Gross earned income.** "Gross earned income" means earned income from employment before mandatory and voluntary payroll deductions. Gross earned income includes salaries, wages, tips, gratuities, commissions, incentive payments from work or training programs, payments made by an employer for regularly accrued vacation or sick leave, and profits from other activity earned by an individual's effort or labor. Gross earned income includes uniform and meal allowances if federal income tax is deducted from the allowance. Gross earned income includes flexible work benefits received from an employer if the employee has the option of receiving the benefit or benefits in cash. For self-employment, gross earned income is the nonexcluded income minus expenses for the business.

Subd. 41. **Gross income.** "Gross income" is the sum of gross earned income and unearned income.

Subd. 42. **Gross receipts.** "Gross receipts" means the money received by a business before the expenses of the business are deducted.

Subd. 43. **Half-time student.** "Half-time student" means a person who is enrolled in a graded or ungraded primary, intermediate, secondary, GED preparatory, trade, technical, vocational, or postsecondary school, and who meets the school's standard of half-time attendance.

Subd. 44. **Home.** "Home" means the primary place of residence used by a person as the base for day-to-day living and does not include locations used as mail drops.

Subd. 45. **Homestead.** "Homestead" means the home that is owned by, and is the usual residence of, the assistance unit together with the surrounding property which is not separated from the home by intervening property owned by others. Public rights-of-way, such as roads which run through the surrounding property and separate it from

MINNESOTA STATUTES 2004

1339

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.08

the home, do not affect the exemption of the property. Homestead includes an asset that is not real property that the assistance unit uses as a home, such as a vehicle.

Subd. 46. **Household.** "Household" means a group of persons who live together.

Subd. 47. **Income.** "Income" means cash or in-kind benefit, whether earned or unearned, received by or available to an applicant or participant that is not an asset under section 256J.20.

Subd. 48. **Initial eligibility.** "Initial eligibility" means the determination of eligibility for an MFIP applicant.

Subd. 49. **In-kind income.** "In-kind income" means income, benefits, or payments which are provided in a form other than money or liquid assets, including the forms of goods, produce, services, privileges, or payments made on behalf of an applicant or participant by a third party.

Subd. 50. **Inquiry.** "Inquiry" means a communication to a county agency through mail, telephone, or in person, by which a person or authorized representative requests information about public assistance. The county agency shall also treat as an inquiry any communication in which a person requesting assistance offers information about the person's family circumstances that indicates that eligibility for public assistance may exist.

Subd. 50a. [Repealed, 1Sp2001 c 9 art 10 s 67]

Subd. 51. **Legally available.** "Legally available" means a person's right under the law to secure, possess, dispose of, or control income or property.

Subd. 51a. **Legal custodian.** "Legal custodian" means any person who is under a legal obligation to provide care for a minor and who is in fact providing care for a minor. For an Indian child, "custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom, under state law, or to whom temporary physical care, custody, and control has been transferred by the parent of the child, as provided in section 260.755, subdivision 10.

Subd. 51b. **Learning disabled.** "Learning disabled," for purposes of an extension to the 60-month time limit under section 256J.425, subdivision 3, clause (3), means the person has a disorder in one or more of the psychological processes involved in perceiving, understanding, or using concepts through verbal language or nonverbal means. Learning disabled does not include learning problems that are primarily the result of visual, hearing, or motor handicaps; mental retardation; emotional disturbance; or due to environmental, cultural, or economic disadvantage.

Subd. 52. **Low-income home energy assistance program or LIHEAP.** "Low-income home energy assistance program" or "LIHEAP" means the program authorized under United States Code, title 42, chapter 94, subchapter II, sections 8621 to 8629, and administered by the Minnesota Department of Commerce.

Subd. 53. **Lump sum.** "Lump sum" means nonrecurring income that is not excluded in section 256J.21.

Subd. 54. **Medical assistance.** "Medical assistance" means the program established under chapter 256B and Title XIX of the Social Security Act.

Subd. 55. **MFIP household report form.** "MFIP household report form" means a form prescribed by the commissioner that a participant uses to report information to a county agency about changes in income and other circumstances.

Subd. 55a. **MFIP standard of need.** "MFIP standard of need" means the appropriate standard used to determine MFIP benefit payments for the MFIP unit and applies to:

(1) the transitional standard, sections 256J.08, subdivision 85, and 256J.24, subdivision 5; and

(2) the shared household standard, section 256J.24, subdivision 9.

Subd. 56. **Migrant worker.** "Migrant worker" means a person who travels away from home on a regular basis, usually with a group of other laborers, to seek employment in an agriculturally related activity.

MINNESOTA STATUTES 2004

Subd. 57. **Minnesota family investment program or MFIP.** "Minnesota family investment program" or "MFIP" means the assistance program authorized in this chapter and chapter 256K.

Subd. 58. **Minnesota supplemental aid or MSA.** "Minnesota supplemental aid" or "MSA" means the program established under sections 256D.33 to 256D.54.

Subd. 59. **Minor caregiver.** "Minor caregiver" means a person who:

- (1) is under the age of 18;
- (2) has never been married or otherwise legally emancipated; and
- (3) is either the natural parent of a minor child living in the same household or is eligible for assistance paid to a pregnant woman.

Subd. 60. **Minor child.** "Minor child" means a child who is living in the same home of a parent or other caregiver, is not the parent of a child in the home, and is either less than 18 years of age or is under the age of 19 years and is a full-time student in a secondary school or pursuing a full-time secondary level course of vocational or technical training designed to fit students for gainful employment.

Subd. 61. **Monthly income test.** "Monthly income test" means the test used to determine ongoing eligibility and the assistance payment amount according to section 256J.21.

Subd. 61a. **Noncustodial parent.** "Noncustodial parent" means a minor child's parent who does not live in the same home as the child.

Subd. 62. **Nonrecurring income.** "Nonrecurring income" means a form of income which is received:

- (1) only one time or is not of a continuous nature; or
- (2) in a prospective payment month but is no longer received in the corresponding retrospective payment month.

Subd. 63. **Overpayment.** "Overpayment" means the portion of an assistance payment issued by the county agency that is greater than the amount for which the assistance unit is eligible.

Subd. 64. **Parent.** "Parent" means a child's biological or adoptive parent who is legally obligated to support that child.

Subd. 65. **Participant.** "Participant" means a person who is currently receiving cash assistance or the food portion available through MFIP. A person who fails to withdraw or access electronically any portion of the person's cash and food assistance payment by the end of the payment month, who makes a written request for closure before the first of a payment month and repays cash and food assistance electronically issued for that payment month within that payment month, or who returns any uncashed assistance check and food coupons and withdraws from the program is not a participant. A person who withdraws a cash or food assistance payment by electronic transfer or receives and cashes an MFIP assistance check or food coupons and is subsequently determined to be ineligible for assistance for that period of time is a participant, regardless whether that assistance is repaid. The term "participant" includes the caregiver relative and the minor child whose needs are included in the assistance payment. A person in an assistance unit who does not receive a cash and food assistance payment because the case has been suspended from MFIP is a participant. A person who receives cash payments under the diversionary work program under section 256J.95 is a participant.

Subd. 65a. **Participation requirements of TANF.** "Participation requirements of TANF" means activities and hourly requirements allowed under title IV-A of the federal Social Security Act.

Subd. 66. **Payee.** "Payee" means a person to whom an assistance payment is made payable.

Subd. 67. **Payment month.** "Payment month" means the calendar month for which the assistance payment is paid.

Subd. 67a. **Person trained in domestic violence.** "Person trained in domestic violence" means an individual who works for an organization that is designated by the

Minnesota Center for Crime Victims Services as providing services to victims of domestic violence, or a county staff person who has received similar specialized training, and includes any other person or organization designated by a qualifying organization under this section.

Subd. 68. **Personal property.** "Personal property" means an item of value that is not real property, including the value of a contract for deed held by a seller; assets held in trust on behalf of members of an assistance unit, value of a prepaid burial, savings account, value of stocks and bonds, and value of retirement accounts.

Subd. 69. **Probable fraud.** "Probable fraud" means the level of evidence that, if proven as fact, would establish that assistance has been wrongfully obtained.

Subd. 70. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 71. **Prospective budgeting.** "Prospective budgeting" means a method of determining the amount of the assistance payment in which the budget month and payment month are the same.

Subd. 72. **Protective payee.** "Protective payee" means a person other than the caregiver of an assistance unit who receives the monthly assistance payment on behalf of an assistance unit and is responsible to provide for the basic needs of the assistance unit to the extent of that payment.

Subd. 73. **Qualified noncitizen.** "Qualified noncitizen" means a person:

(1) who was lawfully admitted for permanent residence according to United States Code, title 8;

(2) who was admitted to the United States as a refugee according to United States Code, title 8; section 1157;

(3) whose deportation is being withheld according to United States Code, title 8, sections 1231(b)(3), 1253(h), and 1641(b)(5);

(4) who was paroled for a period of at least one year according to United States Code, title 8, section 1182(d)(5);

(5) who was granted conditional entry according to United States Code, title 8, section 1153(a)(7);

(6) who is a Cuban or Haitian entrant as defined in section 501(c) of the Refugee Education Assistance Act of 1980, United States Code, title 8, section 1641(b)(7);

(7) who was granted asylum according to United States Code, title 8, section 1158;

(8) who is a battered noncitizen according to United States Code, title 8, section 1641(c); or

(9) who is a parent or child of a battered noncitizen according to United States Code, title 8, section 1641(c).

Subd. 73a. **Qualified professional.** (a) For physical illness, injury, or incapacity, a "qualified professional" means a licensed physician, a physician's assistant, a nurse practitioner, or a licensed chiropractor.

(b) For mental retardation and intelligence testing, a "qualified professional" means an individual qualified by training and experience to administer the tests necessary to make determinations, such as tests of intellectual functioning, assessments of adaptive behavior, adaptive skills, and developmental functioning. These professionals include licensed psychologists, certified school psychologists, or certified psychometrists working under the supervision of a licensed psychologist.

(c) For learning disabilities, a "qualified professional" means a licensed psychologist or school psychologist with experience determining learning disabilities.

(d) For mental health, a "qualified professional" means a licensed physician or a qualified mental health professional. A "qualified mental health professional" means:

(1) for children, in psychiatric nursing, a registered nurse who is licensed under sections 148.171 to 148.285, and who is certified as a clinical specialist in child and adolescent psychiatric or mental health nursing by a national nurse certification organization or who has a master's degree in nursing or one of the behavioral sciences or related fields from an accredited college or university or its equivalent, with at least

4,000 hours of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness;

(2) for adults, in psychiatric nursing, a registered nurse who is licensed under sections 148.171 to 148.285, and who is certified as a clinical specialist in adult psychiatric and mental health nursing by a national nurse certification organization or who has a master's degree in nursing or one of the behavioral sciences or related fields from an accredited college or university or its equivalent, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness;

(3) in clinical social work, a person licensed as an independent clinical social worker under section 148B.21, subdivision 6, or a person with a master's degree in social work from an accredited college or university, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness;

(4) in psychology, an individual licensed by the Board of Psychology under sections 148.88 to 148.98, who has stated to the Board of Psychology competencies in the diagnosis and treatment of mental illness;

(5) in psychiatry, a physician licensed under chapter 147 and certified by the American Board of Psychiatry and Neurology or eligible for board certification in psychiatry; and

(6) in marriage and family therapy, the mental health professional must be a marriage and family therapist licensed under sections 148B.29 to 148B.39, with at least two years of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness.

Subd. 74. **Real property.** "Real property" means land and all buildings, structures, and improvements, or other fixtures on the land, belonging or appertaining to the land, and all mines, minerals, fossils, and trees on or under the land.

Subd. 75. **Reasonable compensation.** "Reasonable compensation" means the value received in exchange for property transferred to another owner that is consistent with fair market value and equals or exceeds the seller's equity in the property, reduced by costs incurred in the sale.

Subd. 76. **Recertification.** "Recertification" means the periodic review of eligibility factors to determine an assistance unit's continued eligibility.

Subd. 77. **Recoupment.** "Recoupment" means the action of the county agency to reduce a family's monthly assistance payment to recover overpayments caused by client or agency error and overpayments received while an appeal is pending.

Subd. 78. **Recovery.** "Recovery" means actions taken by a county agency to reclaim the value of overpayments through voluntary repayment, recoupment from the assistance payment, court action, revenue recapture, or federal tax refund offset program (FTROP).

Subd. 79. **Recurring income.** "Recurring income" means a form of income which is:

(1) received periodically, and may be received irregularly when receipt can be anticipated even though the date of receipt cannot be predicted; and

(2) from the same source or of the same type that is received and budgeted in a prospective month and is received in one or both of the first two retrospective months.

Subd. 80. **Unemployment benefits.** "Unemployment benefits" means the insurance benefit paid to an unemployed worker under sections 268.03 to 268.23.

Subd. 81. **Retrospective budgeting.** "Retrospective budgeting" means a method of determining the amount of the assistance payment in which the payment month is the second month after the budget month.

Subd. 82. **Sanction.** "Sanction" means the reduction of a family's assistance payment by a specified percentage of the MFIP standard of need because: a nonexempt participant fails to comply with the requirements of sections 256J.515 to 256J.57; a parental caregiver fails without good cause to cooperate with the child support

enforcement requirements; or a participant fails to comply with other requirements of this chapter.

Subd. 82a. **Shared household standard.** "Shared household standard" means the basic standard used when the household includes an unrelated member. The standard also applies to a member disqualified under section 256J.425. The cash portion of the shared household standard is equal to 90 percent of the cash portion of the transitional standard. The cash portion of the shared household standard plus the food portion equals the full shared household standard.

Subd. 82b. **Shelter costs.** "Shelter costs" means rent, manufactured home lot rental costs, or monthly principal, interest, insurance premiums, and property taxes due for mortgages or contracts for deed.

Subd. 83. **Significant change.** "Significant change" means a decline in gross income of the amount of the disregard as defined in subdivision 24 or more from the income used to determine the grant for the current month.

Subd. 84. **Supplemental Security Income or SSI.** "Supplemental Security Income" or "SSI" means the program authorized under title XVI of the Social Security Act.

Subd. 84a. **SSI recipient.** "SSI recipient" means a person who receives at least \$1 in SSI benefits, or who is not receiving an SSI benefit due to recoupment or a one-month suspension by the Social Security Administration due to excess income.

Subd. 85. **Transitional standard.** "Transitional standard" means the basic standard for a family without earned income and is a combination of the cash portion and food portion as specified in section 256J.24, subdivision 5.

Subd. 86. **Unearned income.** "Unearned income" means income received by a person that does not meet the definition of earned income. Unearned income includes income from a contract for deed, interest, dividends, unemployment benefits, disability insurance payments, veterans benefits, pension payments, return on capital investment, insurance payments or settlements, severance payments, child support and maintenance payments, and payments for illness or disability whether the premium payments are made in whole or in part by an employer or participant.

Subd. 86a. **Unrelated member.** "Unrelated member" means an individual in the household who does not meet the definition of an eligible caregiver.

Subd. 87. **Vendor.** "Vendor" means a provider of goods or services.

Subd. 88. **Vendor payment.** "Vendor payment" means a payment authorized by a county agency to a vendor.

Subd. 89. **Verification.** "Verification" means the process a county agency uses to establish the accuracy or completeness of information from an applicant, participant; third party, or other source as that information relates to program eligibility or an assistance payment.

Subd. 90. **Severe forms of trafficking in persons.** "Severe forms of trafficking in persons" means: (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act has not attained 18 years of age; or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.

History: 1986 c 444; 1997 c 85 art 1 s 4; 1998 c 398 art 5 s 55; 1998 c 407 art 6 s 20-34; 1999 c 107 s 66; 1999 c 139 art 4 s 2; 1999 c 245 art 6 s 6-13; 2000 c 343 s 4; 2000 c 488 art 10 s 7; 1Sp2001 c 9 art 10 s 6,7,66; 2002 c 379 art 1 s 113; 2003 c 130 s 12; 1Sp2003 c 14 art 1 s 11-24; 2004 c 206 s 37; 2004 c 288 art 4 s 29,30

256J.09 APPLYING FOR ASSISTANCE.

Subdivision 1. **Where to apply.** To apply for assistance a person must submit a signed application to the county agency in the county where that person lives.

Subd. 2. **County agency responsibility to provide information.** When a person inquires about assistance, a county agency must:

MINNESOTA STATUTES 2004

(1) explain the eligibility requirements of, and how to apply for any assistance for which the person may be eligible; and

(2) offer the person brochures developed or approved by the commissioner that describe how to apply for assistance.

Subd. 3. **Submitting the application form.** (a) A county agency must offer, in person or by mail, the application forms prescribed by the commissioner as soon as a person makes a written or oral inquiry. At that time, the county agency must:

(1) inform the person that assistance begins with the date the signed application is received by the county agency or the date all eligibility criteria are met, whichever is later;

(2) inform the person that any delay in submitting the application will reduce the amount of assistance paid for the month of application;

(3) inform a person that the person may submit the application before an interview;

(4) explain the information that will be verified during the application process by the county agency as provided in section 256J.32;

(5) inform a person about the county agency's average application processing time and explain how the application will be processed under subdivision 5;

(6) explain how to contact the county agency if a person's application information changes and how to withdraw the application;

(7) inform a person that the next step in the application process is an interview and what a person must do if the application is approved including, but not limited to, attending orientation under section 256J.45 and complying with employment and training services requirements in sections 256J.515 to 256J.57;

(8) explain the child care and transportation services that are available under paragraph (c) to enable caregivers to attend the interview, screening, and orientation; and

(9) identify any language barriers and arrange for translation assistance during appointments, including, but not limited to, screening under subdivision 3a, orientation under section 256J.45, and assessment under section 256J.521.

(b) Upon receipt of a signed application, the county agency must stamp the date of receipt on the face of the application. The county agency must process the application within the time period required under subdivision 5. An applicant may withdraw the application at any time by giving written or oral notice to the county agency. The county agency must issue a written notice confirming the withdrawal. The notice must inform the applicant of the county agency's understanding that the applicant has withdrawn the application and no longer wants to pursue it. When, within ten days of the date of the agency's notice, an applicant informs a county agency, in writing, that the applicant does not wish to withdraw the application, the county agency must reinstate the application and finish processing the application.

(c) Upon a participant's request, the county agency must arrange for transportation and child care or reimburse the participant for transportation and child care expenses necessary to enable participants to attend the screening under subdivision 3a and orientation under section 256J.45.

Subd. 3a. **Screening.** The county agency, or at county option, the county's employment and training service provider as defined in section 256J.49, must screen each applicant to determine immediate needs and to determine if the applicant may be eligible for another program that is not partially funded through the federal temporary assistance to needy families block grant under Title I of Public Law 104-193, including the expedited issuance of food stamps under section 256J.28, subdivision 1. If the applicant appears eligible for another program, including any program funded by the MFIP consolidated fund, the county must make a referral to the appropriate program.

Subd. 3b. **Interview to determine referrals and services.** If the applicant is not diverted from applying for MFIP, and if the applicant meets the MFIP eligibility requirements, then a county agency must:

MINNESOTA STATUTES 2004

1345

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.09

(1) identify an applicant who is under the age of 20 without a high school diploma or its equivalent and explain to the applicant the assessment procedures and employment plan requirements under section 256J.54;

(2) explain to the applicant the eligibility criteria in section 256J.545 for the family violence waiver, and what an applicant should do to develop an employment plan;

(3) explain that the activities and hourly requirements of the employment plan may be adjusted to accommodate the personal and family circumstances of applicants who meet the criteria in section 256J.561, subdivision 2, paragraph (d), explain how a person should report to the county agency any status changes, and explain that an applicant who is not required to participate in employment services under section 256J.561 may volunteer to participate in employment and training services;

(4) for applicants who are not exempt from the requirement to attend orientation, arrange for an orientation under section 256J.45 and an assessment under section 256J.521;

(5) inform an applicant who is not exempt from the requirement to attend orientation that failure to attend the orientation is considered an occurrence of noncompliance with program requirements and will result in an imposition of a sanction under section 256J.46; and

(6) explain how to contact the county agency if an applicant has questions about compliance with program requirements.

Subd. 4. Verification of information on application. A county agency must verify information provided by an applicant as required in section 256J.32.

Subd. 5. Processing applications. Upon receiving an application, a county agency must determine the applicant's eligibility, approve or deny the application, inform the applicant of its decision according to the notice provisions in section 256J.31, and, if eligible, issue the assistance payment to the applicant. When a county agency is unable to process an application within 30 days, the county agency must inform the applicant of the reason for the delay in writing. When an applicant establishes the inability to provide required verification within the 30-day processing period, the county agency may not use the expiration of that period as the basis for denial.

Subd. 6. Invalid reason for delay. A county agency must not delay a decision on eligibility or delay issuing the assistance payment except to establish state residence as provided in section 256J.12 by:

(1) treating the 30-day processing period as a waiting period;

(2) delaying approval or issuance of the assistance payment pending the decision of the county board; or

(3) awaiting the result of a referral to a county agency in another county when the county receiving the application does not believe it is the county of financial responsibility.

Subd. 7. Changes in residence during application. The requirements in subdivisions 5 and 6 apply without regard to the length of time that an applicant remains, or intends to remain, a resident of the county in which the application is made. When an applicant leaves the county where application was made but remains in the state, section 256J.75 applies and the county agency may request additional information from the applicant about changes in circumstances related to the move.

Subd. 8. Additional applications. Until a county agency issues notice of approval or denial, additional applications submitted by an applicant are void. However, an application for monthly assistance or other benefits funded under section 256J.626 and an application for emergency general assistance may exist concurrently. More than one application for monthly assistance or emergency general assistance may exist concurrently when the county agency decisions on one or more earlier applications have been appealed to the commissioner, and the applicant asserts that a change in circumstances has occurred that would allow eligibility. A county agency must require additional application forms or supplemental forms as prescribed by the commissioner when a

payee's name changes, or when a caregiver requests the addition of another person to the assistance unit.

Subd. 9. **Addendum to an existing application.** (a) An addendum to an existing application must be used to add persons to an assistance unit regardless of whether the persons being added are required to be in the assistance unit. When a person is added by addendum to an assistance unit, eligibility for that person begins on the first of the month the addendum was filed except as provided in section 256J.74, subdivision 2, clause (1).

(b) An overpayment must be determined when a change in household composition is not reported within the deadlines in section 256J.30, subdivision 9. Any overpayment must be calculated from the month of the change including the needs, income, and assets of any individual who is required to be included in the assistance unit under section 256J.24, subdivision 2. Individuals not included in the assistance unit who are identified in section 256J.37, subdivisions 1 to 2, must have their income and assets considered when determining the amount of the overpayment.

Subd. 10. **Applicants who do not meet eligibility requirements for MFIP or the diversionary work program.** When an applicant is not eligible for MFIP or the diversionary work program under section 256J.95 because the applicant does not meet eligibility requirements, the county agency must determine whether the applicant is eligible for food stamps, food support, or health care programs. The county must also inform applicants about resources available through the county or other agencies to meet short-term emergency needs.

History: 1997 c 85 art 1 s 5; 1998 c 407 art 6 s 35,36; 1Sp2001 c 9 art 10 s 8-12,66; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 25-30,106; 2004 c 288 art 4 s 31

256J.10 MFIP ELIGIBILITY REQUIREMENTS.

To be eligible for MFIP, applicants must meet the general eligibility requirements in sections 256J.11 to 256J.15, the property limitations in section 256J.20, and the income limitations in section 256J.21.

History: 1997 c 85 art 1 s 6; 1Sp2001 c 9 art 10 s 66

256J.11 CITIZENSHIP.

Subdivision 1. **General citizenship requirements.** (a) To be eligible for MFIP, a member of the assistance unit must be a citizen of the United States, a qualified noncitizen as defined in section 256J.08, or a noncitizen who is otherwise residing lawfully in the United States.

(b) A qualified noncitizen who entered the United States on or after August 22, 1996, is eligible for MFIP. However, TANF dollars cannot be used to fund the MFIP benefits for an individual under this paragraph for a period of five years after the date of entry unless the qualified noncitizen meets one of the following criteria:

(1) was admitted to the United States as a refugee under United States Code, title 8, section 1157;

(2) was granted asylum under United States Code, title 8, section 1158;

(3) was granted withholding of deportation under the United States Code, title 8, section 1253(h);

(4) is a veteran of the United States armed forces with an honorable discharge for a reason other than noncitizen status, or is a spouse or unmarried minor dependent child of the same; or

(5) is an individual on active duty in the United States armed forces, other than for training, or is a spouse or unmarried minor dependent child of the same.

(c) A person who is not a qualified noncitizen but who is otherwise residing lawfully in the United States is eligible for MFIP. However, TANF dollars cannot be used to fund the MFIP benefits for an individual under this paragraph.

(d) For purposes of this subdivision, a nonimmigrant in one or more of the classes listed in United States Code, title 8, section 1101(a)(15), or an undocumented

immigrant who resides in the United States without the approval or acquiescence of the Immigration and Naturalization Service, is not eligible for MFIP.

Subd. 2. Noncitizens; food portion. State dollars shall fund the food portion of a noncitizen's MFIP benefits when federal food stamp dollars cannot be used to fund those benefits. The assistance provided under this subdivision, which is designated as a supplement to replace lost benefits under the federal food stamp program, must be disregarded as income in all programs that do not count food stamps or food support as income where the commissioner has the authority to make the income disregard determination for the program.

Subd. 3. Benefits funded with state money. Legal adult noncitizens who have resided in the country for four years or more as a lawful permanent resident, whose benefits are funded entirely with state money, and who are under 70 years of age, must, as a condition of eligibility:

(1) be enrolled in a literacy class, English as a second language class, or a citizen class;

(2) be applying for admission to a literacy class, English as a second language class, and is on a waiting list;

(3) be in the process of applying for a waiver from the Immigration and Naturalization Service of the English language or civics requirements of the citizenship test;

(4) have submitted an application for citizenship to the Immigration and Naturalization Service and is waiting for a testing date or a subsequent swearing in ceremony; or

(5) have been denied citizenship due to a failure to pass the test after two attempts or because of an inability to understand the rights and responsibilities of becoming a United States citizen, as documented by the Immigration and Naturalization Service or the county.

If the county social service agency determines that a legal noncitizen subject to the requirements of this subdivision will require more than one year of English language training, then the requirements of clause (1) or (2) shall be imposed after the legal noncitizen has resided in the country for three years. Individuals who reside in a facility licensed under chapter 144A, 144D, 245A, or 256I are exempt from the requirements of this subdivision.

History: 1997 c 85 art 1 s 7; 1997 c 203 art 12 s 7; 3Sp1997 c 1 s 1; 1998 c 407 art 6 s 37; 1999 c 159 s 78,79; 1999 c 245 art 6 s 14,15; 1Sp2001 c 9 art 10 s 66; 2002 c 379 art 1 s 114; 1Sp2003 c 14 art 1 s 106

256J.12 MINNESOTA RESIDENCE.

Subdivision 1. Simple residency. To be eligible for MFIP, an assistance unit must have established residency in this state which means the assistance unit is present in the state and intends to remain here. A person who lives in this state and who entered this state with a job commitment or to seek employment in this state, whether or not that person is currently employed, meets the criteria in this subdivision.

Subd. 1a. 30-day residency requirement. An assistance unit is considered to have established residency in this state only when a child or caregiver has resided in this state for at least 30 consecutive days with the intention of making the person's home here and not for any temporary purpose. The birth of a child in Minnesota to a member of the assistance unit does not automatically establish the residency in this state under this subdivision of the other members of the assistance unit. Time spent in a shelter for battered women shall count toward satisfying the 30-day residency requirement.

Subd. 2. Exceptions. (a) A county shall waive the 30-day residency requirement where unusual hardship would result from denial of assistance.

(b) For purposes of this section, unusual hardship means an assistance unit:

(1) is without alternative shelter; or

(2) is without available resources for food.

(c) For purposes of this subdivision, the following definitions apply (1) "metropolitan statistical area" is as defined by the U.S. Census Bureau; (2) "alternative shelter" includes any shelter that is located within the metropolitan statistical area containing the county and for which the family is eligible, provided the assistance unit does not have to travel more than 20 miles to reach the shelter and has access to transportation to the shelter. Clause (2) does not apply to counties in the Minneapolis-St. Paul metropolitan statistical area.

(d) Applicants are considered to meet the residency requirement under subdivision 1a if they once resided in Minnesota and:

(1) joined the United States armed services, returned to Minnesota within 30 days of leaving the armed services, and intend to remain in Minnesota; or

(2) left to attend school in another state, paid nonresident tuition or Minnesota tuition rates under a reciprocity agreement, and returned to Minnesota within 30 days of graduation with the intent to remain in Minnesota.

(e) The 30-day residence requirement is met when:

(1) a minor child or a minor caregiver moves from another state to the residence of a relative caregiver; and

(2) the relative caregiver has resided in Minnesota for at least 30 consecutive days and:

(i) the minor caregiver applies for and receives MFIP; or

(ii) the relative caregiver applies for assistance for the minor child but does not choose to be a member of the MFIP assistance unit.

Subd. 2a. **Migrant workers.** Migrant workers, as defined in section 256J.08, and their immediate families are exempt from the requirements of subdivisions 1 and 1a, provided the migrant worker provides verification that the migrant family worked in this state within the last 12 months and earned at least \$1,000 in gross wages during the time the migrant worker worked in this state.

Subd. 3. [Repealed, 1Sp2001 c 9 art 10 s 67]

Subd. 4. **Severability clause.** If any subdivision in this section is enjoined from implementation or found unconstitutional by any court of competent jurisdiction, the remaining subdivisions shall remain valid and shall be given full effect.

History: 1997 c 85 art 1 s 8; 1997 c 203 art 12 s 8; 1998 c 407 art 6 s 38; 1999 c 159 s 80; 1999 c 245 art 6 s 16,17

256J.13 MINOR CHILD IN ASSISTANCE UNIT; PHYSICAL PRESENCE.

Subdivision 1. **Minor child or pregnant woman.** The assistance unit must include at least one minor child or a pregnant woman. If a minor child is a recipient of Supplemental Security Income or Minnesota supplemental aid, the assistance unit is eligible for MFIP, but the needs of the minor child receiving Supplemental Security Income or Minnesota supplemental aid must not be taken into account when the county agency determines the amount of the assistance payment to be paid to the assistance unit.

Subd. 2. **Physical presence.** A minor child and a caregiver must live together except as provided in the following paragraphs.

(a) The physical presence requirement is met when a minor child is required to live away from the caregiver's home to meet the need for educational curricula that cannot be met by, but is approved by, the local public school district, the home is maintained for the minor child's return during periodic school vacations, and the caregiver continues to maintain responsibility for the support and care of the minor child.

(b) The physical presence requirement is met when an applicant caregiver or applicant minor child is away from the home due to illness or hospitalization, when the home is maintained for the return of the absent family member, the absence is not

expected to last more than six months beyond the month of departure, and the conditions of clause (1), (2), or (3) apply:

(1) when the minor child and caregiver lived together immediately prior to the absence, the caregiver continues to maintain responsibility for the support and care of the minor child, and the absence is reported at the time of application;

(2) when the pregnant mother is hospitalized or out of the home due to the pregnancy; or

(3) when the newborn child and mother are hospitalized at the time of birth.

(c) The absence of a caregiver or minor child does not affect eligibility for the month of departure when the caregiver or minor child received assistance for that month and lived together immediately prior to the absence. Eligibility also exists in the following month when the absence ends on or before the tenth day of that month. A temporary absence of a caregiver or a minor child which continues beyond the month of departure must not affect eligibility when the home is maintained for the return of the absent family member, the caregiver continues to maintain responsibility for the support and care of the minor child, and one of clauses (1) to (7) applies:

(1) a participant caregiver or participant child is absent due to illness or hospitalization, and the absence is expected to last no more than six months beyond the month of departure;

(2) a participant child is out of the home due to placement in foster care as defined in section 260B.007, subdivision 7, and 260C.007, subdivision 15, when the placement will not be paid under title IV-E of the Social Security Act, and when the absence is expected to last no more than six months beyond the month of departure;

(3) a participant minor child is out of the home for a vacation, the vacation is not with an absent parent, and the absence is expected to last no more than two months beyond the month of departure;

(4) a participant minor child is out of the home due to a visit or vacation with an absent parent, the home of the minor child remains with the caregiver, the absence meets the conditions of this paragraph and the absence is expected to last no more than two months beyond the month of departure;

(5) a participant caregiver is out of the home due to a death or illness of a relative, incarceration, training, or employment search and suitable arrangements have been made for the care of the minor child, or a participant minor child is out of the home due to incarceration, and the absence is expected to last no more than two months beyond the month of departure;

(6) a participant caregiver and a participant minor child are both absent from Minnesota due to a situation described in clause (5), except for incarceration, and the absence is expected to last no more than one month beyond the month of the departure; or

(7) a participant minor child has run away from home, and another person has not made application for that minor child, assistance must continue for no more than two months following the month of departure.

History: 1997 c 85 art 1 s 9; 1999 c 139 art 4 s 2; 2001 c 178 art 1 s 44; 1Sp2001 c 9 art 10 s 66

256J.14 ELIGIBILITY FOR PARENTING OR PREGNANT MINORS.

(a) The definitions in this paragraph only apply to this subdivision.

(1) "Household of a parent, legal guardian, or other adult relative" means the place of residence of:

(i) a natural or adoptive parent;

(ii) a legal guardian according to appointment or acceptance under sections 260C.325 or 524.5-201 to 524.5-317, and related laws;

(iii) a caregiver as defined in section 256J.08, subdivision 11; or

(iv) an appropriate adult relative designated by a county agency.

MINNESOTA STATUTES 2004

(2) "Adult-supervised supportive living arrangement" means a private family setting which assumes responsibility for the care and control of the minor parent and minor child, or other living arrangement, not including a public institution, licensed by the commissioner of human services which ensures that the minor parent receives adult supervision and supportive services, such as counseling, guidance, independent living skills training, or supervision.

(b) A minor parent and the minor child who is in the care of the minor parent must reside in the household of a parent, legal guardian, other adult relative, or in an adult-supervised supportive living arrangement in order to receive MFIP unless:

(1) the minor parent has no living parent, other adult relative, or legal guardian whose whereabouts is known;

(2) no living parent, other adult relative, or legal guardian of the minor parent allows the minor parent to live in the parent's, other adult relative's, or legal guardian's home;

(3) the minor parent lived apart from the minor parent's own parent or legal guardian for a period of at least one year before either the birth of the minor child or the minor parent's application for MFIP;

(4) the physical or emotional health or safety of the minor parent or minor child would be jeopardized if the minor parent and the minor child resided in the same residence with the minor parent's parent, other adult relative, or legal guardian; or

(5) an adult supervised supportive living arrangement is not available for the minor parent and child in the county in which the minor parent and child currently reside. If an adult supervised supportive living arrangement becomes available within the county, the minor parent and child must reside in that arrangement.

(c) The county agency shall inform minor applicants both orally and in writing about the eligibility requirements, their rights and obligations under the MFIP program, and any other applicable orientation information. The county must advise the minor of the possible exemptions under section 256J.54, subdivision 5, and specifically ask whether one or more of these exemptions is applicable. If the minor alleges one or more of these exemptions, then the county must assist the minor in obtaining the necessary verifications to determine whether or not these exemptions apply.

(d) If the county worker has reason to suspect that the physical or emotional health or safety of the minor parent or minor child would be jeopardized if they resided with the minor parent's parent, other adult relative, or legal guardian, then the county worker must make a referral to child protective services to determine if paragraph (b), clause (4), applies. A new determination by the county worker is not necessary if one has been made within the last six months, unless there has been a significant change in circumstances which justifies a new referral and determination.

(e) If a minor parent is not living with a parent, legal guardian, or other adult relative due to paragraph (b), clause (1), (2), or (4), the minor parent must reside, when possible, in a living arrangement that meets the standards of paragraph (a), clause (2).

(f) Regardless of living arrangement, MFIP must be paid, when possible, in the form of a protective payment on behalf of the minor parent and minor child according to section 256J.39, subdivisions 2 to 4.

History: 1997 c 85 art 1 s 10; 1998 c 407 art 6 s 39; 1999 c 139 art 4 s 2; 1999 c 245 art 6 s 18; 1Sp2003 c 14 art 1 s 31; 2004 c 146 art 3 s 26

256J.15 OTHER ELIGIBILITY CONDITIONS.

Subdivision 1. **Eligibility when there is shared, court ordered, and other custody arrangements.** The language of a court order that specifies joint legal or physical custody does not preclude a determination that a parent is absent. Absence must be determined based on the actual facts of the absence according to paragraphs (a) to (c).

(a) When a minor child spends time in each of the parents' homes within a payment month, the minor child's home shall be considered the home in which the

majority of the minor child's time is spent. When this time is exactly equal within a payment month, or when the parents alternately live in the minor child's home within a payment month, the minor child's home shall be with that parent who is applying for MFIP, unless the minor child's needs for the full payment month have already been met through the provision of assistance to the other parent for that month.

(b) When the physical custody of a minor child alternates between parents for periods of at least one payment month, each parent shall be eligible for assistance for any full payment months the minor child's home is with that parent, except under the conditions in paragraph (c).

(c) When a minor child's home is with one parent for the majority of time in each month for at least nine consecutive calendar months, and that minor child visits or vacations with the other parent under section 256J.13, the minor child's home remains with the first parent even when the stay with the second parent is for all or the majority of the months in the period of the temporary absence.

Subd. 2. Eligibility during labor disputes. To receive assistance when a member of an assistance unit is on strike, or when an individual identified under section 256J.37, subdivisions 1 to 2, whose income and assets must be considered when determining the unit's eligibility is on strike, the assistance unit must have been receiving MFIP or have been eligible for MFIP on the day before the strike.

The county agency must count the striker's prestrike earnings as current earnings. A significant change cannot be invoked when a member of an assistance unit, or an individual identified under section 256J.37, subdivisions 1 to 2, is on strike. A member of an assistance unit, or an individual identified under section 256J.37, subdivisions 1 to 2, is not considered a striker when that person is not in the bargaining unit that voted for the strike and does not cross the picket line for fear of personal injury.

History: 1997 c 85 art 1 s 11; 1998 c 407 art 6 s 40; 1Sp2001 c 9 art 10 s 66

256J.20 PROPERTY LIMITATIONS.

Subdivision 1. Property ownership provisions. The county agency must apply paragraphs (a) to (d) to real and personal property. The county agency must use the equity value of legally available real and personal property, except property excluded in subdivisions 2 and 3, to determine whether an applicant or participant is eligible for assistance.

(a) When real or personal property is jointly owned by two or more persons, the county agency shall assume that each person owns an equal share, except that either person owns the entire sum of a joint personal checking or savings account. When an applicant or participant documents greater or lesser ownership, the county agency must use that greater or lesser share to determine the equity value held by the applicant or participant. Other types of ownership must be evaluated according to law.

(b) Real or personal property owned by the applicant or participant must be presumed legally available to the applicant or participant unless the applicant or participant documents that the property is not legally available to the applicant or participant. When real or personal property is not legally available, its equity value must not be applied against the limits of subdivisions 2 and 3.

(c) An applicant must disclose whether the applicant has transferred real or personal property valued in excess of the property limits in subdivisions 2 and 3 for which reasonable compensation was not received within one year prior to application. A participant must disclose all transfers of property valued in excess of these limits, according to the reporting requirements in section 256J.30, subdivision 9. When a transfer of real or personal property without reasonable compensation has occurred:

(1) the person who transferred the property must provide the property's description, information needed to determine the property's equity value, the names of the persons who received the property, and the circumstances of and reasons for the transfer; and

(2) when the transferred property can be reasonably reacquired, or when reasonable compensation can be secured, the property is presumed legally available to the applicant or participant.

(d) A participant may build the equity value of real and personal property to the limits in subdivisions 2 and 3.

Subd. 2. **Real property limitations.** Ownership of real property by an applicant or participant is subject to the limitations in paragraphs (a) and (b).

(a) A county agency shall exclude the homestead of an applicant or participant according to clauses (1) to (5):

(1) an applicant or participant who is purchasing real property through a contract for deed and using that property as a home is considered the owner of real property;

(2) the total amount of land that can be excluded under this subdivision is limited to surrounding property which is not separated from the home by intervening property owned by others. Additional property must be assessed as to its legal and actual availability according to subdivision 1;

(3) when real property that has been used as a home by a participant is sold, the county agency must treat the cash proceeds from the sale as excluded property for six months when the participant intends to reinvest the proceeds in another home and maintains those proceeds, unused for other purposes, in a separate account;

(4) when the homestead is jointly owned, but the client does not reside in it because of legal separation, pending divorce, or battering or abuse by the spouse or partner, the homestead is excluded; and

(5) the homestead shall continue to be excluded if it is temporarily unoccupied due to employment, illness, or as the result of compliance with a county-approved employability plan. The education, training, or job search must be within the state, but can be outside the immediate geographic area. A homestead temporarily unoccupied because it is not habitable due to a casualty or natural disaster is excluded. The homestead is excluded during periods only if the client intends to return to it.

(b) The equity value of real property that is not excluded under paragraph (a) and which is legally available must be applied against the limits in subdivision 3. When the equity value of the real property exceeds the limits under subdivision 3, the applicant or participant may qualify to receive assistance when the applicant or participant continues to make a good faith effort to sell the property and signs a legally binding agreement to repay the amount of assistance, less child support collected by the agency. Repayment must be made within five working days after the property is sold. Repayment to the county agency must be in the amount of assistance received or the proceeds of the sale, whichever is less.

Subd. 3. **Other property limitations.** To be eligible for MFIP, the equity value of all nonexcluded real and personal property of the assistance unit must not exceed \$2,000 for applicants and \$5,000 for ongoing participants. The value of assets in clauses (1) to (19) must be excluded when determining the equity value of real and personal property:

(1) a licensed vehicle up to a loan value of less than or equal to \$7,500. The county agency shall apply any excess loan value as if it were equity value to the asset limit described in this section. If the assistance unit owns more than one licensed vehicle, the county agency shall determine the vehicle with the highest loan value and count only the loan value over \$7,500, excluding: (i) the value of one vehicle per physically disabled person when the vehicle is needed to transport the disabled unit member; this exclusion does not apply to mentally disabled people; (ii) the value of special equipment for a handicapped member of the assistance unit; and (iii) any vehicle used for long-distance travel, other than daily commuting, for the employment of a unit member.

The county agency shall count the loan value of all other vehicles and apply this amount as if it were equity value to the asset limit described in this section. To establish the loan value of vehicles, a county agency must use the N.A.D.A. Official

MINNESOTA STATUTES 2004

1353

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.20

Used Car Guide, Midwest Edition, for newer model cars. When a vehicle is not listed in the guidebook, or when the applicant or participant disputes the loan value listed in the guidebook as unreasonable given the condition of the particular vehicle, the county agency may require the applicant or participant document the loan value by securing a written statement from a motor vehicle dealer licensed under section 168.27, stating the amount that the dealer would pay to purchase the vehicle. The county agency shall reimburse the applicant or participant for the cost of a written statement that documents a lower loan value;

(2) the value of life insurance policies for members of the assistance unit;

(3) one burial plot per member of an assistance unit;

(4) the value of personal property needed to produce earned income, including tools, implements, farm animals, inventory, business loans, business checking and savings accounts used at least annually and used exclusively for the operation of a self-employment business, and any motor vehicles if at least 50 percent of the vehicle's use is to produce income and if the vehicles are essential for the self-employment business;

(5) the value of personal property not otherwise specified which is commonly used by household members in day-to-day living such as clothing, necessary household furniture, equipment, and other basic maintenance items essential for daily living;

(6) the value of real and personal property owned by a recipient of Supplemental Security Income or Minnesota supplemental aid;

(7) the value of corrective payments, but only for the month in which the payment is received and for the following month;

(8) a mobile home or other vehicle used by an applicant or participant as the applicant's or participant's home;

(9) money in a separate escrow account that is needed to pay real estate taxes or insurance and that is used for this purpose;

(10) money held in escrow to cover employee FICA, employee tax withholding, sales tax withholding, employee worker compensation, business insurance, property rental, property taxes, and other costs that are paid at least annually, but less often than monthly;

(11) monthly assistance payments for the current month's or short-term emergency needs under section 256J.626, subdivision 2;

(12) the value of school loans, grants, or scholarships for the period they are intended to cover;

(13) payments listed in section 256J.21, subdivision 2, clause (9), which are held in escrow for a period not to exceed three months to replace or repair personal or real property;

(14) income received in a budget month through the end of the payment month;

(15) savings from earned income of a minor child or a minor parent that are set aside in a separate account designated specifically for future education or employment costs;

(16) the federal earned income credit, Minnesota working family credit, state and federal income tax refunds, state homeowners and renters credits under chapter 290A, property tax rebates and other federal or state tax rebates in the month received and the following month;

(17) payments excluded under federal law as long as those payments are held in a separate account from any nonexcluded funds;

(18) the assets of children ineligible to receive MFIP benefits because foster care or adoption assistance payments are made on their behalf; and

(19) the assets of persons whose income is excluded under section 256J.21, subdivision 2, clause (43).

History: 1997 c 85 art 1 s 12; 1997 c 203 art 12 s 9; 1998 c 407 art 6 s 41,42; 1999 c 245 art 6 s 19; 1Sp2001 c 2 s 144; 1Sp2003 c 14 art 1 s 32

256J.21 INCOME LIMITATIONS.

Subdivision 1. **Income inclusions.** To determine MFIP eligibility, the county agency must evaluate income received by members of an assistance unit, or by other persons whose income is considered available to the assistance unit, and only count income that is available to the member of the assistance unit. Income is available if the individual has legal access to the income. All payments, unless specifically excluded in subdivision 2, must be counted as income. The county agency shall verify the income of all MFIP recipients and applicants.

Subd. 2. **Income exclusions.** The following must be excluded in determining a family's available income:

- (1) payments for basic care, difficulty of care, and clothing allowances received for providing family foster care to children or adults under Minnesota Rules, parts 9545.0010 to 9545.0260 and 9555.5050 to 9555.6265, and payments received and used for care and maintenance of a third-party beneficiary who is not a household member;
- (2) reimbursements for employment training received through the Workforce Investment Act of 1998, United States Code, title 20; chapter 73, section 9201;
- (3) reimbursement for out-of-pocket expenses incurred while performing volunteer services, jury duty, employment, or informal carpooling arrangements directly related to employment;
- (4) all educational assistance, except the county agency must count graduate student teaching assistantships, fellowships, and other similar paid work as earned income and, after allowing deductions for any unmet and necessary educational expenses, shall count scholarships or grants awarded to graduate students that do not require teaching or research as unearned income;
- (5) loans, regardless of purpose, from public or private lending institutions, governmental lending institutions, or governmental agencies;
- (6) loans from private individuals, regardless of purpose, provided an applicant or participant documents that the lender expects repayment;
- (7)(i) state income tax refunds; and
(ii) federal income tax refunds;
- (8)(i) federal earned income credits;
(ii) Minnesota working family credits;
(iii) state homeowners and renters credits under chapter 290A; and
(iv) federal or state tax rebates;
- (9) funds received for reimbursement, replacement, or rebate of personal or real property when these payments are made by public agencies, awarded by a court, solicited through public appeal, or made as a grant by a federal agency, state or local government, or disaster assistance organizations, subsequent to a presidential declaration of disaster;
- (10) the portion of an insurance settlement that is used to pay medical, funeral, and burial expenses, or to repair or replace insured property;
- (11) reimbursements for medical expenses that cannot be paid by medical assistance;
- (12) payments by a vocational rehabilitation program administered by the state under chapter 268A, except those payments that are for current living expenses;
- (13) in-kind income, including any payments directly made by a third party to a provider of goods and services;
- (14) assistance payments to correct underpayments, but only for the month in which the payment is received;
- (15) payments for short-term emergency needs under section 256J.626, subdivision 2;
- (16) funeral and cemetery payments as provided by section 256.935;

MINNESOTA STATUTES 2004

1355

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.21

(17) nonrecurring cash gifts of \$30 or less, not exceeding \$30 per participant in a calendar month;

(18) any form of energy assistance payment made through Public Law 97-35, Low-Income Home Energy Assistance Act of 1981, payments made directly to energy providers by other public and private agencies, and any form of credit or rebate payment issued by energy providers;

(19) Supplemental Security Income (SSI), including retroactive SSI payments and other income of an SSI recipient, except as described in section 256J.37, subdivision 3b;

(20) Minnesota supplemental aid, including retroactive payments;

(21) proceeds from the sale of real or personal property;

(22) state adoption assistance payments under section 259.67, and up to an equal amount of county adoption assistance payments;

(23) state-funded family subsidy program payments made under section 252.32 to help families care for children with mental retardation or related conditions, consumer support grant funds under section 256.476, and resources and services for a disabled household member under one of the home and community-based waiver services programs under chapter 256B;

(24) interest payments and dividends from property that is not excluded from and that does not exceed the asset limit;

(25) rent rebates;

(26) income earned by a minor caregiver, minor child through age 6, or a minor child who is at least a half-time student in an approved elementary or secondary education program;

(27) income earned by a caregiver under age 20 who is at least a half-time student in an approved elementary or secondary education program;

(28) MFIP child care payments under section 119B.05;

(29) all other payments made through MFIP to support a caregiver's pursuit of greater economic stability;

(30) income a participant receives related to shared living expenses;

(31) reverse mortgages;

(32) benefits provided by the Child Nutrition Act of 1966, United States Code, title 42, chapter 13A, sections 1771 to 1790;

(33) benefits provided by the women, infants, and children (WIC) nutrition program, United States Code, title 42, chapter 13A, section 1786;

(34) benefits from the National School Lunch Act, United States Code, title 42, chapter 13, sections 1751 to 1769e;

(35) relocation assistance for displaced persons under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, United States Code, title 42, chapter 61, subchapter II, section 4636, or the National Housing Act, United States Code, title 12, chapter 13, sections 1701 to 1750jj;

(36) benefits from the Trade Act of 1974, United States Code, title 19, chapter 12, part 2, sections 2271 to 2322;

(37) war reparations payments to Japanese Americans and Aleuts under United States Code, title 50, sections 1989 to 1989d;

(38) payments to veterans or their dependents as a result of legal settlements regarding Agent Orange or other chemical exposure under Public Law 101-239, section 10405, paragraph (a)(2)(E);

(39) income that is otherwise specifically excluded from MFIP consideration in federal law, state law, or federal regulation;

(40) security and utility deposit refunds;

(41) American Indian tribal land settlements excluded under Public Laws 98-123, 98-124, and 99-377 to the Mississippi Band Chippewa Indians of White Earth, Leech

Lake, and Mille Lacs reservations and payments to members of the White Earth Band, under United States Code, title 25, chapter 9, section 331, and chapter 16, section 1407;

(42) all income of the minor parent's parents and stepparents when determining the grant for the minor parent in households that include a minor parent living with parents or stepparents on MFIP with other children;

(43) income of the minor parent's parents and stepparents equal to 200 percent of the federal poverty guideline for a family size not including the minor parent and the minor parent's child in households that include a minor parent living with parents or stepparents not on MFIP when determining the grant for the minor parent. The remainder of income is deemed as specified in section 256J.37, subdivision 1b;

(44) payments made to children eligible for relative custody assistance under section 257.85;

(45) vendor payments for goods and services made on behalf of a client unless the client has the option of receiving the payment in cash; and

(46) the principal portion of a contract for deed payment.

Subd. 3. **Initial income test.** The county agency shall determine initial eligibility by considering all earned and unearned income that is not excluded under subdivision 2. To be eligible for MFIP, the assistance unit's countable income minus the disregards in paragraphs (a) and (b) must be below the transitional standard of assistance according to section 256J.24 for that size assistance unit.

(a) The initial eligibility determination must disregard the following items:

(1) the employment disregard is 18 percent of the gross earned income whether or not the member is working full time or part time;

(2) dependent care costs must be deducted from gross earned income for the actual amount paid for dependent care up to a maximum of \$200 per month for each child less than two years of age, and \$175 per month for each child two years of age and older under this chapter and chapter 119B;

(3) all payments made according to a court order for spousal support or the support of children not living in the assistance unit's household shall be disregarded from the income of the person with the legal obligation to pay support, provided that, if there has been a change in the financial circumstances of the person with the legal obligation to pay support since the support order was entered, the person with the legal obligation to pay support has petitioned for a modification of the support order; and

(4) an allocation for the unmet need of an ineligible spouse or an ineligible child under the age of 21 for whom the caregiver is financially responsible and who lives with the caregiver according to section 256J.36.

(b) Notwithstanding paragraph (a), when determining initial eligibility for applicant units when at least one member has received MFIP in this state within four months of the most recent application for MFIP, apply the disregard as defined in section 256J.08, subdivision 24, for all unit members.

After initial eligibility is established, the assistance payment calculation is based on the monthly income test.

Subd. 4. **Monthly income test and determination of assistance payment.** The county agency shall determine ongoing eligibility and the assistance payment amount according to the monthly income test. To be eligible for MFIP, the result of the computations in paragraphs (a) to (c) must be at least \$1.

(a) Apply an income disregard as defined in section 256J.08, subdivision 24, to gross earnings and subtract this amount from the family wage level. If the difference is equal to or greater than the MFIP standard of need, the assistance payment is equal to the MFIP standard of need. If the difference is less than the MFIP standard of need, the assistance payment is equal to the difference. The employment disregard in this paragraph must be deducted every month there is earned income.

(b) All payments made according to a court order for spousal support or the support of children not living in the assistance unit's household must be disregarded from the income of the person with the legal obligation to pay support, provided that, if

there has been a change in the financial circumstances of the person with the legal obligation to pay support since the support order was entered, the person with the legal obligation to pay support has petitioned for a modification of the court order.

(c) An allocation for the unmet need of an ineligible spouse or an ineligible child under the age of 21 for whom the caregiver is financially responsible and who lives with the caregiver must be made according to section 256J.36.

(d) Subtract unearned income dollar for dollar from the MFIP standard of need to determine the assistance payment amount.

(e) When income is both earned and unearned, the amount of the assistance payment must be determined by first treating gross earned income as specified in paragraph (a). After determining the amount of the assistance payment under paragraph (a), unearned income must be subtracted from that amount dollar for dollar to determine the assistance payment amount.

(f) When the monthly income is greater than the MFIP standard of need after deductions and the income will only exceed the standard for one month, the county agency must suspend the assistance payment for the payment month.

Subd. 5. Distribution of income. The income of all members of the assistance unit must be counted. Income may also be deemed from ineligible persons to the assistance unit. Income must be attributed to the person who earns it or to the assistance unit according to paragraphs (a) to (c).

(a) Funds distributed from a trust, whether from the principal holdings or sale of trust property or from the interest and other earnings of the trust holdings, must be considered income when the income is legally available to an applicant or participant. Trusts are presumed legally available unless an applicant or participant can document that the trust is not legally available.

(b) Income from jointly owned property must be divided equally among property owners unless the terms of ownership provide for a different distribution.

(c) Deductions are not allowed from the gross income of a financially responsible household member or by the members of an assistance unit to meet a current or prior debt.

History: 1997 c 85 art 1 s 13; 1998 c 407 art 6 s 43; 1999 c 159 s 81; 1999 c 245 art 6 s 20-22; 2000 c 488 art 10 s 8; 1Sp2001 c 9 art 10 s 13,66; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 33,34; 2004 c 288 art 4 s 32,33

256J.24 FAMILY COMPOSITION; ASSISTANCE STANDARDS; EXIT LEVEL.

Subdivision 1. MFIP assistance unit. An MFIP assistance unit is either a group of individuals with at least one minor child who live together whose needs, assets, and income are considered together and who receive MFIP assistance, or a pregnant woman and her spouse who receive MFIP assistance.

Individuals identified in subdivision 2 must be included in the MFIP assistance unit. Individuals identified in subdivision 3 are ineligible to receive MFIP. Individuals identified in subdivision 4 may be included in the assistance unit at their option. Individuals not included in the assistance unit who are identified in section 256J.37, subdivisions 1 to 2, must have their income and assets considered when determining eligibility and benefits for an MFIP assistance unit. All assistance unit members, whether mandatory or elective, who live together and for whom one caregiver or two caregivers apply must be included in a single assistance unit.

Subd. 2. Mandatory assistance unit composition. Except for minor caregivers and their children who must be in a separate assistance unit from the other persons in the household, when the following individuals live together, they must be included in the assistance unit:

- (1) a minor child, including a pregnant minor;
- (2) the minor child's minor siblings, minor half-siblings, and minor step-siblings;
- (3) the minor child's natural parents, adoptive parents, and stepparents; and
- (4) the spouse of a pregnant woman.

MINNESOTA STATUTES 2004

A minor child must have a caregiver for the child to be included in the assistance unit.

Subd. 3. **Individuals who must be excluded from an assistance unit.** (a) The following individuals who are part of the assistance unit determined under subdivision 2 are ineligible to receive MFIP:

(1) individuals who are recipients of Supplemental Security Income or Minnesota supplemental aid;

(2) individuals disqualified from the food stamp or food support program or MFIP, until the disqualification ends;

(3) children on whose behalf federal, state or local foster care payments are made, except as provided in sections 256J.13, subdivision 2, and 256J.74, subdivision 2; and

(4) children receiving ongoing monthly adoption assistance payments under section 259.67.

(b) The exclusion of a person under this subdivision does not alter the mandatory assistance unit composition.

Subd. 4. **Individuals who may elect to be included in the assistance unit.** (a) The minor child's eligible caregiver may choose to be in the assistance unit, if the caregiver is not required to be in the assistance unit under subdivision 2. If the eligible caregiver chooses to be in the assistance unit, that person's spouse must also be in the unit.

(b) Any minor child not related as a sibling, stepsibling, or adopted sibling to the minor child in the unit, but for whom there is an eligible caregiver may elect to be in the unit.

(c) A foster care provider of a minor child who is receiving federal, state, or local foster care maintenance payments may elect to receive MFIP if the provider meets the definition of caregiver under section 256J.08, subdivision 11. If the provider chooses to receive MFIP, the spouse of the provider must also be included in the assistance unit with the provider. The provider and spouse are eligible for assistance even if the only minor child living in the provider's home is receiving foster care maintenance payments.

(d) The adult caregiver or caregivers of a minor parent are eligible to be a separate assistance unit from the minor parent and the minor parent's child when:

(1) the adult caregiver or caregivers have no other minor children in the household;

(2) the minor parent and the minor parent's child are living together with the adult caregiver or caregivers; and

(3) the minor parent and the minor parent's child receive MFIP, or would be eligible to receive MFIP, if they were not receiving SSI benefits.

Subd. 5. **MFIP transitional standard.** The MFIP transitional standard is based on the number of persons in the assistance unit eligible for both food and cash assistance unless the restrictions in subdivision 6 on the birth of a child apply. The following table represents the transitional standards effective October 1, 2003.

Number of Eligible People	Transitional Standard	Cash Portion	Food Portion
1	\$371:	\$250	\$121
2	\$661:	\$437	\$224
3	\$852:	\$532	\$320
4	\$1,006:	\$621	\$385
5	\$1,146:	\$697	\$449
6	\$1,309:	\$773	\$536
7	\$1,428:	\$850	\$578
8	\$1,572:	\$916	\$656
9	\$1,715:	\$980	\$735
10	\$1,853:	\$1,035	\$818
over 10	add \$137:	\$53	\$84

per additional member.

The commissioner shall annually publish in the State Register the transitional standard for an assistance unit sizes 1 to 10 including a breakdown of the cash and food portions.

Subd. 5a. **Food portion of MFIP transitional standard.** The commissioner shall adjust the food portion of the MFIP transitional standard by October 1 each year beginning October 1998 to reflect the cost-of-living adjustments to the Food Stamp Program. The commissioner shall annually publish in the State Register the transitional standard for an assistance unit of sizes one to ten.

Subd. 6. **Family cap.** (a) MFIP assistance units shall not receive an increase in the cash portion of the transitional standard as a result of the birth of a child, unless one of the conditions under paragraph (b) is met. The child shall be considered a member of the assistance unit according to subdivisions 1 to 3, but shall be excluded in determining family size for purposes of determining the amount of the cash portion of the transitional standard under subdivision 5. The child shall be included in determining family size for purposes of determining the food portion of the transitional standard. The transitional standard under this subdivision shall be the total of the cash and food portions as specified in this paragraph. The family wage level under this subdivision shall be based on the family size used to determine the food portion of the transitional standard.

(b) A child shall be included in determining family size for purposes of determining the amount of the cash portion of the MFIP transitional standard when at least one of the following conditions is met:

(1) for families receiving MFIP assistance on July 1, 2003, the child is born to the adult parent before May 1, 2004;

(2) for families who apply for the diversionary work program under section 256J.95 or MFIP assistance on or after July 1, 2003, the child is born to the adult parent within ten months of the date the family is eligible for assistance;

(3) the child was conceived as a result of a sexual assault or incest, provided that the incident has been reported to a law enforcement agency;

(4) the child's mother is a minor caregiver as defined in section 256J.08, subdivision 59, and the child, or multiple children, are the mother's first birth; or

(5) any child previously excluded in determining family size under paragraph (a) shall be included if the adult parent or parents have not received benefits from the diversionary work program under section 256J.95 or MFIP assistance in the previous ten months. An adult parent or parents who reapply and have received benefits from the diversionary work program or MFIP assistance in the past ten months shall be under the ten-month grace period of their previous application under clause (2).

(c) Income and resources of a child excluded under this subdivision, except child support received or distributed on behalf of this child, must be considered using the same policies as for other children when determining the grant amount of the assistance unit.

(d) The caregiver must assign support and cooperate with the child support enforcement agency to establish paternity and collect child support on behalf of the excluded child. Failure to cooperate results in the sanction specified in section 256J.46, subdivisions 2 and 2a. Current support paid on behalf of the excluded child shall be distributed according to section 256.741, subdivision 15.

(e) County agencies must inform applicants of the provisions under this subdivision at the time of each application and at recertification.

(f) Children excluded under this provision shall be deemed MFIP recipients for purposes of child care under chapter 119B.

Subd. 7. **Family wage level.** The family wage level is 110 percent of the transitional standard under subdivision 5 or 6, when applicable, and is the standard used when

MINNESOTA STATUTES 2004

there is earned income in the assistance unit. As specified in section 256J.21, earned income is subtracted from the family wage level to determine the amount of the assistance payment. The assistance payment may not exceed the transitional standard under subdivision 5 or 6, or the shared household standard under subdivision 9, whichever is applicable, for the assistance unit.

Subd. 8. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 9. **Shared household standard; MFIP.** (a) Except as prohibited in paragraph (b), the county agency must use the shared household standard when the household includes one or more unrelated members, as that term is defined in section 256J.08, subdivision 86a. The county agency must use the shared household standard, unless a member of the assistance unit is a victim of family violence and has an alternative employment plan, regardless of the number of unrelated members in the household.

(b) The county agency must not use the shared household standard when all unrelated members are one of the following:

(1) a recipient of public assistance benefits, including food stamps or food support, Supplemental Security Income, adoption assistance, relative custody assistance, or foster care payments;

(2) a roomer or boarder, or a person to whom the assistance unit is paying room or board;

(3) a minor child under the age of 18;

(4) a minor caregiver living with the minor caregiver's parents or in an approved supervised living arrangement;

(5) a caregiver who is not the parent of the minor child in the assistance unit; or

(6) an individual who provides child care to a child in the MFIP assistance unit.

(c) The shared household standard must be discontinued if it is not approved by the United States Department of Agriculture under the MFIP waiver.

Subd. 10. **MFIP exit level.** The commissioner shall adjust the MFIP earned income disregard to ensure that most participants do not lose eligibility for MFIP until their income reaches at least 115 percent of the federal poverty guidelines in effect in October of each fiscal year. The adjustment to the disregard shall be based on a household size of three, and the resulting earned income disregard percentage must be applied to all household sizes. The adjustment under this subdivision must be implemented at the same time as the October food stamp or food support cost-of-living adjustment is reflected in the food portion of MFIP transitional standard as required under subdivision 5a.

History: 1997 c 85 art 1 s 14; 1998 c 407 art 6 s 44-51; 1999 c 245 art 6 s 23-28; 1Sp2001 c 9 art 10 s 14-16,66; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 35-39,106; 2004 c 288 art 4 s 34

256J.25 [Repealed, 1998 c 407 art 6 s 118]

256J.26 PERSONS INELIGIBLE; VENDOR PAYMENTS.

Subdivision 1. **Person convicted of drug offenses.** (a) Applicants or participants who have been convicted of a drug offense committed after July 1, 1997, may, if otherwise eligible, receive MFIP benefits subject to the following conditions:

(1) Benefits for the entire assistance unit must be paid in vendor form for shelter and utilities during any time the applicant is part of the assistance unit.

(2) The convicted applicant or participant shall be subject to random drug testing as a condition of continued eligibility and following any positive test for an illegal controlled substance is subject to the following sanctions:

(i) for failing a drug test the first time, the residual amount of the participant's grant after making vendor payments for shelter and utility costs, if any, must be reduced by an amount equal to 30 percent of the MFIP standard of need for an assistance unit of the same size. When a sanction under this subdivision is in effect, the job counselor must attempt to meet with the person face-to-face. During the face-to-

MINNESOTA STATUTES 2004

face meeting, the job counselor must explain the consequences of a subsequent drug test failure and inform the participant of the right to appeal the sanction under section 256J.40. If a face-to-face meeting is not possible, the county agency must send the participant a notice of adverse action as provided in section 256J.31, subdivisions 4 and 5, and must include the information required in the face-to-face meeting; or

(ii) for failing a drug test two times, the participant is permanently disqualified from receiving MFIP assistance, both the cash and food portions. The assistance unit's MFIP grant must be reduced by the amount which would have otherwise been made available to the disqualified participant. Disqualification under this item does not make a participant ineligible for food stamps or food support. Before a disqualification under this provision is imposed, the job counselor must attempt to meet with the participant face-to-face. During the face-to-face meeting, the job counselor must identify other resources that may be available to the participant to meet the needs of the family and inform the participant of the right to appeal the disqualification under section 256J.40. If a face-to-face meeting is not possible, the county agency must send the participant a notice of adverse action as provided in section 256J.31, subdivisions 4 and 5, and must include the information required in the face-to-face meeting.

(3) A participant who fails a drug test the first time and is under a sanction due to other MFIP program requirements is considered to have more than one occurrence of noncompliance and is subject to the applicable level of sanction as specified under section 256J.46, subdivision 1, paragraph (d).

(b) Applicants requesting only food stamps or food support or participants receiving only food stamps or food support, who have been convicted of a drug offense that occurred after July 1, 1997, may, if otherwise eligible, receive food stamps or food support if the convicted applicant or participant is subject to random drug testing as a condition of continued eligibility. Following a positive test for an illegal controlled substance, the applicant is subject to the following sanctions:

(1) for failing a drug test the first time, food stamps or food support shall be reduced by an amount equal to 30 percent of the applicable food stamp or food support allotment. When a sanction under this clause is in effect, a job counselor must attempt to meet with the person face-to-face. During the face-to-face meeting, a job counselor must explain the consequences of a subsequent drug test failure and inform the participant of the right to appeal the sanction under section 256J.40. If a face-to-face meeting is not possible, a county agency must send the participant a notice of adverse action as provided in section 256J.31, subdivisions 4 and 5, and must include the information required in the face-to-face meeting; and

(2) for failing a drug test two times, the participant is permanently disqualified from receiving food stamps or food support. Before a disqualification under this provision is imposed, a job counselor must attempt to meet with the participant face-to-face. During the face-to-face meeting, the job counselor must identify other resources that may be available to the participant to meet the needs of the family and inform the participant of the right to appeal the disqualification under section 256J.40. If a face-to-face meeting is not possible, a county agency must send the participant a notice of adverse action as provided in section 256J.31, subdivisions 4 and 5, and must include the information required in the face-to-face meeting.

(c) For the purposes of this subdivision, "drug offense" means an offense that occurred after July 1, 1997, of sections 152.021 to 152.025, 152.0261, or 152.096. Drug offense also means a conviction in another jurisdiction of the possession, use, or distribution of a controlled substance, or conspiracy to commit any of these offenses, if the offense occurred after July 1, 1997, and the conviction is a felony offense in that jurisdiction, or in the case of New Jersey, a high misdemeanor.

Subd. 2. **Parole violators.** An individual violating a condition of probation or parole or supervised release imposed under federal law or the law of any state is disqualified from receiving MFIP.

Subd. 3. **Fleeing felons.** An individual who is fleeing to avoid prosecution, or custody, or confinement after conviction for a crime that is a felony under the laws of

the jurisdiction from which the individual flees, or in the case of New Jersey, is a high misdemeanor, is disqualified from receiving MFIP.

Subd. 4. Denial of assistance for ten years to a person found to have fraudulently misrepresented residency. An individual who is convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states is disqualified from receiving MFIP for ten years beginning on the date of the conviction.

History: 1997 c 85 art 1 s 16; 1997 c 203 art 12 s 10; 1997 c 245 art 4 s 1; 1998 c 407 art 6 s 52-55; 1999 c 159 s 82-85; 1999 c 245 art 6 s 29; 1Sp2001 c 9 art 10 s 17; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 106

256J.28 PROVISIONS RELATED SPECIFICALLY TO FOOD STAMP OR FOOD SUPPORT ASSISTANCE.

Subdivision 1. Expedited issuance of food stamp assistance. The following households are entitled to expedited issuance of food stamp assistance:

- (1) households with less than \$150 in monthly gross income provided their liquid assets do not exceed \$100;
- (2) migrant or seasonal farm worker households who are destitute as defined in Code of Federal Regulations, title 7, subtitle B, chapter 2, subchapter C, part 273, section 273.10, paragraph (e)(3), provided their liquid assets do not exceed \$100; and
- (3) eligible households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage and utilities.

For any month an individual receives expedited Food Stamp Program benefits, the individual is not eligible for the MFIP food portion of assistance.

Subd. 2. Food stamps for household members not in the assistance unit. (a) For household members who purchase and prepare food with the MFIP assistance unit but are not part of the assistance unit, the county agency must determine a separate food stamp benefit based on regulations agreed upon with the United States Department of Agriculture.

(b) Fair hearing requirements for persons who receive food stamps under this subdivision are governed by section 256.045, and Code of Federal Regulations, title 7, subtitle B, chapter II, part 273, section 273.15.

Subd. 3. Income disregard for certain programs, food assistance portion of assistance payment. The portion of the MFIP assistance payment that is designated by the commissioner as the food assistance portion of the assistance payment must be disregarded as income in the following programs:

- (1) housing subsidy programs;
- (2) low-income home energy assistance program;
- (3) Supplemental Security Income, when determining interim assistance amount; and
- (4) other programs that do not count food stamps as income.

For the purposes of this subdivision, the food assistance portion of the assistance payment means a predetermined portion of the MFIP assistance payment that may be received in point-of-purchase sites or as food stamps. The predetermined portion of the assistance payment will vary by family profile, which is based on family size.

Subd. 4. [Repealed, 1998 c 407 art 6 s 118]

Subd. 5. Food stamps for persons residing in a battered woman's shelter. Members of an MFIP assistance unit residing in a battered woman's shelter may receive food stamps or the food portion twice in a month if the unit that initially received the food stamps or food portion included the alleged abuser.

History: 1997 c 85 art 1 s 17; 1998 c 407 art 6 s 56-58; 1Sp2001 c 9 art 10 s 66

256J.29 INELIGIBILITY FOR STATE-FUNDED PROGRAMS.

Beginning July 1, 2007, legal noncitizens ineligible for federally funded cash or food benefits due to 1996 changes in federal law and subsequent relevant enactments, who are eligible for state-funded MFIP cash or food assistance, will be ineligible for state-funded MFIP under this chapter.

History: 1997 c 203 art 9 s 21; 1998 c 407 art 6 s 111; 2000 c 488 art 10 s 28; 1Sp2001 c 9 art 10 s 62; 1Sp2003 c 14 art 1 s 105

256J.30 APPLICANT AND PARTICIPANT REQUIREMENTS AND RESPONSIBILITIES.

Subdivision 1. **Applicant reporting requirements.** An applicant must provide information on an application form and supplemental forms about the applicant's circumstances which affect MFIP eligibility or the assistance payment. An applicant must report changes identified in subdivision 9 while the application is pending. When an applicant does not accurately report information on an application, both an overpayment and a referral for a fraud investigation may result. When an applicant does not provide information or documentation, the receipt of the assistance payment may be delayed or the application may be denied depending on the type of information required and its effect on eligibility.

Subd. 2. **Requirement to apply for other benefits.** An applicant or participant must apply for, accept if eligible, and follow through with appealing any denials of eligibility for benefits from other programs for which the applicant or participant is potentially eligible and which would, if received, offset assistance payments. An applicant's or participant's failure to complete application for these benefits without good cause results in denial or termination of assistance. Good cause for failure to apply for these benefits is allowed when circumstances beyond the control of the applicant or participant prevent the applicant or participant from making an application.

Subd. 3. **Responsibility to inquire.** An applicant or participant who does not know or is unsure whether a given change in circumstances will affect the applicant's or participant's MFIP eligibility or assistance payment must contact the county agency for information.

Subd. 4. **Participant's completion of recertification of eligibility form.** A participant must complete forms prescribed by the commissioner which are required for recertification of eligibility according to section 256J.32, subdivision 6.

Subd. 5. **Monthly MFIP household reports.** Each assistance unit with a member who has earned income or a recent work history, and each assistance unit that has income deemed to it from a financially responsible person must complete a monthly MFIP household report form. "Recent work history" means the individual received earned income in the report month or any of the previous three calendar months even if the earnings are excluded. To be complete, the MFIP household report form must be signed and dated by the caregivers no earlier than the last day of the reporting period. All questions required to determine assistance payment eligibility must be answered, and documentation of earned income must be included.

Subd. 6. [Repealed, 1999 c 245 art 6 s 89]

Subd. 7. **Due date of MFIP household report form.** An MFIP household report form must be received by the county agency by the eighth calendar day of the month following the reporting period covered by the form. When the eighth calendar day of the month falls on a weekend or holiday, the MFIP household report form must be received by the county agency the first working day that follows the eighth calendar day.

Subd. 8. **Late MFIP household report forms.** Paragraphs (a) to (d) apply to the reporting requirements in subdivision 7.

(a) When the county agency receives an incomplete MFIP household report form, the county agency must immediately return the incomplete form and clearly state what the caregiver must do for the form to be complete.

MINNESOTA STATUTES 2004

(b) The automated eligibility system must send a notice of proposed termination of assistance to the assistance unit if a complete MFIP household report form is not received by a county agency. The automated notice must be mailed to the caregiver by approximately the 16th of the month. When a caregiver submits an incomplete form on or after the date a notice of proposed termination has been sent, the termination is valid unless the caregiver submits a complete form before the end of the month.

(c) An assistance unit required to submit an MFIP household report form is considered to have continued its application for assistance if a complete MFIP household report form is received within a calendar month after the month in which the form was due and assistance shall be paid for the period beginning with the first day of that calendar month.

(d) A county agency must allow good cause exemptions from the reporting requirements under subdivisions 5 and 6 when any of the following factors cause a caregiver to fail to provide the county agency with a completed MFIP household report form before the end of the month in which the form is due:

- (1) an employer delays completion of employment verification;
- (2) a county agency does not help a caregiver complete the MFIP household report form when the caregiver asks for help;
- (3) a caregiver does not receive an MFIP household report form due to mistake on the part of the department or the county agency or due to a reported change in address;
- (4) a caregiver is ill, or physically or mentally incapacitated; or
- (5) some other circumstance occurs that a caregiver could not avoid with reasonable care which prevents the caregiver from providing a completed MFIP household report form before the end of the month in which the form is due.

Subd. 9. Changes that must be reported. A caregiver must report the changes or anticipated changes specified in clauses (1) to (16) within ten days of the date they occur, at the time of the periodic recertification of eligibility under section 256J.32, subdivision 6, or within eight calendar days of a reporting period as in subdivision 5 or 6, whichever occurs first. A caregiver must report other changes at the time of the periodic recertification of eligibility under section 256J.32, subdivision 6, or at the end of a reporting period under subdivision 5 or 6, as applicable. A caregiver must make these reports in writing to the county agency. When a county agency could have reduced or terminated assistance for one or more payment months if a delay in reporting a change specified under clauses (1) to (15) had not occurred, the county agency must determine whether a timely notice under section 256J.31, subdivision 4, could have been issued on the day that the change occurred. When a timely notice could have been issued, each month's overpayment subsequent to that notice must be considered a client error overpayment under section 256J.38. Calculation of overpayments for late reporting under clause (16) is specified in section 256J.09, subdivision 9. Changes in circumstances which must be reported within ten days must also be reported on the MFIP household report form for the reporting period in which those changes occurred. Within ten days, a caregiver must report:

- (1) a change in initial employment;
- (2) a change in initial receipt of unearned income;
- (3) a recurring change in unearned income;
- (4) a nonrecurring change of unearned income that exceeds \$30;
- (5) the receipt of a lump sum;
- (6) an increase in assets that may cause the assistance unit to exceed asset limits;
- (7) a change in the physical or mental status of an incapacitated member of the assistance unit if the physical or mental status is the basis of exemption from an MFIP employment services program under section 256J.56, or as the basis for reducing the hourly participation requirements under section 256J.55, subdivision 1, or the type of activities included in an employment plan under section 256J.521, subdivision 2;
- (8) a change in employment status;

- (9) information affecting an exception under section 256J.24, subdivision 9;
- (10) the marriage or divorce of an assistance unit member;
- (11) the death of a parent; minor child, or financially responsible person;
- (12) a change in address or living quarters of the assistance unit;
- (13) the sale, purchase, or other transfer of property;
- (14) a change in school attendance of a caregiver under age 20 or an employed child;
- (15) filing a lawsuit, a workers' compensation claim, or a monetary claim against a third party; and
- (16) a change in household composition, including births, returns to and departures from the home of assistance unit members and financially responsible persons, or a change in the custody of a minor child.

Subd. 10. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 11. **Requirement to assign support and maintenance rights.** An assistance unit is ineligible for MFIP unless the caregiver assigns all rights to child support and spousal maintenance benefits according to section 256.741.

Subd. 12. **Requirement to provide Social Security numbers.** Each member of the assistance unit must provide the member's Social Security number to the county agency, except for members in the assistance unit who are qualified noncitizens who are victims of domestic violence as defined under section 256J.08, subdivision 73, clause (7). When a Social Security number is not provided to the county agency for verification, this requirement is satisfied when each member of the assistance unit cooperates with the procedures for verification of numbers, issuance of duplicate cards, and issuance of new numbers which have been established jointly between the Social Security Administration and the commissioner.

History: 1997 c 85 art 1 s 18; 1998 c 407 art 6 s 59,60; 1999 c 245 art 6 s 30-33; 1Sp2001 c 9 art 10 s 66; 1Sp2003 c 14 art 1 s 40

256J.31 APPLICANT AND PARTICIPANT RIGHTS AND COUNTY AGENCY RESPONSIBILITIES.

Subdivision 1. **Right to information.** An applicant or participant has the right to obtain from the county agency information about the benefits, requirements, restrictions, and appeal provisions of public assistance programs.

Subd. 2. **Right to authorized representative.** An applicant or participant has the right to designate an authorized representative to act on the applicant's or participant's behalf. An applicant or participant has the right to be assisted or represented by an authorized representative in eligibility determinations, recertification, conciliation conferences, the fair hearing process, and any other contacts with the county agency or the department. When a county agency determines that it is necessary for a person to assist an applicant or participant, the county agency must designate a staff member to assist the applicant or participant. Upon a request from an applicant or participant, a county agency must provide addresses and telephone numbers of organizations that provide legal services at low cost or no cost to low-income persons.

Subd. 3. **Right of applicant to notice.** A county agency must notify an applicant of the disposition of the applicant's application. The notice must be in writing and on forms prescribed by the commissioner. The county agency must mail the notice to the last known mailing address provided by the applicant. When an application is denied, the county agency must notify the applicant in writing of the reasons for the denial, of the right to appeal, and of the right to reapply for assistance.

Subd. 4. **Participant's right to notice.** A county agency must give a participant written notice of all adverse actions affecting the participant including payment reductions, suspensions, terminations, and use of protective, vendor, or two-party payments. The notice of adverse action must be on a form prescribed or approved by the commissioner, must be understandable at a seventh grade reading level, and must be mailed to the last known mailing address provided by the participant. A notice

written in English must include the Department of Human Services language block and must be sent to every applicable participant. The county agency must state on the notice of adverse action the action it intends to take, the reasons for the action, the participant's right to appeal the action, the conditions under which assistance can be continued pending an appeal decision, and the related consequences of the action.

Subd. 5. Mailing of notice. The notice of adverse action shall be issued according to paragraphs (a) to (d).

(a) A notice of adverse action must be mailed at least ten days before the effective date of the adverse action, except as provided in paragraphs (b) to (d).

(b) A notice of adverse action must be mailed no later than four working days before the end of the month when the county agency:

(1) is informed of the death of the only caregiver or payee in an assistance unit;

(2) receives a signed statement from the caregiver that assistance is no longer wanted;

(3) has factual information to reduce, suspend, or terminate assistance based on the failure to timely report changes;

(4) verifies that a member of the assistance unit has entered a regional treatment center or a licensed residential facility for medical or psychological treatment or rehabilitation;

(5) verifies that a member of an assistance unit has been removed from the home as a result of a judicial determination or placed in foster care, and the provisions of section 256J.13, subdivision 2, paragraph (c), clause (2), do not apply; or

(6) cannot locate a caregiver.

(c) A notice of adverse action must be mailed for a payment month when the caregiver makes a written request for closure before the first of that payment month.

(d) A notice of adverse action must be mailed before the effective date of the adverse action when the county agency receives the caregiver's signed and completed MFIP household report form or recertification form that includes information that requires payment reduction, suspension, or termination.

Subd. 6. Appeal rights. An applicant, participant, or former participant has the right to request a fair hearing when aggrieved by an action or inaction of a county agency. A request for a fair hearing and rights pending a fair hearing are set as specified in section 256J.40.

Subd. 7. Case records available. A county agency must make financial case records available to the participant or former participant as soon as possible but no later than the fifth business day following the date of the request. When the participant or former participant asks for photocopies of material from the financial case record, the county agency must provide one copy of each page at no cost.

Subd. 8. Right to manage affairs. Except for protective payment provisions authorized under section 256J.39, participants have the right to manage their own affairs.

Subd. 9. Right to protection. Minor caregivers have the right to protection. The county agency must refer a minor caregiver to the social service unit within 30 days of the date the application is approved. The social service unit must assist the caregiver who is less than 18 years of age to develop a plan as specified in section 256J.54.

Subd. 10. Protection from garnishment. MFIP grants or earnings of a caregiver shall be protected from garnishment. This protection for earnings shall extend for a period of six months from the date of termination from MFIP.

Subd. 11. Responsibility to retain case records. The county agency must retain financial case records and employment and training service records for MFIP cases according to chapter 13.

Subd. 12. Right to discontinue cash assistance. A participant who is not in vendor payment status may discontinue receipt of the cash assistance portion of the MFIP assistance grant and retain eligibility for child care assistance under section 119B.05.

For the months a participant chooses to discontinue the receipt of the cash portion of the MFIP grant, the assistance unit accrues months of eligibility to be applied toward eligibility for child care under section 119B.05.

History: 1997 c 85 art 1 s 19; 1998 c 407 art 6 s 61-63; 1999 c 245 art 6 s 34,35; 1Sp2001 c 9 art 2 s 57; art 10 s 18,66; 2002 c 379 art 1 s 113

256J.315 COUNTY AND TRIBAL COOPERATION.

The county agency must cooperate with tribal governments in the implementation of MFIP to ensure that the program meets the special needs of persons living on Indian reservations. This cooperation must include, but is not limited to, the sharing of MFIP duties including initial screening, orientation, assessments, and provision of employment and training services. The county agency shall encourage tribal governments to assume duties related to MFIP and shall work cooperatively with tribes that have assumed responsibility for a portion of the MFIP program to expand tribal responsibilities, if that expansion is requested by the tribe.

History: 1997 c 85 art 1 s 20; 1Sp2001 c 9 art 10 s 66

256J.32 DOCUMENTING, VERIFYING, AND RECERTIFYING ELIGIBILITY.

Subdivision 1. **Verification of information.** A county agency must only require verification of information necessary to determine MFIP eligibility and the amount of the assistance payment.

Subd. 2. **Documentation.** The applicant or participant must document the information required under subdivisions 4 to 6 or authorize the county agency to verify the information. The applicant or participant has the burden of providing documentary evidence to verify eligibility. The county agency shall assist the applicant or participant in obtaining required documents when the applicant or participant is unable to do so. The county agency may accept a signed personal statement from the applicant or participant only for factors specified under subdivision 8.

Subd. 3. **Contacting third parties.** A county agency must not request information about an applicant or participant that is not of public record from a source other than county agencies, the department, or the United States Department of Health and Human Services without the person's prior written consent. An applicant's signature on an application form constitutes consent for contact with the sources specified on the application. A county agency may use a single consent form to contact a group of similar sources, such as banks or insurance agencies, but the sources to be contacted must be identified by the county agency prior to requesting an applicant's consent.

Subd. 4. **Factors to be verified.** The county agency shall verify the following at application:

- (1) identity of adults;
- (2) presence of the minor child in the home, if questionable;
- (3) relationship of a minor child to caregivers in the assistance unit;
- (4) age, if necessary to determine MFIP eligibility;
- (5) immigration status;
- (6) Social Security number according to the requirements of section 256J.30, subdivision 12;
- (7) income;
- (8) self-employment expenses used as a deduction;
- (9) source and purpose of deposits and withdrawals from business accounts;
- (10) spousal support and child support payments made to persons outside the household;
- (11) real property;
- (12) vehicles;
- (13) checking and savings accounts;
- (14) savings certificates, savings bonds, stocks, and individual retirement accounts;

- (15) pregnancy, if related to eligibility;
- (16) inconsistent information, if related to eligibility;
- (17) burial accounts;
- (18) school attendance, if related to eligibility;
- (19) residence;
- (20) a claim of family violence if used as a basis to qualify for the family violence waiver;
- (21) disability if used as the basis for an exemption from employment and training services requirements under section 256J.56 or as the basis for reducing the hourly participation requirements under section 256J.55, subdivision 1, or the type of activity included in an employment plan under section 256J.521, subdivision 2; and

(22) information needed to establish an exception under section 256J.24, subdivision 9.

Subd. 5. [Repealed, 1998 c 407 art 6 s 118]

Subd. 5a. **Inconsistent information.** When the county agency verifies inconsistent information under subdivision 4, clause (16), or 6, clause (5), the reason for verifying the information must be documented in the financial case record.

Subd. 6. **Recertification.** The county agency shall recertify eligibility in an annual face-to-face interview with the participant and verify the following:

- (1) presence of the minor child in the home, if questionable;
- (2) income, unless excluded, including self-employment expenses used as a deduction or deposits or withdrawals from business accounts;
- (3) assets when the value is within \$200 of the asset limit;
- (4) information to establish an exception under section 256J.24, subdivision 9, if questionable; and
- (5) inconsistent information, if related to eligibility.

Subd. 7. **Notice to undocumented persons; release of private data.** County agencies in consultation with the commissioner of human services shall provide notification to undocumented persons regarding the release of personal data to the Immigration and Naturalization Service and develop protocol regarding the release or sharing of data about undocumented persons with the Immigration and Naturalization Service as required under sections 404, 434, and 411A of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Subd. 7a. **Requirement to report to immigration and naturalization services.** The commissioner shall comply with the reporting requirements under United States Code, title 42, section 611a, and any federal regulation or guidance adopted under that law.

Subd. 8. **Personal statement.** The county agency may accept a signed personal statement from the applicant or participant explaining the reasons that the documentation requested in subdivision 2 is unavailable as sufficient documentation at the time of application, recertification, or change related to eligibility only for the following factors:

- (1) a claim of family violence if used as a basis to qualify for the family violence waiver;
- (2) information needed to establish an exception under section 256J.24, subdivision 9;
- (3) relationship of a minor child to caregivers in the assistance unit;

(4) citizenship status from a noncitizen who reports to be, or is identified as, a victim of severe forms of trafficking in persons, if the noncitizen reports that the noncitizen's immigration documents are being held by an individual or group of individuals against the noncitizen's will. The noncitizen must follow up with the Office of Refugee Resettlement (ORR) to pursue certification. If verification that certification is being pursued is not received within 30 days, the MFIP case must be closed and the agency shall pursue overpayments. The ORR documents certifying the noncitizen's status as a victim of severe forms of trafficking in persons, or the reason for the delay

in processing, must be received within 90 days, or the MFIP case must be closed and the agency shall pursue overpayments; and

(5) other documentation unavailable for reasons beyond the control of the applicant or participant. Reasonable attempts must have been made to obtain the documents requested under subdivision 2.

History: 1997 c 85 art 1 s 21; 1998 c 407 art 6 s 64-66; 1999 c 245 art 6 s 36,37; 2000 c 488 art 10 s 9; 1Sp2001 c 9 art 10 s 19,20,66; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 41-44; 2004 c 288 art 4 s 35,36

256J.33 PROSPECTIVE AND RETROSPECTIVE DETERMINATION OF MFIP ELIGIBILITY.

Subdivision 1. Determination of eligibility. A county agency must determine MFIP eligibility prospectively for a payment month based on retrospectively assessing income and the county agency's best estimate of the circumstances that will exist in the payment month.

Except as described in section 256J.34, subdivision 1, when prospective eligibility exists, a county agency must calculate the amount of the assistance payment using retrospective budgeting. To determine MFIP eligibility and the assistance payment amount, a county agency must apply countable income, described in section 256J.37, subdivisions 3 to 10, received by members of an assistance unit or by other persons whose income is counted for the assistance unit, described under sections 256J.21 and 256J.37, subdivisions 1 to 2.

This income must be applied to the MFIP standard of need or family wage level subject to this section and sections 256J.34 to 256J.36. Income received in a calendar month and not otherwise excluded under section 256J.21, subdivision 2, must be applied to the needs of an assistance unit.

Subd. 2. Prospective eligibility. A county agency must determine whether the eligibility requirements that pertain to an assistance unit, including those in sections 256J.11 to 256J.15 and 256J.20, will be met prospectively for the payment month. Except for the provisions in section 256J.34, subdivision 1, the income test will be applied retrospectively.

Subd. 3. Retrospective eligibility. After the first two months of MFIP eligibility, a county agency must continue to determine whether an assistance unit is prospectively eligible for the payment month by looking at all factors other than income and then determine whether the assistance unit is retrospectively income eligible by applying the monthly income test to the income from the budget month. When the monthly income test is not satisfied, the assistance payment must be suspended when ineligibility exists for one month or ended when ineligibility exists for more than one month.

Subd. 4. Monthly income test. A county agency must apply the monthly income test retrospectively for each month of MFIP eligibility. An assistance unit is not eligible when the countable income equals or exceeds the MFIP standard of need or the family wage level for the assistance unit. The income applied against the monthly income test must include:

(1) gross earned income from employment, prior to mandatory payroll deductions, voluntary payroll deductions, wage authorizations, and after the disregards in section 256J.21, subdivision 4, and the allocations in section 256J.36, unless the employment income is specifically excluded under section 256J.21, subdivision 2;

(2) gross earned income from self-employment less deductions for self-employment expenses in section 256J.37, subdivision 5, but prior to any reductions for personal or business state and federal income taxes, personal FICA, personal health and life insurance, and after the disregards in section 256J.21, subdivision 4, and the allocations in section 256J.36;

(3) unearned income after deductions for allowable expenses in section 256J.37, subdivision 9, and allocations in section 256J.36, unless the income has been specifically excluded in section 256J.21, subdivision 2;

MINNESOTA STATUTES 2004

(4) gross earned income from employment as determined under clause (1) which is received by a member of an assistance unit who is a minor child or minor caregiver and less than a half-time student;

(5) child support and spousal support received by an assistance unit;

(6) the income of a parent when that parent is not included in the assistance unit;

(7) the income of an eligible relative and spouse who seek to be included in the assistance unit; and

(8) the unearned income of a minor child included in the assistance unit.

Subd. 5. **When to terminate assistance.** When an assistance unit is ineligible for MFIP assistance for two consecutive months, the county agency must terminate MFIP assistance.

History: 1997 c 85 art 1 s 22; 1998 c 407 art 6 s 67,68; 1999 c 245 art 6 s 38; 2000 c 488 art 10 s 10

256J.34 CALCULATING PAYMENTS; SIGNIFICANT CHANGE; INCOME AVERAGING.

Subdivision 1. **Prospective budgeting.** A county agency must use prospective budgeting to calculate the assistance payment amount for the first two months for an applicant who has not received assistance in this state for at least one payment month preceding the first month of payment under a current application. Notwithstanding subdivision 3, paragraph (a), clause (2), a county agency must use prospective budgeting for the first two months for a person who applies to be added to an assistance unit. Prospective budgeting is not subject to overpayments or underpayments unless fraud is determined under section 256.98.

(a) The county agency must apply the income received or anticipated in the first month of MFIP eligibility against the need of the first month. The county agency must apply the income received or anticipated in the second month against the need of the second month.

(b) When the assistance payment for any part of the first two months is based on anticipated income, the county agency must base the initial assistance payment amount on the information available at the time the initial assistance payment is made.

(c) The county agency must determine the assistance payment amount for the first two months of MFIP eligibility by budgeting both recurring and nonrecurring income for those two months.

Subd. 2. **Retrospective budgeting.** The county agency must use retrospective budgeting to calculate the monthly assistance payment amount after the payment for the first two months has been made under subdivision 1.

Subd. 3. **Additional uses of retrospective budgeting.** Notwithstanding subdivision 1, the county agency must use retrospective budgeting to calculate the monthly assistance payment amount for the first two months under paragraphs (a) and (b).

(a) The county agency must use retrospective budgeting to determine the amount of the assistance payment in the first two months of MFIP eligibility:

(1) when an assistance unit applies for assistance for the same month for which assistance has been interrupted, the interruption in eligibility is less than one payment month, the assistance payment for the preceding month was issued in this state, and the assistance payment for the immediately preceding month was determined retrospectively; or

(2) when a person applies in order to be added to an assistance unit, that assistance unit has received assistance in this state for at least the two preceding months, and that person has been living with and has been financially responsible for one or more members of that assistance unit for at least the two preceding months.

(b) Except as provided in clauses (1) to (4), the county agency must use retrospective budgeting and apply income received in the budget month by an assistance unit and by a financially responsible household member who is not included

in the assistance unit against the MFIP standard of need or family wage level to determine the assistance payment to be issued for the payment month.

(1) When a source of income ends prior to the third payment month, that income is not considered in calculating the assistance payment for that month. When a source of income ends prior to the fourth payment month, that income is not considered when determining the assistance payment for that month.

(2) When a member of an assistance unit or a financially responsible household member leaves the household of the assistance unit, the income of that departed household member is not budgeted retrospectively for any full payment month in which that household member does not live with that household and is not included in the assistance unit.

(3) When an individual is removed from an assistance unit because the individual is no longer a minor child, the income of that individual is not budgeted retrospectively for payment months in which that individual is not a member of the assistance unit, except that income of an ineligible child in the household must continue to be budgeted retrospectively against the child's needs when the parent or parents of that child request allocation of their income against any unmet needs of that ineligible child.

(4) When a person ceases to have financial responsibility for one or more members of an assistance unit, the income of that person is not budgeted retrospectively for the payment months which follow the month in which financial responsibility ends.

Subd. 4. Significant change in gross income. The county agency must recalculate the assistance payment when an assistance unit experiences a significant change, as defined in section 256J.08, resulting in a reduction in the gross income received in the payment month from the gross income received in the budget month. The county agency must issue a supplemental assistance payment based on the county agency's best estimate of the assistance unit's income and circumstances for the payment month. Supplemental assistance payments that result from significant changes are limited to two in a 12-month period regardless of the reason for the change. Notwithstanding any other statute or rule of law, supplementary assistance payments shall not be made when the significant change in income is the result of receipt of a lump sum, receipt of an extra paycheck, business fluctuation in self-employment income, or an assistance unit member's participation in a strike or other labor action.

Subd. 5. [Repealed, 1998 c 407 art 6 s 118]

History: 1997 c 85 art 1 s 23; 1999 c 245 art 6 s 39-41; 2000 c 488 art 10 s 11,12

256J.35 AMOUNT OF ASSISTANCE PAYMENT.

Except as provided in paragraphs (a) to (c), the amount of an assistance payment is equal to the difference between the MFIP standard of need or the Minnesota family wage level in section 256J.24 and countable income.

(a) When MFIP eligibility exists for the month of application, the amount of the assistance payment for the month of application must be prorated from the date of application or the date all other eligibility factors are met for that applicant, whichever is later. This provision applies when an applicant loses at least one day of MFIP eligibility.

(b) MFIP overpayments to an assistance unit must be recouped according to section 256J.38, subdivision 4.

(c) An initial assistance payment must not be made to an applicant who is not eligible on the date payment is made.

History: 1997 c 85 art 1 s 24; 1998 c 407 art 6 s 69; 1999 c 245 art 6 s 42

256J.36 ALLOCATION FOR UNMET NEED OF OTHER HOUSEHOLD MEMBERS.

Except as prohibited in paragraphs (a) and (b), an allocation of income is allowed from the caregiver's income to meet the unmet need of an ineligible spouse or an ineligible child under the age of 21 for whom the caregiver is financially responsible

who also lives with the caregiver. That allocation is allowed in an amount up to the difference between the MFIP standard of need for the assistance unit when that ineligible person is included in the assistance unit and the MFIP standard of need for the assistance unit when the ineligible person is not included in the assistance unit. These allocations must be deducted from the caregiver's counted earnings and from unearned income subject to paragraphs (a) and (b).

(a) Income of a minor child in the assistance unit must not be allocated to meet the need of an ineligible person, including the child's parent, even when that parent is the payee of the child's income.

(b) Income of a caregiver must not be allocated to meet the needs of a disqualified person.

History: 1997 c 85 art 1 s 25; 1998 c 407 art 6 s 70; 1999 c 245 art 6 s 43

256J.37 TREATMENT OF INCOME AND LUMP SUMS.

Subdivision 1. **Deemed income from ineligible household members.** Unless otherwise provided under subdivision 1a or 1b, the income of ineligible household members must be deemed after allowing the following disregards:

- (1) the first 18 percent of the ineligible family member's gross earned income;
- (2) amounts the ineligible person actually paid to individuals not living in the same household but whom the ineligible person claims or could claim as dependents for determining federal personal income tax liability;
- (3) all payments made by the ineligible person according to a court order for spousal support or the support of children not living in the assistance unit's household, provided that, if there has been a change in the financial circumstances of the ineligible person since the support order was entered, the ineligible person has petitioned for a modification of the support order; and
- (4) an amount for the needs of the ineligible person and other persons who live in the household but are not included in the assistance unit and are or could be claimed by an ineligible person as dependents for determining federal personal income tax liability. This amount is equal to the difference between the MFIP standard of need when the ineligible person is included in the assistance unit and the MFIP standard of need when the ineligible person is not included in the assistance unit.

Subd. 1a. **Deemed income from disqualified members.** The income of disqualified members must be deemed after allowing the following disregards:

- (1) the first 18 percent of the disqualified member's gross earned income;
- (2) amounts the disqualified member actually paid to individuals not living in the same household but whom the disqualified member claims or could claim as dependents for determining federal personal income tax liability;
- (3) all payments made by the disqualified member according to a court order for spousal support or the support of children not living in the assistance unit's household, provided that, if there has been a change in the financial circumstances of the disqualified member's legal obligation to pay support since the support order was entered, the disqualified member has petitioned for a modification of the support order; and
- (4) an amount for the needs of other persons who live in the household but are not included in the assistance unit and are or could be claimed by the disqualified member as dependents for determining federal personal income tax liability. This amount is equal to the difference between the MFIP standard of need when the ineligible person is included in the assistance unit and the MFIP standard of need when the ineligible person is not included in the assistance unit. An amount shall not be allowed for the needs of a disqualified member.

Subd. 1b. **Deemed income from parents of minor caregivers.** In households where minor caregivers live with a parent or parents who do not receive MFIP, the income of the parents must be deemed after allowing the following disregards:

(1) income of the parents equal to 200 percent of the federal poverty guideline for a family size not including the minor parent and the minor parent's child in the household according to section 256J.21, subdivision 2, clause (43);

(2) 18 percent of the parents' gross earned income;

(3) amounts the parents actually paid to individuals not living in the same household but whom the parents claim or could claim as dependents for determining federal personal income tax liability; and

(4) all payments made by parents according to a court order for spousal support or the support of children not living in the parent's household, provided that, if there has been a change in the financial circumstances of the parent's legal obligation to pay support since the support order was entered, the parents have petitioned for a modification of the support order.

Subd. 2. Deemed income and assets of sponsor of noncitizens. (a) If a noncitizen applies for or receives MFIP, the county must deem the income and assets of the noncitizen's sponsor and the sponsor's spouse as provided in this paragraph and paragraph (b) or (c), whichever is applicable. The deemed income of a sponsor and the sponsor's spouse is considered unearned income of the noncitizen. The deemed assets of a sponsor and the sponsor's spouse are considered available assets of the noncitizen.

(b) The income and assets of a sponsor who signed an affidavit of support under title IV, sections 421, 422, and 423, of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and the income and assets of the sponsor's spouse, must be deemed to the noncitizen to the extent required by those sections of Public Law 104-193.

(c) The income and assets of a sponsor and the sponsor's spouse to whom the provisions of paragraph (b) do not apply must be deemed to the noncitizen to the full extent allowed under title V, section 5505, of Public Law 105-33, the Balanced Budget Act of 1997.

Subd. 3. Earned income of wage, salary, and contractual employees. The county agency must include gross earned income less any disregards in the initial and monthly income test. Gross earned income received by persons employed on a contractual basis must be prorated over the period covered by the contract even when payments are received over a lesser period of time.

Subd. 3a. Rental subsidies; unearned income. (a) Effective July 1, 2003, the county agency shall count \$50 of the value of public and assisted rental subsidies provided through the Department of Housing and Urban Development (HUD) as unearned income to the cash portion of the MFIP grant. The full amount of the subsidy must be counted as unearned income when the subsidy is less than \$50. The income from this subsidy shall be budgeted according to section 256J.34.

(b) The provisions of this subdivision shall not apply to an MFIP assistance unit which includes a participant who is:

(1) age 60 or older;

(2) a caregiver who is suffering from an illness, injury, or incapacity that has been certified by a qualified professional when the illness, injury, or incapacity is expected to continue for more than 30 days and prevents the person from obtaining or retaining employment; or

(3) a caregiver whose presence in the home is required due to the illness or incapacity of another member in the assistance unit, a relative in the household, or a foster child in the household when the illness or incapacity and the need for the participant's presence in the home has been certified by a qualified professional and is expected to continue for more than 30 days.

(c) The provisions of this subdivision shall not apply to an MFIP assistance unit where the parental caregiver is an SSI recipient.

(d) Prior to implementing this provision, the commissioner must identify the MFIP participants subject to this provision and provide written notice to these participants at least 30 days before the first grant reduction. The notice must inform the participant of

the basis for the potential grant reduction, the exceptions to the provision, if any, and inform the participant of the steps necessary to claim an exception. A person who is found not to meet one of the exceptions to the provision must be notified and informed of the right to a fair hearing under section 256J.40. The notice must also inform the participant that the participant may be eligible for a rent reduction resulting from a reduction in the MFIP grant and encourage the participant to contact the local housing authority.

Subd. 3b. Treatment of supplemental security income. Effective July 1, 2003, the county shall reduce the cash portion of the MFIP grant by \$125 per SSI recipient who resides in the household, and who would otherwise be included in the MFIP assistance unit under section 256J.24, subdivision 2, but is excluded solely due to the SSI recipient status under section 256J.24, subdivision 3, paragraph (a), clause (1). If the SSI recipient receives less than \$125 of SSI, only the amount received shall be used in calculating the MFIP cash assistance payment. This provision does not apply to relative caregivers who could elect to be included in the MFIP assistance unit under section 256J.24, subdivision 4, unless the caregiver's children or stepchildren are included in the MFIP assistance unit.

Subd. 4. Self-employment. Self-employed individuals are those who are responsible for their own work schedule and do not have coverage under an employer's liability insurance or workers' compensation. Self-employed individuals generally work for themselves rather than an employer. However, individuals employed in some types of services may be self-employed even if they have an employer or work out of another's business location. For example, real estate sales people, individuals who work for commission sales, manufacturer's representatives, and independent contractors may be self-employed. Self-employed individuals may or may not have FICA deducted from the check issued to them by an employer or another party.

Self-employed individuals may own a business singularly or in partnership. Individuals operating more than one self-employment business may use the loss from one business to offset self-employment income from another business. A loss from a self-employment business may not offset income earned under subdivision 3.

Subd. 5. Self-employment earnings. The county agency must determine self-employment income according to the following:

(a) Subtract allowable business expenses from total gross receipts. Allowable business expenses include:

- (1) interest on mortgages and loans;
- (2) employee wages, except for persons who are part of the assistance unit or whose income is deemed to the participant;
- (3) FICA funds paid on employees' wages, payment of employee workers' compensation, and unemployment benefits;
- (4) livestock and veterinary or breeding fees;
- (5) raw material;
- (6) seed and fertilizer;
- (7) maintenance and repairs that are not capital expenditures;
- (8) tax return preparation fees;
- (9) license fees, professional fees, franchise fees, and professional dues;
- (10) tools and supplies that are not capital expenditures;
- (11) fuel and transportation expenses other than fuel costs covered by the flat rate transportation deduction;
- (12) advertising costs;
- (13) meals eaten when required to be away from the local work site;
- (14) property expenses such as rent, insurance, taxes, and utilities;
- (15) postage;
- (16) purchase cost of inventory at time of sale;

MINNESOTA STATUTES 2004

1375

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.37

- (17) loss from another self-employment business;
 - (18) attorney fees allowed by the Internal Revenue Service; and
 - (19) tuition for classes necessary to maintain or improve job skills or required by law to maintain job status or salary as allowed by the Internal Revenue Service.
- (b) The county agency shall not allow a deduction for the following expenses:
- (1) purchases of capital assets;
 - (2) payments on the principals of loans for capital assets;
 - (3) depreciation;
 - (4) amortization;
 - (5) the wholesale costs of items purchased, processed, or manufactured which are unsold inventory;
 - (6) transportation costs that exceed the maximum standard mileage rate allowed for use of a personal car in the Internal Revenue Code;
 - (7) costs, in any amount, for mileage between an applicant's or participant's home and place of employment;
 - (8) salaries and other employment deductions made for members of an assistance unit or persons who live in the household for whom an employer is legally responsible;
 - (9) monthly expenses in excess of \$71 for each roomer;
 - (10) monthly expenses in excess of the Thrifty Food Plan amount for one person for each boarder. For purposes of this clause and clause (11), "Thrifty Food Plan" has the meaning given it in Code of Federal Regulations;
 - (11) monthly expenses in excess of the roomer rate plus the Thrifty Food Plan amount for one person for each roomer-boarder. If there is more than one boarder or roomer-boarder, use the total number of boarders as the unit size to determine the Thrifty Food Plan amount;
 - (12) an amount greater than actual expenses or two percent of the estimated market value on a county tax assessment form, whichever is greater, as a deduction for upkeep and repair against rental income;
 - (13) expenses not allowed by the Internal Revenue Code;
 - (14) expenses in excess of 60 percent of gross receipts for in-home child care unless a higher amount can be documented; and
 - (15) expenses that are reimbursed under the child and adult care food program as authorized under the National School Lunch Act, United States Code, title 42.

Subd. 6. Self-employment budget period. The self-employment budget period begins in the month of application or in the first month of self-employment. Gross receipts must be budgeted in the month received. Expenses must be budgeted against gross receipts in the month the expenses are paid, except for paragraphs (a) to (c).

(a) The purchase cost of inventory items, including materials which are processed or manufactured, must be deducted as an expense at the time payment is received for the sale of the inventory items.

(b) A 12-month rolling average based on clauses (1) to (3) must be used to budget monthly income.

(1) For a business in operation for at least 12 months, the county agency shall use the average monthly self-employment income from the most current income tax report for the 12 months before the month of application. The county agency shall determine a new monthly average by adding in the actual self-employment income and expenses from the previous month and dropping the first month from the averaging period.

(2) For a business in operation for less than 12 months, the county agency shall compute the average for the number of months the business has been in operation to determine a monthly average. When data are available for 12 or more months, average monthly self-employment income is determined under clause (1).

(3) If the business undergoes a major change, the county agency shall compute a new rolling average beginning with the first month of the major change. For the

purpose of this clause, major change means a change that affects the nature and scale of the business and is not merely the result of normal business fluctuations.

(c) For seasonal self-employment, the caregiver may choose whether to use actual income in the month of receipt and expenses in the month incurred or the rolling average method of computation. The choice must be made once per year at the time of application or recertification. For the purpose of this paragraph, seasonal means working six or less months per year.

Subd. 7. **Farm income.** Farm income is the difference between gross receipts and operating expenses. The county agency must not allow a deduction for expenses listed in subdivision 5, paragraph (b). Gross receipts include sales, rents, subsidies, soil conservation payments, production derived from livestock, and income from home-produced food.

Subd. 8. **Rental income.** The county agency must treat income from rental property as earned or unearned income. Income from rental property is unearned income unless the assistance unit spends an average of ten hours per week on maintenance or management of the property. When the owner spends more than ten hours per week on maintenance or repairs, the earnings are considered self-employment earnings. An amount must be deducted for upkeep and repairs, as specified in subdivision 5, paragraph (b), clause (12), real estate taxes, insurance, utilities, and interest on principal payments. When the applicant or participant lives on the rental property, expenses for upkeep, taxes, insurance, utilities, and interest must be divided by the number of rooms to determine expense per room and expenses deducted must be deducted only for the number of rooms rented.

Subd. 9. **Unearned income.** (a) The county agency must apply unearned income to the MFIP standard of need. When determining the amount of unearned income, the county agency must deduct the costs necessary to secure payments of unearned income. These costs include legal fees, medical fees, and mandatory deductions such as federal and state income taxes.

(b) The county agency must convert unearned income received on a periodic basis to monthly amounts by prorating the income over the number of months represented by the frequency of the payments. The county agency must begin counting the monthly amount in the month the periodic payment is received and budget it according to the assistance unit's budget cycle.

Subd. 10. **Treatment of lump sums.** (a) The county agency must treat lump-sum payments as earned or unearned income. If the lump-sum payment is included in the category of income identified in subdivision 9, it must be treated as unearned income. A lump sum is counted as income in the month received and budgeted either prospectively or retrospectively depending on the budget cycle at the time of receipt. When an individual receives a lump-sum payment, that lump sum must be combined with all other earned and unearned income received in the same budget month, and it must be applied according to paragraphs (a) to (c). A lump sum may not be carried over into subsequent months. Any funds that remain in the third month after the month of receipt are counted in the asset limit.

(b) For a lump sum received by an applicant during the first two months, prospective budgeting is used to determine the payment and the lump sum must be combined with other earned or unearned income received and budgeted in that prospective month.

(c) For a lump sum received by a participant after the first two months of MFIP eligibility, the lump sum must be combined with other income received in that budget month, and the combined amount must be applied retrospectively against the applicable payment month.

(d) When a lump sum, combined with other income under paragraphs (b) and (c), is less than the MFIP standard of need for the appropriate payment month, the assistance payment must be reduced according to the amount of the countable income.

When the countable income is greater than the MFIP standard or family wage level, the assistance payment must be suspended for the payment month.

History: 1997 c 85 art 1 s 26; 1997 c 203 art 12 s 11; 1998 c 407 art 6 s 71-75; 1999 c 107 s 66; 1999 c 245 art 6 s 44-48; 2000 c 343 s 4; 2000 c 488 art 10 s 13; 1Sp2001 c 9 art 10 s 21,66; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 45-47; 2004 c 288 art 4 s 37

256J.38 CORRECTION OF OVERPAYMENTS AND UNDERPAYMENTS.

Subdivision 1. Scope of overpayment. When a participant or former participant receives an overpayment due to agency, client, or ATM error, or due to assistance received while an appeal is pending and the participant or former participant is determined ineligible for assistance or for less assistance than was received, the county agency must recoup or recover the overpayment using the following methods:

- (1) reconstruct each affected budget month and corresponding payment month;
- (2) use the policies and procedures that were in effect for the payment month; and
- (3) do not allow employment disregards in section 256J.21, subdivision 3 or 4, in the calculation of the overpayment when the unit has not reported within two calendar months following the end of the month in which the income was received.

Subd. 2. Notice of overpayment. When a county agency discovers that a participant or former participant has received an overpayment for one or more months, the county agency must notify the participant or former participant of the overpayment in writing. A notice of overpayment must specify the reason for the overpayment, the authority for citing the overpayment, the time period in which the overpayment occurred, the amount of the overpayment, and the participant's or former participant's right to appeal. No limit applies to the period in which the county agency is required to recoup or recover an overpayment according to subdivisions 3 and 4.

Subd. 3. Recovering overpayments. A county agency must initiate efforts to recover overpayments paid to a former participant or caregiver. Caregivers, both parental and nonparental, and minor caregivers of an assistance unit at the time an overpayment occurs, whether receiving assistance or not, are jointly and individually liable for repayment of the overpayment. The county agency must request repayment from the former participants and caregivers. When an agreement for repayment is not completed within six months of the date of discovery or when there is a default on an agreement for repayment after six months, the county agency must initiate recovery consistent with chapter 270A, or section 541.05. When a person has been convicted of fraud under section 256.98, recovery must be sought regardless of the amount of overpayment. When an overpayment is less than \$35, and is not the result of a fraud conviction under section 256.98, the county agency must not seek recovery under this subdivision. The county agency must retain information about all overpayments regardless of the amount. When an adult, adult caregiver, or minor caregiver reapplies for assistance, the overpayment must be recouped under subdivision 4.

Subd. 4. Recouping overpayments from participants. A participant may voluntarily repay, in part or in full, an overpayment even if assistance is reduced under this subdivision, until the total amount of the overpayment is repaid. When an overpayment occurs due to fraud, the county agency must recover from the overpaid assistance unit, including child only cases, ten percent of the applicable standard or the amount of the monthly assistance payment, whichever is less. When a nonfraud overpayment occurs, the county agency must recover from the overpaid assistance unit, including child only cases, three percent of the MFIP standard of need or the amount of the monthly assistance payment, whichever is less.

Subd. 5. Recovering automatic teller machine errors. For recipients receiving benefits via electronic benefit transfer, if the overpayment is a result of an ATM dispensing funds in error to the recipient, the agency may recover the ATM error by immediately withdrawing funds from the recipient's electronic benefit transfer account, up to the amount of the error.

Subd. 6. Scope of underpayments. A county agency must issue a corrective payment for underpayments made to a participant or to a person who would be a

participant if an agency or client error causing the underpayment had not occurred. The county agency must issue the corrective payment according to subdivision 8.

Subd. 7. Identifying the underpayment. An underpayment may be identified by a county agency, by a participant, by a former participant, or by a person who would be a participant except for agency or client error.

Subd. 8. Issuing corrective payments. A county agency must correct an underpayment within seven calendar days after the underpayment has been identified, by adding the corrective payment amount to the monthly assistance payment of the participant or by issuing a separate payment to a participant or former participant, or by reducing an existing overpayment balance. When an underpayment occurs in a payment month and is not identified until the next payment month or later, the county agency must first subtract the underpayment from any overpayment balance before issuing the corrective payment. The county agency must not apply an underpayment in a current payment month against an overpayment balance. When an underpayment in the current payment month is identified, the corrective payment must be issued within seven calendar days after the underpayment is identified.

Subd. 9. Appeals. A participant may appeal an underpayment, an overpayment, and a reduction in an assistance payment made to recoup the overpayment under subdivision 4. The participant's appeal of each issue must be timely under section 256.045. When an appeal based on the notice issued under subdivision 2 is not timely, the fact or the amount of that overpayment must not be considered as a part of a later appeal, including an appeal of a reduction in an assistance payment to recoup that overpayment.

History: 1997 c 85 art 1 s 27; 1998 c 407 art 6 s 76; 1999 c 245 art 6 s 49; 1Sp2003 c 14 art 1 s 48,49

256J.39 PAYMENT PROVISIONS; VENDOR PAYMENTS.

Subdivision 1. Payment policy. The following policies apply to monthly assistance payments and corrective payments:

(1) Grant payments may be issued in the form of warrants immediately redeemable in cash, electronic benefits transfer, or by direct deposit into the recipient's account in a financial institution.

(2) The commissioner shall mail assistance payment checks to the address where a caregiver lives unless the county agency approves an alternate arrangement.

(3) The commissioner shall mail monthly assistance payment checks within time to allow postal service delivery to occur no later than the first day of each month. Monthly assistance payment checks must be dated the first day of the month. The commissioner shall issue electronic benefits transfer payments so that caregivers have access to the payments no later than the first of the month.

(4) The commissioner shall issue replacement checks promptly, but no later than seven calendar days after the provisions of sections 16A.46; 256.01, subdivision 11; and 471.415 have been met.

(5) The commissioner, with the advance approval of the commissioner of finance, may issue cash assistance grant payments up to three days before the first day of each month, including three days before the start of each state fiscal year. Of the money appropriated for cash assistance grant payments for each fiscal year, up to three percent of the annual state appropriation is available to the commissioner in the previous fiscal year. If that amount is insufficient for the costs incurred, an additional amount of the appropriation as needed may be transferred with the advance approval of the commissioner of finance.

Subd. 2. Protective and vendor payments. Alternatives to paying assistance directly to a participant may be used when:

(1) a county agency determines that a vendor payment is the most effective way to resolve an emergency situation pertaining to basic needs;

MINNESOTA STATUTES 2004

1379

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.395

- (2) a caregiver makes a written request to the county agency asking that part or all of the assistance payment be issued by protective or vendor payments for shelter and utility service only. The caregiver may withdraw this request in writing at any time;
- (3) the vendor payment is part of a sanction under section 256J.46;
- (4) the vendor payment is required under section 256J.26;
- (5) protective payments are required for minor parents under section 256J.14; or
- (6) a caregiver has exhibited a continuing pattern of mismanaging funds as determined by the county agency.

The director of a county agency, or the director's designee, must approve a proposal for protective or vendor payment for money mismanagement when there is a pattern of mismanagement under clause (6). During the time a protective or vendor payment is being made, the county agency must provide services designed to alleviate the causes of the mismanagement.

The continuing need for and method of payment must be documented and reviewed every 12 months. The director of a county agency or the director's designee must approve the continuation of protective or vendor payments. When it appears that the need for protective or vendor payments will continue or is likely to continue beyond two years because the county agency's efforts have not resulted in sufficiently improved use of assistance on behalf of the minor child, judicial appointment of a legal guardian or other legal representative must be sought by the county agency.

Subd. 3. Choosing payees for protective or vendor payments. A county agency shall consult with a caregiver regarding the selection of the form of payment, the selection of a protective payee, and the distribution of the assistance payment to meet the various costs incurred by the assistance unit. When choosing a protective payee, the county agency shall notify the caregiver of a consultation date. If the caregiver fails to respond to the county agency's request for consultation by the effective date on the notice, the county agency must choose a protective payee for that payment month and subsequent payment months until the caregiver responds to the agency's request for consultation. The county agency must notify the caregiver of the right to appeal the determination that a protective or vendor payment should be made or continued and to appeal the selection of the payee. If a county agency is not able to find another protective payee, a county agency staff member may serve as a protective payee. The following persons may not serve as protective payees: a member of the county board of commissioners; the county agency staff member determining financial eligibility for the family; special investigative or resource staff; the staff member handling accounting or fiscal processes related to the participant; or a landlord, grocer, or other vendor dealing directly with the participant.

Subd. 4. Discontinuing protective or vendor payments. A county agency shall discontinue protective or vendor payments in two years or in the month following the county agency's failure to grant six-month approval to a money management plan, whichever occurs first. At least once every 12 months, a county agency shall review the performance of a protective payee acting under subdivision 2, clause (3), to determine whether a new payee should be selected. When a participant complains about the performance of a protective payee, a review shall occur within 30 calendar days.

History: 1997 c 85 art 1 s 28; 1998 c 407 art 6 s 77; 1999 c 245 art 1 s 19; 1Sp2001 c 9 art 10 s 22; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 106

256J.395 VENDOR PAYMENT OF SHELTER COSTS AND UTILITIES.

Subdivision 1. Vendor payment. (a) Effective July 1, 1997, when a county is required to provide assistance to a participant in vendor form for shelter costs and utilities under this chapter, or chapter 256, 256D, or 256K, the cost of utilities for a given family may be assumed to be:

- (1) the average of the actual monthly cost of utilities for that family for the prior 12 months at the family's current residence, if applicable;

MINNESOTA STATUTES 2004

(2) the monthly plan amount, if any, set by the local utilities for that family at the family's current residence; or

(3) the estimated monthly utility costs for the dwelling in which the family currently resides.

(b) For purposes of this section, "utility" means any of the following: municipal water and sewer service; electric, gas, or heating fuel service; or wood, if that is the heating source.

(c) In any instance where a vendor payment for rent is directed to a landlord not legally entitled to the payment, the county social services agency shall immediately institute proceedings to collect the amount of the vendored rent payment, which shall be considered a debt under section 270A.03, subdivision 5.

Subd. 2. Vendor payment notification. (a) When a county agency is required to provide assistance to a participant in vendor payment form for shelter costs or utilities under subdivision 1, and the participant does not give the agency the information needed to pay the vendor, the county agency shall notify the participant of the intent to terminate assistance by mail at least ten days before the effective date of the adverse action.

(b) The notice of action shall include a request for information about:

(1) the amount of the participant's shelter costs or utilities;

(2) the due date of the shelter costs or utilities; and

(3) the name and address of the landlord, contract for deed holder, mortgage company, and utility vendor.

(c) If the participant fails to provide the requested information by the effective date of the adverse action, the county must terminate the MFIP grant. If the applicant or participant verifies they do not have shelter costs or utility obligations; the county shall not terminate assistance if the assistance unit is otherwise eligible.

Subd. 3. Discontinuing vendor payments due to dispute with landlord. The county agency shall discontinue vendor payments for shelter costs imposed under this chapter when the vendor payment interferes with the participant's right to withhold rent due to a dispute with the participant's landlord in accordance with federal, state, or local housing laws.

History: 1997 c 85 art 1 s 29; 1998 c 407 art 6 s 78; 1Sp2001 c 9 art 10 s 66

256J.396 SUPPORT FROM PARENTS OF MINOR CAREGIVERS LIVING APART.

Subdivision 1. General provisions. A minor caregiver and the minor's dependent child living outside of the home of the adult parent must meet the criteria in section 256J.14, to be eligible for assistance in the MFIP program. A parent who lives outside the home of a minor child who is an unemancipated minor caregiver of an assistance unit is financially responsible for that minor caregiver unless the parent is a recipient of public assistance, SSI, MSA, medical assistance, general assistance, or general assistance medical care, and a court order does not otherwise provide a support obligation.

Subd. 2. Amount of support payment. The amount of support to be paid by a parent, except a parent specified in subdivision 4, must be determined according to paragraphs (a) to (f).

(a) A minor caregiver must provide information required by the county agency to identify the whereabouts of the minor caregiver's absent parent or parents.

(b) A county agency must notify an absent parent of the parent's legal responsibility to support a minor caregiver and shall request that the absent parent provide the following:

(1) the amount of the parent's earned and unearned income for the previous tax year;

(2) the amount of the parent's earned and unearned income for the current month;

MINNESOTA STATUTES 2004

1381

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.40

(3) the number and names of dependents who are claimed or could be claimed by the parent on federal income tax forms;

(4) the amount of annual medical bills paid by the parent;

(5) the amount of annual housing costs paid by the parent;

(6) the costs for utilities and repairs to the home which are paid by the parent; and

(7) the amount of annual educational costs for family members paid by the parent.

(c) When a parent of a minor caregiver does not provide the information requested under paragraph (b), the county agency must refer the matter to the county attorney. Assistance to the minor caregiver must not be denied, delayed, reduced, or ended because of the lack of cooperation of the minor caregiver's parent.

(d) When the information requested under paragraph (b) is received by a county agency, the county agency must compare the parent's income against the scale set forth below using the conditions and procedures specified in paragraph (e).

Size of Family	Federal Poverty Guideline
1	\$ 9,288
2	12,432
3	15,576
4	18,720
5	21,864

For each additional family member add \$3,144.

(e) The parent's income is the parent's gross earned income plus unearned income, determined by the methods in section 256J.21. To determine family size, each person claimed or who could be claimed by a parent as a dependent on federal income tax forms, exclusive of the minor caregiver, must be included. A deduction from income must be allowed for the amount that medical, educational, and housing costs together exceed 30 percent of the parent's income. When the amount of income, after the allowable deduction, exceeds the annual income level in paragraph (d), a parent is liable to pay one-third of the excess for the annual support of the minor caregiver. These payments must be paid monthly to the minor caregiver or to the county agency on behalf of the minor caregiver.

(f) A county agency must notify the parents of the minor caregiver that they are liable for the amount of support determined by the county agency as specified in paragraph (e). When the support payment is received by the minor caregiver, it must be treated as unearned income of the assistance unit. When the support payment is not received, or a lesser amount is received in any payment month, the county agency must refer the matter to the county attorney.

Subd. 3. **Reviews.** A county agency must review financial responsibility every 12 months until minor caregivers reach the age of 18 or are otherwise emancipated. When a parent reports a change in circumstances, the county agency must review the required amount of payment within ten calendar days.

Subd. 4. **Parents under court order for support.** A parent who is required under an existing court order issued under some other authority in state or federal law to pay child support for a minor caregiver is subject to the conditions of that order in lieu of the requirements and contribution levels in subdivision 2.

History: 1997 c 85 art 1 s 30; 1Sp2001 c 9 art 10 s 66

256J.40 FAIR HEARINGS.

Caregivers receiving a notice of intent to sanction or a notice of adverse action that includes a sanction, reduction in benefits, suspension of benefits, denial of benefits, or termination of benefits may request a fair hearing. A request for a fair hearing must be submitted in writing to the county agency or to the commissioner and must be mailed within 30 days after a participant or former participant receives written notice of the agency's action or within 90 days when a participant or former participant shows

MINNESOTA STATUTES 2004

good cause for not submitting the request within 30 days. A former participant who receives a notice of adverse action due to an overpayment may appeal the adverse action according to the requirements in this section. Issues that may be appealed are:

- (1) the amount of the assistance payment;
- (2) a suspension, reduction, denial, or termination of assistance;
- (3) the basis for an overpayment, the calculated amount of an overpayment, and the level of recoupment;
- (4) the eligibility for an assistance payment; and
- (5) the use of protective or vendor payments under section 256J.39, subdivision 2, clauses (1) to (3).

Except for benefits issued under section 256J.95, a county agency must not reduce, suspend, or terminate payment when an aggrieved participant requests a fair hearing prior to the effective date of the adverse action or within ten days of the mailing of the notice of adverse action, whichever is later, unless the participant requests in writing not to receive continued assistance pending a hearing decision. An appeal request cannot extend benefits for the diversionary work program under section 256J.95 beyond the four-month time limit. Assistance issued pending a fair hearing is subject to recovery under section 256J.38 when as a result of the fair hearing decision the participant is determined ineligible for assistance or the amount of the assistance received. A county agency may increase or reduce an assistance payment while an appeal is pending when the circumstances of the participant change and are not related to the issue on appeal. The commissioner's order is binding on a county agency. No additional notice is required to enforce the commissioner's order.

A county agency shall reimburse appellants for reasonable and necessary expenses of attendance at the hearing, such as child care and transportation costs and for the transportation expenses of the appellant's witnesses and representatives to and from the hearing. Reasonable and necessary expenses do not include legal fees. Fair hearings must be conducted at a reasonable time and date by an impartial referee employed by the department. The hearing may be conducted by telephone or at a site that is readily accessible to persons with disabilities.

The appellant may introduce new or additional evidence relevant to the issues on appeal. Recommendations of the appeals referee and decisions of the commissioner must be based on evidence in the hearing record and are not limited to a review of the county agency action.

History: 1997 c 85 art 1 s 31; 1Sp2003 c 14 art 1 s 50.

256J.415 NOTICE OF TIME LIMIT 12 MONTHS PRIOR TO 60-MONTH TIME LIMIT EXPIRING.

(a) The county agency shall mail a notice to each assistance unit when the assistance unit has 12 months of TANF assistance remaining and each month thereafter until the 60-month limit has expired. The notice must be developed by the commissioner of human services and must contain information about the 60-month limit, the number of months the participant has remaining, the hardship extension policy, and any other information that the commissioner deems pertinent to an assistance unit nearing the 60-month limit.

(b) For applicants who have less than 12 months remaining in the 60-month time limit because the unit previously received TANF assistance in Minnesota or another state, the county agency shall notify the applicant of the number of months of TANF remaining when the application is approved and begin the process required in paragraph (a).

History: 1Sp2001 c 9 art 10 s 23; 2002 c 379 art 1 s 113; 2004 c 288 art 4 s 38

256J.42 60-MONTH TIME LIMIT; EXEMPTIONS.

Subdivision 1. **Time limit.** (a) Except as otherwise provided for in this section, an assistance unit in which any adult caregiver has received 60 months of cash assistance

funded in whole or in part by the TANF block grant in this or any other state or United States territory, or from a tribal TANF program, MFIP, the AFDC program formerly codified in sections 256.72 to 256.87, or the family general assistance program formerly codified in sections 256D.01 to 256D.23, funded in whole or in part by state appropriations, is ineligible to receive MFIP. Any cash assistance funded with TANF dollars in this or any other state or United States territory, or from a tribal TANF program, or MFIP assistance funded in whole or in part by state appropriations, that was received by the unit on or after the date TANF was implemented, including any assistance received in states or United States territories of prior residence, counts toward the 60-month limitation. The 60-month limit applies to a minor caregiver except under subdivision 5. The 60-month time period does not need to be consecutive months for this provision to apply.

(b) The months before July 1998 in which individuals received assistance as part of the field trials as an MFIP, MFIP-R, or MFIP or MFIP-R comparison group family are not included in the 60-month time limit.

Subd. 2. [Repealed by amendment, 1998 c 407 art 6 s 79]

Subd. 3. **Adults living in Indian country.** In determining the number of months for which an adult has received assistance under MFIP, the county agency must disregard any month during which the adult lived in Indian country if during the month at least 50 percent of the adults living in Indian country were not employed.

Subd. 4. **Victims of family violence.** Any cash assistance received by an assistance unit in a month when a caregiver complied with a safety plan, an alternative employment plan, or an employment plan under section 256J.521, subdivision 3, does not count toward the 60-month limitation on assistance.

Subd. 5. **Exemption for certain families.** (a) Any cash assistance received by an assistance unit does not count toward the 60-month limit on assistance during a month in which the caregiver is age 60 or older, including months during which the caregiver was exempt under section 256J.56, paragraph (a), clause (1).

(b) From July 1, 1997, until the date MFIP is operative in the caregiver's county of financial responsibility, any cash assistance received by a caregiver who is complying with Minnesota Statutes 1996, section 256.73, subdivision 5a, and Minnesota Statutes 1998, section 256.736, if applicable, does not count toward the 60-month limit on assistance. Thereafter, any cash assistance received by a minor caregiver who is complying with the requirements of sections 256J.14 and 256J.54, if applicable, does not count towards the 60-month limit on assistance.

(c) Any diversionary assistance or emergency assistance received prior to July 1, 2003, does not count toward the 60-month limit.

(d) Any cash assistance received by an 18- or 19-year-old caregiver who is complying with an employment plan that includes an education option under section 256J.54 does not count toward the 60-month limit.

(e) Payments provided to meet short-term emergency needs under section 256J.626 and diversionary work program benefits provided under section 256J.95 do not count toward the 60-month time limit.

Subd. 6. **Case review.** (a) Within 180 days, but not less than 60 days, before the end of the participant's 60th month on assistance, the county agency or job counselor must review the participant's case to determine if the employment plan is still appropriate or if the participant is exempt under section 256J.56 from the employment and training services component, and attempt to meet with the participant face-to-face.

(b) During the face-to-face meeting, a county agency or the job counselor must:

(1) inform the participant how many months of counted assistance the participant has accrued and when the participant is expected to reach the 60th month;

(2) explain the hardship extension criteria under section 256J.425 and what the participant should do if the participant thinks a hardship extension applies;

(3) identify other resources that may be available to the participant to meet the needs of the family; and

MINNESOTA STATUTES 2004

(4) inform the participant of the right to appeal the case closure under section 256J.40.

(c) If a face-to-face meeting is not possible, the county agency must send the participant a notice of adverse action as provided in section 256J.31, subdivisions 4 and 5.

(d) Before a participant's case is closed under this section, the county must ensure that:

(1) the case has been reviewed by the job counselor's supervisor or the review team designated by the county to determine if the criteria for a hardship extension, if requested, were applied appropriately; and

(2) the county agency or the job counselor attempted to meet with the participant face-to-face.

History: 1997 c 85 art 1 s 32; 1997 c 203 art 12 s 12; 1998 c 407 art 6 s 79; 1999 c 159 s 86,87; 1999 c 245 art 6 s 50,51; 2000 c 260 s 88; 1Sp2001 c 9 art 10 s 24-27,66; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 51-53

256J.425 HARDSHIP EXTENSIONS.

Subdivision 1. **Eligibility.** (a) To be eligible for a hardship extension, a participant in an assistance unit subject to the time limit under section 256J.42, subdivision 1, must be in compliance in the participant's 60th counted month. For purposes of determining eligibility for a hardship extension, a participant is in compliance in any month that the participant has not been sanctioned.

(b) If one participant in a two-parent assistance unit is determined to be ineligible for a hardship extension, the county shall give the assistance unit the option of disqualifying the ineligible participant from MFIP. In that case, the assistance unit shall be treated as a one-parent assistance unit and the assistance unit's MFIP grant shall be calculated using the shared household standard under section 256J.08, subdivision 82a.

(c) Prior to denying an extension, the county must review the sanction status and determine whether the sanction is appropriate or if good cause exists under section 256J.57. If the sanction was inappropriately applied or the participant is granted a good cause exception before the end of month 60, the participant shall be considered for an extension.

Subd. 1a. **Review.** If a county grants a hardship extension under this section, a county agency shall review the case every six or 12 months, whichever is appropriate based on the participant's circumstances and the extension category. More frequent reviews shall be required if eligibility for an extension is based on a condition that is subject to change in less than six months.

Subd. 2. **Ill or incapacitated.** (a) An assistance unit subject to the time limit in section 256J.42, subdivision 1, is eligible to receive months of assistance under a hardship extension if the participant who reached the time limit belongs to any of the following groups:

(1) participants who are suffering from an illness, injury, or incapacity which has been certified by a qualified professional when the illness, injury, or incapacity is expected to continue for more than 30 days and prevents the person from obtaining or retaining employment. These participants must follow the treatment recommendations of the qualified professional certifying the illness, injury, or incapacity;

(2) participants whose presence in the home is required as a caregiver because of the illness, injury, or incapacity of another member in the assistance unit, a relative in the household, or a foster child in the household when the illness or incapacity and the need for a person to provide assistance in the home has been certified by a qualified professional and is expected to continue for more than 30 days; or

(3) caregivers with a child or an adult in the household who meets the disability or medical criteria for home care services under section 256B.0627, subdivision 1, paragraph (f), or a home and community-based waiver services program under chapter 256B, or meets the criteria for severe emotional disturbance under section 245.4871,

subdivision 6, or for serious and persistent mental illness under section 245.462, subdivision 20, paragraph (c). Caregivers in this category are presumed to be prevented from obtaining or retaining employment.

(b) An assistance unit receiving assistance under a hardship extension under this subdivision may continue to receive assistance as long as the participant meets the criteria in paragraph (a), clause (1), (2), or (3).

Subd. 3. Hard-to-employ participants. An assistance unit subject to the time limit in section 256J.42, subdivision 1, is eligible to receive months of assistance under a hardship extension if the participant who reached the time limit belongs to any of the following groups:

(1) a person who is diagnosed by a licensed physician, psychological practitioner, or other qualified professional, as mentally retarded or mentally ill, and that condition prevents the person from obtaining or retaining unsubsidized employment;

(2) a person who:

(i) has been assessed by a vocational specialist or the county agency to be unemployable for purposes of this subdivision; or

(ii) has an IQ below 80 who has been assessed by a vocational specialist or a county agency to be employable, but not at a level that makes the participant eligible for an extension under subdivision 4. The determination of IQ level must be made by a qualified professional. In the case of a non-English-speaking person: (A) the determination must be made by a qualified professional with experience conducting culturally appropriate assessments, whenever possible; (B) the county may accept reports that identify an IQ range as opposed to a specific score; (C) these reports must include a statement of confidence in the results;

(3) a person who is determined by a qualified professional to be learning disabled, and the disability severely limits the person's ability to obtain, perform, or maintain suitable employment. For purposes of the initial approval of a learning disability extension, the determination must have been made or confirmed within the previous 12 months. In the case of a non-English-speaking person: (i) the determination must be made by a qualified professional with experience conducting culturally appropriate assessments, whenever possible; and (ii) these reports must include a statement of confidence in the results. If a rehabilitation plan for a participant extended as learning disabled is developed or approved by the county agency, the plan must be incorporated into the employment plan. However, a rehabilitation plan does not replace the requirement to develop and comply with an employment plan under section 256J.521; or

(4) a person who has been granted a family violence waiver, and who is complying with an employment plan under section 256J.521, subdivision 3.

Subd. 4. Employed participants. (a) An assistance unit subject to the time limit under section 256J.42, subdivision 1, is eligible to receive assistance under a hardship extension if the participant who reached the time limit belongs to:

(1) a one-parent assistance unit in which the participant is participating in work activities for at least 30 hours per week, of which an average of at least 25 hours per week every month are spent participating in employment;

(2) a two-parent assistance unit in which the participants are participating in work activities for at least 55 hours per week, of which an average of at least 45 hours per week every month are spent participating in employment; or

(3) an assistance unit in which a participant is participating in employment for fewer hours than those specified in clause (1), and the participant submits verification from a qualified professional, in a form acceptable to the commissioner, stating that the number of hours the participant may work is limited due to illness or disability, as long as the participant is participating in employment for at least the number of hours specified by the qualified professional. The participant must be following the treatment recommendations of the qualified professional providing the verification. The commissioner shall develop a form to be completed and signed by the qualified professional,

MINNESOTA STATUTES 2004

documenting the diagnosis and any additional information necessary to document the functional limitations of the participant that limit work hours. If the participant is part of a two-parent assistance unit, the other parent must be treated as a one-parent assistance unit for purposes of meeting the work requirements under this subdivision.

(b) For purposes of this section, employment means:

(1) unsubsidized employment under section 256J.49, subdivision 13, clause (1);

(2) subsidized employment under section 256J.49, subdivision 13, clause (2);

(3) on-the-job training under section 256J.49, subdivision 13, clause (2);

(4) an apprenticeship under section 256J.49, subdivision 13, clause (1);

(5) supported work under section 256J.49, subdivision 13, clause (2);

(6) a combination of clauses (1) to (5); or

(7) child care under section 256J.49, subdivision 13, clause (7), if it is in combination with paid employment.

(c) If a participant is complying with a child protection plan under chapter 260C, the number of hours required under the child protection plan count toward the number of hours required under this subdivision.

(d) The county shall provide the opportunity for subsidized employment to participants needing that type of employment within available appropriations.

(e) To be eligible for a hardship extension for employed participants under this subdivision, a participant must be in compliance for at least ten out of the 12 months the participant received MFIP immediately preceding the participant's 61st month on assistance. If ten or fewer months of eligibility for TANF assistance remain at the time the participant from another state applies for assistance, the participant must be in compliance every month.

(f) The employment plan developed under section 256J.521, subdivision 2, for participants under this subdivision must contain at least the minimum number of hours specified in paragraph (a) for the purpose of meeting the requirements for an extension under this subdivision. The job counselor and the participant must sign the employment plan to indicate agreement between the job counselor and the participant on the contents of the plan.

(g) Participants who fail to meet the requirements in paragraph (a), without good cause under section 256J.57, shall be sanctioned or permanently disqualified under subdivision 6. Good cause may only be granted for that portion of the month for which the good cause reason applies. Participants must meet all remaining requirements in the approved employment plan or be subject to sanction or permanent disqualification.

(h) If the noncompliance with an employment plan is due to the involuntary loss of employment, the participant is exempt from the hourly employment requirement under this subdivision for one month. Participants must meet all remaining requirements in the approved employment plan or be subject to sanction or permanent disqualification. This exemption is available to each participant two times in a 12-month period.

Subd. 4a. Hardship extension pending documentation. If the documentation needed to determine if a participant is eligible for a hardship extension under subdivision 2 or 3 is not available by the 60th month, the county agency may extend the participant pending receipt of the documentation if the county believes the participant is likely to qualify for a hardship extension and the participant is cooperating with efforts to obtain the documentation. If the participant is found to be not eligible for an extension, the participant may be responsible for an overpayment.

Subd. 5. Accrual of certain exempt months. (a) Participants who meet the criteria in clause (1), (2), or (3) and who are not eligible for assistance under a hardship extension under subdivision 2, paragraph (a), clause (3), shall be eligible for a hardship extension for a period of time equal to the number of months that were counted toward the federal 60-month time limit while the participant was:

(1) a caregiver with a child or an adult in the household who meets the disability or medical criteria for home care services under section 256B.0627, subdivision 1,

paragraph (f), or a home and community-based waiver services program under chapter 256B, or meets the criteria for severe emotional disturbance under section 245.4871, subdivision 6, or for serious and persistent mental illness under section 245.462, subdivision 20, paragraph (c), who was subject to the requirements in section 256J.561, subdivision 2;

(2) exempt under section 256J.56, paragraph (a), clause (7); or

(3) exempt under section 256J.56, paragraph (a), clause (3), and demonstrates at the time of the case review required under section 256J.42, subdivision 6, that the participant met the exemption criteria under section 256J.56, paragraph (a), clause (7), during one or more months the participant was exempt under section 256J.56, paragraph (a), clause (3). Only months during which the participant met the criteria under section 256J.56, paragraph (a), clause (7), shall be considered.

(b) A participant who received TANF assistance that counted towards the federal 60-month time limit while the participant met the state time limit exemption criteria under section 256J.42, subdivision 4 or 5, is eligible for assistance under a hardship extension for a period of time equal to the number of months that were counted toward the federal 60-month time limit while the participant met the state time limit exemption criteria under section 256J.42, subdivision 4 or 5.

(c) After the accrued months have been exhausted, the county agency must determine if the assistance unit is eligible for an extension under another extension category in section 256J.425, subdivision 2, 3, or 4.

(d) At the time of the case review, a county agency must explain to the participant the basis for receiving a hardship extension based on the accrual of exempt months. The participant must provide documentation necessary to enable the county agency to determine whether the participant is eligible to receive a hardship extension based on the accrual of exempt months or authorize a county agency to verify the information.

(e) While receiving extended MFIP assistance under this subdivision, a participant is subject to the MFIP policies that apply to participants during the first 60 months of MFIP, unless the participant is a member of a two-parent family in which one parent is extended under subdivision 3 or 4. For two-parent families in which one parent is extended under subdivision 3 or 4, the sanction provisions in subdivision 6 shall apply.

Subd. 6. Sanctions for extended cases. (a) If one or both participants in an assistance unit receiving assistance under subdivision 3 or 4 are not in compliance with the employment and training service requirements in sections 256J.521 to 256J.57, the sanctions under this subdivision apply. For a first occurrence of noncompliance, an assistance unit must be sanctioned under section 256J.46, subdivision 1, paragraph (c), clause (1). For a second or third occurrence of noncompliance, the assistance unit must be sanctioned under section 256J.46, subdivision 1, paragraph (c), clause (2). For a fourth occurrence of noncompliance, the assistance unit is disqualified from MFIP. If a participant is determined to be out of compliance, the participant may claim a good cause exception under section 256J.57, however, the participant may not claim an exemption under section 256J.56.

(b) If both participants in a two-parent assistance unit are out of compliance at the same time, it is considered one occurrence of noncompliance.

(c) When a parent in an extended two-parent assistance unit who has not used 60 months of assistance is out of compliance with the employment and training service requirements in sections 256J.521 to 256J.57, sanctions must be applied as specified in clauses (1) and (2).

(1) If the assistance unit is receiving assistance under subdivision 3 or 4, the assistance unit is subject to the sanction policy in this subdivision.

(2) If the assistance unit is receiving assistance under subdivision 2, the assistance unit is subject to the sanction policy in section 256J.46.

(d) If a two-parent assistance unit is extended under subdivision 3 or 4, and a parent who has not reached the 60-month time limit is out of compliance with the employment and training services requirements in sections 256J.521 to 256J.57 when

MINNESOTA STATUTES 2004

the case is extended, the sanction in the 61st month is considered the first sanction for the purposes of applying the sanctions in this subdivision, except that the sanction amount shall be 30 percent.

Subd. 7. Status of disqualified participants. (a) An assistance unit that is disqualified under subdivision 6, paragraph (a), may be approved for MFIP if the participant complies with MFIP program requirements and demonstrates compliance for up to one month. No assistance shall be paid during this period.

(b) An assistance unit that is disqualified under subdivision 6, paragraph (a), and that reapplies under paragraph (a) is subject to sanction under section 256J.46, subdivision 1, paragraph (c), clause (1), for a first occurrence of noncompliance. A subsequent occurrence of noncompliance results in a permanent disqualification.

(c) If one participant in a two-parent assistance unit receiving assistance under a hardship extension under subdivision 3 or 4 is determined to be out of compliance with the employment and training services requirements under sections 256J.521 to 256J.57, the county shall give the assistance unit the option of disqualifying the noncompliant participant from MFIP. In that case, the assistance unit shall be treated as a one-parent assistance unit for the purposes of meeting the work requirements under subdivision 4 and the assistance unit's MFIP grant shall be calculated using the shared household standard under section 256J.08, subdivision 82a. An applicant who is disqualified from receiving assistance under this paragraph may reapply under paragraph (a). If a participant is disqualified from MFIP under this subdivision a second time, the participant is permanently disqualified from MFIP.

(d) Prior to a disqualification under this subdivision, a county agency must review the participant's case to determine if the employment plan is still appropriate and attempt to meet with the participant face-to-face. If a face-to-face meeting is not conducted, the county agency must send the participant a notice of adverse action as provided in section 256J.31. During the face-to-face meeting, the county agency must:

(1) determine whether the continued noncompliance can be explained and mitigated by providing a needed preemployment activity, as defined in section 256J.49, subdivision 13, clause (9);

(2) determine whether the participant qualifies for a good cause exception under section 256J.57;

(3) inform the participant of the family violence waiver criteria and make appropriate referrals if the waiver is requested;

(4) inform the participant of the participant's sanction status and explain the consequences of continuing noncompliance;

(5) identify other resources that may be available to the participant to meet the needs of the family; and

(6) inform the participant of the right to appeal under section 256J.40.

Subd. 8. County extension request. A county may make a request to the commissioner of human services, and the commissioner may grant, an extension for a category of participants that are not extended under section 256J.425, provided the new category of participants is consistent with the existing extension policy in which an extension is provided to participants whose MFIP requirements conflict with other statutory requirements or obligations. By January 15 of each year, the commissioner must report to the chairs and ranking minority members of the senate and house committees having jurisdiction over health and human services the extensions that were granted under this section during the previous calendar year. The legislature must act in order for the extensions to continue. If the legislature fails to act by the end of the legislative session in which the extensions were reported, the extensions granted under this section during the previous calendar year expire on June 30 of that year.

History: 1Sp2001 c 9 art 10 s 28; 2002 c 374 art 10 s 9-12; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 54-60; 2004 c 288 art 4 s 39-42

256J.43 [Repealed, 1Sp2001 c 9 art 10 s 67]

256J.44 [Repealed, 1Sp2001 c 9 art 10 s 67]

256J.45 ORIENTATION.

Subdivision 1. **County agency to provide orientation.** A county agency must provide a face-to-face orientation to each MFIP caregiver unless the caregiver is:

- (1) a single parent, or one parent in a two-parent family, employed at least 35 hours per week; or
- (2) a second parent in a two-parent family who is employed for 20 or more hours per week provided the first parent is employed at least 35 hours per week.

The county agency must inform caregivers who are not exempt under clause (1) or (2) that failure to attend the orientation is considered an occurrence of noncompliance with program requirements, and will result in the imposition of a sanction under section 256J.46. If the client complies with the orientation requirement prior to the first day of the month in which the grant reduction is proposed to occur, the orientation sanction shall be lifted.

Subd. 1a. **Pregnant and parenting minors.** Pregnant and parenting minors who are complying with the provisions of section 256J.54 are exempt from the requirement under subdivision 1, however, the county agency must provide information to the minor as required under section 256J.14.

Subd. 2. **General information.** The MFIP orientation must consist of a presentation that informs caregivers of:

- (1) the necessity to obtain immediate employment;
- (2) the work incentives under MFIP, including the availability of the federal earned income tax credit and the Minnesota working family tax credit;
- (3) the requirement to comply with the employment plan and other requirements of the employment and training services component of MFIP, including a description of the range of work and training activities that are allowable under MFIP to meet the individual needs of participants;
- (4) the consequences for failing to comply with the employment plan and other program requirements, and that the county agency may not impose a sanction when failure to comply is due to the unavailability of child care or other circumstances where the participant has good cause under subdivision 3;
- (5) the rights, responsibilities, and obligations of participants;
- (6) the types and locations of child care services available through the county agency;
- (7) the availability and the benefits of the early childhood health and developmental screening under sections 121A.16 to 121A.19; 123B.02, subdivision 16; and 123B.10;
- (8) the caregiver's eligibility for transition year child care assistance under section 119B.05;
- (9) the availability of all health care programs, including transitional medical assistance;
- (10) the caregiver's option to choose an employment and training provider and information about each provider, including but not limited to, services offered, program components, job placement rates, job placement wages, and job retention rates;
- (11) the caregiver's option to request approval of an education and training plan according to section 256J.53;
- (12) the work study programs available under the higher education system; and
- (13) information about the 60-month time limit exemptions under the family violence waiver and referral information about shelters and programs for victims of family violence.

Subd. 3. **Good cause exemptions for not attending orientation.** (a) The county agency shall not impose the sanction under section 256J.46 if it determines that the participant has good cause for failing to attend orientation. Good cause exists when:

MINNESOTA STATUTES 2004

(1) appropriate child care is not available;

(2) the participant is ill or injured;

(3) a family member is ill and needs care by the participant that prevents the participant from attending orientation. For a caregiver with a child or adult in the household who meets the disability or medical criteria for home care services under section 256B.0627, subdivision 1, paragraph (c) or a home and community-based waiver services program under chapter 256B, or meets the criteria for severe emotional disturbance under section 245.4871, subdivision 6, or for serious and persistent mental illness under section 245.462, subdivision 20, paragraph (c), good cause also exists when an interruption in the provision of those services occurs which prevents the participant from attending orientation;

(4) the caregiver is unable to secure necessary transportation;

(5) the caregiver is in an emergency situation that prevents orientation attendance;

(6) the orientation conflicts with the caregiver's work, training, or school schedule;

or

(7) the caregiver documents other verifiable impediments to orientation attendance beyond the caregiver's control.

(b) Counties must work with clients to provide child care and transportation necessary to ensure a caregiver has every opportunity to attend orientation.

History: 1997 c 85 art 1 s 35; 1998 c 397 art 11 s 3; 1998 c 407 art 6 s 81-83; 1999 c 86 art 1 s 59; 1999 c 245 art 6 s 53,54; 2000 c 488 art 10 s 14; 1Sp2001 c 9 art 10 s 29,30; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 61

256J.46 SANCTIONS.

Subdivision 1. **Participants not complying with program requirements.** (a) A participant who fails without good cause under section 256J.57 to comply with the requirements of this chapter, and who is not subject to a sanction under subdivision 2, shall be subject to a sanction as provided in this subdivision. Prior to the imposition of a sanction, a county agency shall provide a notice of intent to sanction under section 256J.57, subdivision 2, and, when applicable, a notice of adverse action as provided in section 256J.31.

(b) A sanction under this subdivision becomes effective the month following the month in which a required notice is given. A sanction must not be imposed when a participant comes into compliance with the requirements for orientation under section 256J.45 prior to the effective date of the sanction. A sanction must not be imposed when a participant comes into compliance with the requirements for employment and training services under sections 256J.515 to 256J.57 ten days prior to the effective date of the sanction. For purposes of this subdivision, each month that a participant fails to comply with a requirement of this chapter shall be considered a separate occurrence of noncompliance. If both participants in a two-parent assistance unit are out of compliance at the same time, it is considered one occurrence of noncompliance.

(c) Sanctions for noncompliance shall be imposed as follows:

(1) For the first occurrence of noncompliance by a participant in an assistance unit, the assistance unit's grant shall be reduced by ten percent of the MFIP standard of need for an assistance unit of the same size with the residual grant paid to the participant. The reduction in the grant amount must be in effect for a minimum of one month and shall be removed in the month following the month that the participant returns to compliance.

(2) For a second, third, fourth, fifth, or sixth occurrence of noncompliance by a participant in an assistance unit, the assistance unit's shelter costs shall be vendor paid up to the amount of the cash portion of the MFIP grant for which the assistance unit is eligible. At county option, the assistance unit's utilities may also be vendor paid up to the amount of the cash portion of the MFIP grant remaining after vendor payment of the assistance unit's shelter costs. The residual amount of the grant after vendor payment, if any, must be reduced by an amount equal to 30 percent of the MFIP

MINNESOTA STATUTES 2004

1391

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.46

standard of need for an assistance unit of the same size before the residual grant is paid to the assistance unit. The reduction in the grant amount must be in effect for a minimum of one month and shall be removed in the month following the month that the participant in a one-parent assistance unit returns to compliance. In a two-parent assistance unit, the grant reduction must be in effect for a minimum of one month and shall be removed in the month following the month both participants return to compliance. The vendor payment of shelter costs and, if applicable, utilities shall be removed six months after the month in which the participant or participants return to compliance. If an assistance unit is sanctioned under this clause, the participant's case file must be reviewed to determine if the employment plan is still appropriate.

(d) For a seventh occurrence of noncompliance by a participant in an assistance unit, or when the participants in a two-parent assistance unit have a total of seven occurrences of noncompliance, the county agency shall close the MFIP assistance unit's financial assistance case, both the cash and food portions, and redetermine the family's continued eligibility for food support payments. The MFIP case must remain closed for a minimum of one full month. Before the case is closed, the county agency must review the participant's case to determine if the employment plan is still appropriate and attempt to meet with the participant face-to-face. The participant may bring an advocate to the face-to-face meeting. If a face-to-face meeting is not conducted, the county agency must send the participant a written notice that includes the information required under clause (1).

(1) During the face-to-face meeting, the county agency must:

(i) determine whether the continued noncompliance can be explained and mitigated by providing a needed preemployment activity, as defined in section 256J.49, subdivision 13, clause (9);

(ii) determine whether the participant qualifies for a good cause exception under section 256J.57, or if the sanction is for noncooperation with child support requirements, determine if the participant qualifies for a good cause exemption under section 256.741, subdivision 10;

(iii) determine whether the participant qualifies for an exemption under section 256J.56 or the work activities in the employment plan are appropriate based on the criteria in section 256J.521, subdivision 2 or 3;

(iv) determine whether the participant qualifies for the family violence waiver;

(v) inform the participant of the participant's sanction status and explain the consequences of continuing noncompliance;

(vi) identify other resources that may be available to the participant to meet the needs of the family; and

(vii) inform the participant of the right to appeal under section 256J.40.

(2) If the lack of an identified activity or service can explain the noncompliance, the county must work with the participant to provide the identified activity.

(3) The grant must be restored to the full amount for which the assistance unit is eligible retroactively to the first day of the month in which the participant was found to lack preemployment activities or to qualify for an exemption under section 256J.56, a family violence waiver, or for a good cause exemption under section 256.741, subdivision 10, or 256J.57.

(e) For the purpose of applying sanctions under this section, only occurrences of noncompliance that occur after July 1, 2003, shall be considered. If the participant is in 30 percent sanction in the month this section takes effect, that month counts as the first occurrence for purposes of applying the sanctions under this section, but the sanction shall remain at 30 percent for that month.

(f) An assistance unit whose case is closed under paragraph (d) or (g), may reapply for MFIP and shall be eligible if the participant complies with MFIP program requirements and demonstrates compliance for up to one month. No assistance shall be paid during this period.

MINNESOTA STATUTES 2004

(g) An assistance unit whose case has been closed for noncompliance, that reapplies under paragraph (f), is subject to sanction under paragraph (c), clause (2), for a first occurrence of noncompliance. Any subsequent occurrence of noncompliance shall result in case closure under paragraph (d).

Subd. 1a. [Repealed, 1Sp2001 c 9 art 10 s 67]

Subd. 2. **Sanctions for refusal to cooperate with support requirements.** The grant of an MFIP caregiver who refuses to cooperate, as determined by the child support enforcement agency, with support requirements under section 256.741, shall be subject to sanction as specified in this subdivision and subdivision 1. For a first occurrence of noncooperation, the assistance unit's grant must be reduced by 30 percent of the applicable MFIP standard of need. Subsequent occurrences of noncooperation shall be subject to sanction under subdivision 1, paragraphs (c), clause (2), and (d). The residual amount of the grant, if any, must be paid to the caregiver. A sanction under this subdivision becomes effective the first month following the month in which a required notice is given. A sanction must not be imposed when a caregiver comes into compliance with the requirements under section 256.741 prior to the effective date of the sanction. The sanction shall be removed in the month following the month that the caregiver cooperates with the support requirements. Each month that an MFIP caregiver fails to comply with the requirements of section 256.741 must be considered a separate occurrence of noncompliance for the purpose of applying sanctions under subdivision 1, paragraphs (c), clause (2), and (d).

Subd. 2a. **Dual sanctions.** (a) Notwithstanding the provisions of subdivisions 1 and 2, for a participant subject to a sanction for refusal to comply with child support requirements under subdivision 2 and subject to a concurrent sanction for refusal to cooperate with other program requirements under subdivision 1, sanctions shall be imposed in the manner prescribed in this subdivision.

Any vendor payment of shelter costs or utilities under this subdivision must remain in effect for six months after the month in which the participant is no longer subject to sanction under subdivision 1.

(b) If the participant was subject to sanction for:

(i) noncompliance under subdivision 1 before being subject to sanction for noncooperation under subdivision 2; or

(ii) noncooperation under subdivision 2 before being subject to sanction for noncompliance under subdivision 1, the participant is considered to have a second occurrence of noncompliance and shall be sanctioned as provided in subdivision 1, paragraph (c), clause (2). Each subsequent occurrence of noncompliance shall be considered one additional occurrence and shall be subject to the applicable level of sanction under subdivision 1. The requirement that the county conduct a review as specified in subdivision 1, paragraph (d), remains in effect.

(c) A participant who first becomes subject to sanction under both subdivisions 1 and 2 in the same month is subject to sanction as follows:

(i) in the first month of noncompliance and noncooperation, the participant's grant must be reduced by 30 percent of the applicable MFIP standard of need, with any residual amount paid to the participant;

(ii) in the second and subsequent months of noncompliance and noncooperation, the participant shall be subject to the applicable level of sanction under subdivision 1.

The requirement that the county conduct a review as specified in subdivision 1, paragraph (d), remains in effect.

(d) A participant remains subject to sanction under subdivision 2 if the participant:

(i) returns to compliance and is no longer subject to sanction for noncompliance with section 256J.45 or sections 256J.515 to 256J.57; or

(ii) has the sanction for noncompliance with section 256J.45 or sections 256J.515 to 256J.57 removed upon completion of the review under subdivision 1, paragraph (e).

A participant remains subject to the applicable level of sanction under subdivision 1 if the participant cooperates and is no longer subject to sanction under subdivision 2.

History: 1997 c 85 art 1 s 36; 1997 c 245 art 4 s 2; 1998 c 407 art 6 s 84-86; 1999 c 245 art 6 s 55-57; 1Sp2001 c 9 art 10 s 31,32; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 62-64,106; 2004 c 288 art 4 s 43

256J.462 [Repealed, 1Sp2003 c 14 art 1 s 107]

256J.47 [Repealed, 1Sp2003 c 14 art 1 s 107]

256J.48 [Repealed, 1Sp2003 c 14 art 1 s 107]

256J.49 EMPLOYMENT AND TRAINING SERVICES; DEFINITIONS.

Subdivision 1. **Scope.** The terms used in sections 256J.50 to 256J.72 have the meanings given them in this section.

Subd. 1a. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 2. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 3. **Employment and training services.** "Employment and training services" means programs, activities and services that are designed to assist participants in obtaining and retaining employment.

Subd. 4. **Employment and training service provider.** "Employment and training service provider" means:

(1) a public, private, or nonprofit agency with which a county has contracted to provide employment and training services and which is included in the county's service agreement submitted under section 256J.626, subdivision 4; or

(2) a county agency, if the county has opted to provide employment and training services and the county has indicated that fact in the service agreement submitted under section 256J.626, subdivision 4.

Notwithstanding section 116L.871, an employment and training services provider meeting this definition may deliver employment and training services under this chapter.

Subd. 5. **Employment plan.** "Employment plan" means a plan developed by the job counselor and the participant which identifies the participant's most direct path to unsubsidized employment, lists the specific steps that the caregiver will take on that path, and includes a timetable for the completion of each step. The plan should also identify any subsequent steps that support long-term economic stability. For participants who request and qualify for a family violence waiver, an employment plan must be developed by the job counselor and the participant, and in consultation with a person trained in domestic violence and follow the employment plan provisions in section 256J.521, subdivision 3.

Subd. 6. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 6a. **Functional work literacy.** "Functional work literacy" means an intensive English as a second language program that is work focused and offers at least 20 hours of class time per week.

Subd. 7. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 8. **Job counselor.** "Job counselor" means a staff person employed by or under contract with the employment and training services provider who delivers services as specified in sections 256J.50 to 256J.55.

Subd. 9. **Participant.** "Participant" means a recipient of MFIP assistance who participates or is required to participate in employment and training services under sections 256J.515 to 256J.57 and 256J.95.

Subd. 10. **Provider.** "Provider" means an employment and training service provider.

Subd. 11. [Repealed, 1Sp2001 c 9 art 10 s 67]

Subd. 12. **Suitable employment.** "Suitable employment" means employment that:

MINNESOTA STATUTES 2004

- (1) is within the participant's physical and mental abilities;
- (2) pays hourly gross wages of not less than the applicable state or federal minimum wage;
- (3) meets health and safety standards set by federal, state and county agencies; and
- (4) complies with federal, state, and local antidiscrimination laws.

Subd. 12a. **Supported work.** "Supported work" means a subsidized or unsubsidized work experience placement with a public or private sector employer, which may include services such as individualized supervision and job coaching to support the participant on the job.

Subd. 13. **Work activity.** "Work activity" means any activity in a participant's approved employment plan that leads to employment. For purposes of the MFIP program, this includes activities that meet the definition of work activity under the participation requirements of TANF. Work activity includes:

- (1) unsubsidized employment, including work study and paid apprenticeships or internships;
- (2) subsidized private sector or public sector employment, including grant diversion as specified in section 256J.69, on-the-job training as specified in section 256J.66, the self-employment investment demonstration program (SEID) as specified in section 256J.65, paid work experience, and supported work when a wage subsidy is provided;
- (3) unpaid work experience, including community service, volunteer work, the community work experience program as specified in section 256J.67, unpaid apprenticeships or internships, and supported work when a wage subsidy is not provided;
- (4) job search including job readiness assistance, job clubs, job placement, job-related counseling, and job retention services;
- (5) job readiness education, including English as a second language (ESL) or functional work literacy classes as limited by the provisions of section 256J.531, subdivision 2, general educational development (GED) course work, high school completion, and adult basic education as limited by the provisions of section 256J.531, subdivision 1;
- (6) job skills training directly related to employment, including education and training that can reasonably be expected to lead to employment, as limited by the provisions of section 256J.53;
- (7) providing child care services to a participant who is working in a community service program;
- (8) activities included in the employment plan that is developed under section 256J.521, subdivision 3; and
- (9) preemployment activities including chemical and mental health assessments, treatment, and services; learning disabilities services; child protective services; family stabilization services; or other programs designed to enhance employability.

History: 1997 c 85 art 1 s 39; 1997 c 200 art 6 s 1 1998 c 407 art 6 s 90; 2000 c 488 art 10 s 16; 1Sp2001 c 9 art 10 s 35-37,66; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 65-70; 2004 c 206 s 52; 2004 c 288 art 4 s 44

256J.50 COUNTY DUTIES.

Subdivision 1. **Employment and training services component of MFIP.** (a) Each county must develop and provide an employment and training services component which is designed to put participants on the most direct path to unsubsidized employment. Participation in these services is mandatory for all MFIP caregivers, unless the caregiver is exempt under section 256J.56.

(b) A county must provide employment and training services under sections 256J.515 to 256J.74 within 30 days after the caregiver is determined eligible for MFIP, or within ten days when the caregiver participated in the diversionary work program under section 256J.95 within the past 12 months.

Subd. 2. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 3. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 3a. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 4. **Service providing agencies.** Unless the provisions of subdivision 8 apply, a county must select at least two employment and training service providers. A county may opt to provide services on its own as one of these providers.

Subd. 5. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 6. **Explanatory materials required.** The county must:

(1) explain to applicants and recipients and provide explanatory materials regarding the relationship between the 60-month time limit on assistance funded with TANF dollars and the receipt of various benefits, including cash assistance, food stamps or food support, medical assistance, and child care assistance; and

(2) provide assistance to applicants and recipients to enable them to minimize the use of their 60 allowable months of TANF-funded assistance.

Subd. 7. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 8. **County duty to ensure employment and training choices for participants.** Each county, or group of counties working cooperatively, shall make available to participants the choice of at least two employment and training service providers as defined under section 256J.49, subdivision 4, except in counties utilizing workforce centers that use multiple employment and training services, offer multiple services options under a collaborative effort and can document that participants have choice among employment and training services designed to meet specialized needs.

Subd. 9. **Exception; financial hardship.** Notwithstanding subdivision 8, a county that explains in the service agreement required under section 256J.626, subdivision 4, that the provision of alternative employment and training service providers would result in financial hardship for the county is not required to make available more than one employment and training provider.

Subd. 10. **Required notification to victims of family violence.** (a) County agencies and their contractors must provide universal notification to all applicants and recipients of MFIP that:

(1) referrals to counseling and supportive services are available for victims of family violence;

(2) nonpermanent resident battered individuals married to United States citizens or permanent residents may be eligible to petition for permanent residency under the federal Violence Against Women Act, and that referrals to appropriate legal services are available;

(3) victims of family violence are exempt from the 60-month limit on assistance if they are complying with an employment plan under section 256J.521, subdivision 3; and

(4) victims of family violence may choose to have regular work requirements waived while the individual is complying with an employment plan under section 256J.521, subdivision 3.

(b) If an employment plan under section 256J.521, subdivision 3, is denied, the county or a job counselor must provide reasons why the plan is not approved and document how the denial of the plan does not interfere with the safety of the participant or children.

Notification must be in writing and orally at the time of application and recertification, when the individual is referred to the title IV-D child support agency, and at the beginning of any job training or work placement assistance program.

Subd. 11. **Coordination.** The county agency and the county agency's employment and training providers must consult and coordinate with other providers of employment and training services to identify existing resources, in order to prevent duplication of services, to assure that other programs' services are available to enable participants to achieve self-sufficiency, and to assure that costs for these other services for which participants are eligible are not incurred by MFIP. At a minimum, the county agency

and its providers must coordinate with Jobs Training and Partnership Act providers and with any other relevant employment, training, and education programs in the county.

Subd. 12. Access to persons trained in domestic violence. In a county where there is no staff person who is trained in domestic violence, as that term is defined in section 256J.08, subdivision 67a, the county must work with the nearest organization that is designated as providing services to victims of domestic violence to develop a process, which ensures that domestic violence victims have access to a person trained in domestic violence.

History: 1997 c 85 art 1 s 40; 1998 c 407 art 6 s 91-93; 1999 c 159 s 89; 1999 c 245 art 6 s 61; 2000 c 488 art 10 s 17,18; 1Sp2001 c 9 art 10 s 38-41,66; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 71-73,106

256J.51 EMPLOYMENT AND TRAINING SERVICE PROVIDER; ALTERNATE APPROVAL PROCESS.

Subdivision 1. Provider application. An employment and training service provider that is not included in a county's service agreement under section 256J.626, subdivision 4, because the county has demonstrated financial hardship under section 256J.50, subdivision 9, may appeal its exclusion to the commissioner of employment and economic development under this section.

Subd. 2. Appeal; alternate approval. (a) An employment and training service provider that is not included by a county agency in the service agreement under section 256J.626, subdivision 4, and that meets the criteria in paragraph (b), may appeal its exclusion to the commissioner of employment and economic development, and may request alternative approval by the commissioner of employment and economic development to provide services in the county.

(b) An employment and training services provider that is requesting alternative approval must demonstrate to the commissioner that the provider meets the standards specified in section 116L.871, subdivision 1, paragraph (b), except that the provider's past experience may be in services and programs similar to those specified in section 116L.871, subdivision 1, paragraph (b).

Subd. 3. Commissioner's review. (a) The commissioner must act on a request for alternative approval under this section within 30 days of the receipt of the request. If after reviewing the provider's request, and the county's service agreement submitted under section 256J.626, subdivision 4, the commissioner determines that the provider meets the criteria under subdivision 2, paragraph (b), and that approval of the provider would not cause financial hardship to the county, the county must submit a revised service agreement under subdivision 4 that includes the approved provider.

(b) If the commissioner determines that the approval of the provider would cause financial hardship to the county, the commissioner must notify the provider and the county of this determination. The alternate approval process under this section shall be closed to other requests for alternate approval to provide employment and training services in the county for up to 12 months from the date that the commissioner makes a determination under this paragraph.

Subd. 4. Revised service agreement required. The commissioner of employment and economic development must notify the county agency when the commissioner grants an alternative approval to an employment and training service provider under subdivision 2. Upon receipt of the notice, the county agency must submit a revised service agreement under section 256J.626, subdivision 4, that includes the approved provider. The county has 90 days from the receipt of the commissioner's notice to submit the revised service agreement.

Subd. 5. Review not required. Notwithstanding subdivision 3, once a county meets the requirements of section 256J.50, subdivision 8, the commissioner may, but is not required to, act on a request by an employment and training services provider for alternative approval in that county.

History: 1997 c 85 art 1 s 41; 1Sp2003 c 14 art 1 s 74-77; 2004 c 206 s 52

256J.515 OVERVIEW OF EMPLOYMENT AND TRAINING SERVICES.

During the first meeting with participants, job counselors must ensure that an overview of employment and training services is provided that:

- (1) stresses the necessity and opportunity of immediate employment;
- (2) outlines the job search resources offered;
- (3) outlines education or training opportunities available;
- (4) describes the range of work activities, including activities under section 256J.49, subdivision 13, clause (18), that are allowable under MEIP to meet the individual needs of participants;
- (5) explains the requirements to comply with an employment plan;
- (6) explains the consequences for failing to comply;
- (7) explains the services that are available to support job search and work and education; and
- (8) provides referral information about shelters and programs for victims of family violence and the time limit exemption for family violence victims.

Failure to attend the overview of employment and training services without good cause results in the imposition of a sanction under section 256J.46.

An applicant who requests and qualifies for a family violence waiver is exempt from attending a group overview. Information usually presented in an overview must be covered during the development of an employment plan under section 256J.521, subdivision 3.

History: 1997 c 85 art 1 s 42; 1998 c 407 art 6 s 94; 1999 c 245 art 6 s 62; 1Sp2001 c 9 art 10 s 42; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 106; 2004 c 288 art 4 s 45

256J.52 [Repealed, 1Sp2003 c 14 art 1 s 107]

256J.521 ASSESSMENT; EMPLOYMENT PLANS.

Subdivision 1. **Assessments.** (a) For purposes of MFIP employment services, assessment is a continuing process of gathering information related to employability for the purpose of identifying both participant's strengths and strategies for coping with issues that interfere with employment. The job counselor must use information from the assessment process to develop and update the employment plan under subdivision 2 or 3, as appropriate, and to determine whether the participant qualifies for a family violence waiver including an employment plan under subdivision 3.

(b) The scope of assessment must cover at least the following areas:

(1) basic information about the participant's ability to obtain and retain employment, including: a review of the participant's education level; interests, skills, and abilities; prior employment or work experience; transferable work skills; child care and transportation needs;

(2) identification of personal and family circumstances that impact the participant's ability to obtain and retain employment, including: any special needs of the children, the level of English proficiency, family violence issues, and any involvement with social services or the legal system;

(3) the results of a mental and chemical health screening tool designed by the commissioner and results of the brief screening tool for special learning needs. Screening tools for mental and chemical health and special learning needs must be approved by the commissioner and may only be administered by job counselors or county staff trained in using such screening tools. The commissioner shall work with county agencies to develop protocols for referrals and follow-up actions after screens are administered to participants, including guidance on how employment plans may be modified based upon outcomes of certain screens. Participants must be told of the purpose of the screens and how the information will be used to assist the participant in identifying and overcoming barriers to employment. Screening for mental and chemical health and special learning needs must be completed by participants who are unable to

MINNESOTA STATUTES 2004

find suitable employment after six weeks of job search under subdivision 2, paragraph (b), and participants who are determined to have barriers to employment under subdivision 2, paragraph (d). Failure to complete the screens will result in sanction under section 256J.46; and

(4) a comprehensive review of participation and progress for participants who have received MFIP assistance and have not worked in unsubsidized employment during the past 12 months. The purpose of the review is to determine the need for additional services and supports, including placement in subsidized employment or unpaid work experience under section 256J.49, subdivision 13.

(c) Information gathered during a caregiver's participation in the diversionary work program under section 256J.95 must be incorporated into the assessment process.

(d) The job counselor may require the participant to complete a professional chemical use assessment to be performed according to the rules adopted under section 254A.03, subdivision 3, including provisions in the administrative rules which recognize the cultural background of the participant, or a professional psychological assessment as a component of the assessment process, when the job counselor has a reasonable belief, based on objective evidence, that a participant's ability to obtain and retain suitable employment is impaired by a medical condition. The job counselor may assist the participant with arranging services, including child care assistance and transportation, necessary to meet needs identified by the assessment. Data gathered as part of a professional assessment must be classified and disclosed according to the provisions in section 13.46.

Subd. 2. Employment plan; contents. (a) Based on the assessment under subdivision 1, the job counselor and the participant must develop an employment plan that includes participation in activities and hours that meet the requirements of section 256J.55, subdivision 1. The purpose of the employment plan is to identify for each participant the most direct path to unsubsidized employment and any subsequent steps that support long-term economic stability. The employment plan should be developed using the highest level of activity appropriate for the participant. Activities must be chosen from clauses (1) to (6), which are listed in order of preference. Notwithstanding this order of preference for activities, priority must be given for activities related to a family violence waiver when developing the employment plan. The employment plan must also list the specific steps the participant will take to obtain employment, including steps necessary for the participant to progress from one level of activity to another, and a timetable for completion of each step. Levels of activity include:

- (1) unsubsidized employment;
- (2) job search;
- (3) subsidized employment or unpaid work experience;
- (4) unsubsidized employment and job readiness education or job skills training;
- (5) unsubsidized employment or unpaid work experience and activities related to a family violence waiver or preemployment needs; and
- (6) activities related to a family violence waiver or preemployment needs.

(b) Participants who are determined to possess sufficient skills such that the participant is likely to succeed in obtaining unsubsidized employment must job search at least 30 hours per week for up to six weeks and accept any offer of suitable employment. The remaining hours necessary to meet the requirements of section 256J.55, subdivision 1, may be met through participation in other work activities under section 256J.49, subdivision 13. The participant's employment plan must specify, at a minimum: (1) whether the job search is supervised or unsupervised; (2) support services that will be provided; and (3) how frequently the participant must report to the job counselor. Participants who are unable to find suitable employment after six weeks must meet with the job counselor to determine whether other activities in paragraph (a) should be incorporated into the employment plan. Job search activities which are continued after six weeks must be structured and supervised.

MINNESOTA STATUTES 2004

1399

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.521

(c) Beginning July 1, 2004, activities and hourly requirements in the employment plan may be adjusted as necessary to accommodate the personal and family circumstances of participants identified under section 256J.561, subdivision 2, paragraph (d). Participants who no longer meet the provisions of section 256J.561, subdivision 2, paragraph (d), must meet with the job counselor within ten days of the determination to revise the employment plan.

(d) Participants who are determined to have barriers to obtaining or retaining employment that will not be overcome during six weeks of job search under paragraph (b) must work with the job counselor to develop an employment plan that addresses those barriers by incorporating appropriate activities from paragraph (a), clauses (1) to (6). The employment plan must include enough hours to meet the participation requirements in section 256J.55, subdivision 1, unless a compelling reason to require fewer hours is noted in the participant's file.

(e) The job counselor and the participant must sign the employment plan to indicate agreement on the contents. Failure to develop or comply with activities in the plan, or voluntarily quitting suitable employment without good cause, will result in the imposition of a sanction under section 256J.46.

(f) Employment plans must be reviewed at least every three months to determine whether activities and hourly requirements should be revised.

Subd. 3. Employment plan; family violence waiver. (a) A participant who requests and qualifies for a family violence waiver shall develop or revise the employment plan as specified in this subdivision with a job counselor or county, and a person trained in domestic violence. The revised or new employment plan must be approved by the county or the job counselor. The plan may address safety, legal, or emotional issues, and other demands on the family as a result of the family violence. Information in section 256J.515, clauses (1) to (8), must be included as part of the development of the plan.

(b) The primary goal of an employment plan developed under this subdivision is to ensure the safety of the caregiver and children. To the extent it is consistent with ensuring safety, the plan shall also include activities that are designed to lead to economic stability. An activity is inconsistent with ensuring safety if, in the opinion of a person trained in domestic violence, the activity would endanger the safety of the participant or children. A plan under this subdivision may not automatically include a provision that requires a participant to obtain an order for protection or to attend counseling.

(c) If at any time there is a disagreement over whether the activities in the plan are appropriate or the participant is not complying with activities in the plan under this subdivision, the participant must receive the assistance of a person trained in domestic violence to help resolve the disagreement or noncompliance with the county or job counselor. If the person trained in domestic violence recommends that the activities are still appropriate, the county or a job counselor must approve the activities in the plan or provide written reasons why activities in the plan are not approved and document how denial of the activities does not endanger the safety of the participant or children.

Subd. 4. Self-employment. (a) Self-employment activities may be included in an employment plan contingent on the development of a business plan which establishes a timetable and earning goals that will result in the participant exiting MFIP assistance. Business plans must be developed with assistance from an individual or organization with expertise in small business as approved by the job counselor.

(b) Participants with an approved plan that includes self-employment must meet the participation requirements in section 256J.55, subdivision 1. Only hours where the participant earns at least minimum wage shall be counted toward the requirement. Additional activities and hours necessary to meet the participation requirements in section 256J.55, subdivision 1, must be included in the employment plan.

(c) Employment plans which include self-employment activities must be reviewed every three months. Participants who fail, without good cause, to make satisfactory

progress as established in the business plan must revise the employment plan to replace the self-employment with other-approved work activities.

(d) The requirements of this subdivision may be waived for participants who are enrolled in the self-employment investment demonstration program (SEID) under section 256J.65, and who make satisfactory progress as determined by the job counselor and the SEID provider.

Subd. 5. Transition from the diversionary work program. Participants who become eligible for MFIP assistance after completing the diversionary work program under section 256J.95 must comply with all requirements of subdivisions 1 and 2. Participants who become eligible for MFIP assistance after being determined unable to benefit from the diversionary work program must comply with the requirements of subdivisions 1 and 2, with the exception of subdivision 2, paragraph (b).

Subd. 6. Loss of employment. Participants who are laid off, quit with good cause, or are terminated from employment through no fault of their own must meet with the job counselor within ten working days to ascertain the reason for the job loss and to revise the employment plan as necessary to address the problem.

History: *1Sp2003 c 14 art 1 s 78; 2004 c 288 art 4 s 46,47*

256J.53 POSTSECONDARY EDUCATION; LIMITATIONS ON APPROVAL, JOB SEARCH REQUIREMENT.

Subdivision 1. Length of program. In order for a postsecondary education or training program to be an approved work activity as defined in section 256J.49, subdivision 13, clause (6), it must be a program lasting 24 months or less, and the participant must meet the requirements of subdivisions 2, 3, and 5.

Subd. 2. Approval of postsecondary education or training. (a) In order for a postsecondary education or training program to be an approved activity in an employment plan, the participant must be working in unsubsidized employment at least 20 hours per week.

(b) Participants seeking approval of a postsecondary education or training plan must provide documentation that:

- (1) the employment goal can only be met with the additional education or training;
- (2) there are suitable employment opportunities that require the specific education or training in the area in which the participant resides or is willing to reside;
- (3) the education or training will result in significantly higher wages for the participant than the participant could earn without the education or training;
- (4) the participant can meet the requirements for admission into the program; and
- (5) there is a reasonable expectation that the participant will complete the training program based on such factors as the participant's MFIP assessment, previous education, training, and work history; current motivation; and changes in previous circumstances.

(c) The hourly unsubsidized employment requirement does not apply for intensive education or training programs lasting 12 weeks or less when full-time attendance is required.

(d) Participants with an approved employment plan in place on July 1, 2003, which includes more than 12 months of postsecondary education or training shall be allowed to complete that plan provided that hourly requirements in section 256J.55, subdivision 1, and conditions specified in paragraph (b), and subdivisions 3 and 5 are met. A participant whose case is subsequently closed for three months or less for reasons other than noncompliance with program requirements and who returns to MFIP shall be allowed to complete that plan provided that hourly requirements in section 256J.55, subdivision 1, and conditions specified in paragraph (b) and subdivisions 3 and 5 are met.

Subd. 3. Satisfactory progress required. In order for a postsecondary education or training program to be an approved activity in a participant's employment plan, the participant must maintain satisfactory progress in the program. "Satisfactory progress"

in an education or training program means (1) the participant remains in good standing while the participant is enrolled in the program, as defined by the education or training institution, or (2) the participant makes satisfactory progress as the term is defined in the participant's employment plan.

Subd. 4. [Repealed, 1Sp2001 c 9 art 10 s 67]

Subd. 5. **Requirements after postsecondary education or training.** Upon completion of an approved education or training program, a participant who does not meet the participation requirements in section 256J.55, subdivision 1, through unsubsidized employment must participate in job search. If, after six weeks of job search, the participant does not find a full-time job consistent with the employment goal, the participant must accept any offer of full-time suitable employment, or meet with the job counselor to revise the employment plan to include additional work activities necessary to meet hourly requirements.

History: 1997 c 85 art 1 s 44; 1Sp2001 c 9 art 10 s 45,66; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 79-81; 2004 c 288 art 4 s 48

256J.531 BASIC EDUCATION; ENGLISH AS A SECOND LANGUAGE.

Subdivision 1. **Approval of adult basic education.** With the exception of classes related to obtaining a general educational development credential (GED), a participant must have reading or mathematics proficiency below a ninth grade level in order for adult basic education classes to be an approved work activity. The employment plan must also specify that the participant fulfill no more than one-half of the participation requirements in section 256J.55, subdivision 1, through attending adult basic education or general educational development classes.

Subd. 2. **Approval of English as a second language.** In order for English as a second language (ESL) classes to be an approved work activity in an employment plan, a participant must be below a spoken language proficiency level of SPL6 or its equivalent, as measured by a nationally recognized test. In approving ESL as a work activity, the job counselor must give preference to enrollment in a functional work literacy program, if one is available, over a regular ESL program. A participant may not be approved for more than a combined total of 24 months of ESL classes while participating in the diversionary work program and the employment and training services component of MFIP. The employment plan must also specify that the participant fulfill no more than one-half of the participation requirements in section 256J.55, subdivision 1, through attending ESL classes. For participants enrolled in functional work literacy classes, no more than two-thirds of the participation requirements in section 256J.55, subdivision 1, may be met through attending functional work literacy classes.

History: 1Sp2003 c 14 art 1 s 82

256J.54 MINOR PARENTS; EMPLOYMENT PLAN.

Subdivision 1. **Assessment of educational progress and needs.** (a) The county agency must document the educational level of each MFIP caregiver who is under the age of 20 and determine if the caregiver has obtained a high school diploma or its equivalent. If the caregiver has not obtained a high school diploma or its equivalent, the county agency must complete an individual assessment for the caregiver unless the caregiver is exempt from the requirement to attend school under subdivision 5 or has chosen to have an employment plan under section 256J.521, subdivision 2, as allowed in paragraph (b). The assessment must be performed as soon as possible but within 30 days of determining MFIP eligibility for the caregiver. The assessment must provide an initial examination of the caregiver's educational progress and needs, literacy level, child care and supportive service needs, family circumstances, skills, and work experience. In the case of a caregiver under the age of 18, the assessment must also consider the results of either the caregiver's or the caregiver's minor child's child and teen checkup under Minnesota Rules, parts 9505.0275 and 9505.1693 to 9505.1748, if available, and the effect of a child's development and educational needs on the

MINNESOTA STATUTES 2004

caregiver's ability to participate in the program. The county agency must advise the caregiver that the caregiver's first goal must be to complete an appropriate education option if one is identified for the caregiver through the assessment and, in consultation with educational agencies, must review the various school completion options with the caregiver and assist in selecting the most appropriate option.

(b) The county agency must give a caregiver, who is age 18 or 19 and has not obtained a high school diploma or its equivalent, the option to choose an employment plan with an education option under subdivision 3 or an employment plan under section 256J.521, subdivision 2.

Subd. 2. Responsibility for assessment and employment plan. For caregivers who are under age 18 without a high school diploma or its equivalent, the assessment under subdivision 1 and the employment plan under subdivision 3 must be completed by the social services agency under section 257.33. For caregivers who are age 18 or 19 without a high school diploma or its equivalent who choose to have an employment plan with an education option under subdivision 3, the assessment under subdivision 1 and the employment plan under subdivision 3 must be completed by the job counselor or, at county option, by the social services agency under section 257.33. Upon reaching age 18 or 19 a caregiver who received social services under section 257.33 and is without a high school diploma or its equivalent has the option to choose whether to continue receiving services under the caregiver's plan from the social services agency or to utilize an MFIP employment and training service provider. The social services agency or the job counselor shall consult with representatives of educational agencies that are required to assist in developing educational plans under section 124D.331.

Subd. 3. Education option developed. If the job counselor or county social services agency identifies an appropriate education option for a minor caregiver without a high school diploma or its equivalent, or a caregiver age 18 or 19 without a high school diploma or its equivalent who chooses an employment plan with an education option, the job counselor or agency must develop an employment plan which reflects the identified option. The plan must specify that participation in an educational activity is required, what school or educational program is most appropriate, the services that will be provided, the activities the caregiver will take part in, including child care and supportive services, the consequences to the caregiver for failing to participate or comply with the specified requirements, and the right to appeal any adverse action. The employment plan must, to the extent possible, reflect the preferences of the caregiver.

Subd. 4. No appropriate educational option. If the job counselor determines that there is no appropriate educational option for a caregiver who is age 18 or 19 without a high school diploma or its equivalent, the job counselor must develop an employment plan, as defined in section 256J.49, subdivision 5, for the caregiver. If the county social services agency determines that school attendance is not appropriate for a caregiver under age 18 without a high school diploma or its equivalent, the county agency shall refer the caregiver to social services for services as provided in section 257.33.

Subd. 5. School attendance required. (a) Notwithstanding the provisions of section 256J.56, minor parents, or 18- or 19-year-old parents without a high school diploma or its equivalent who chooses an employment plan with an education option must attend school unless:

(1) transportation services needed to enable the caregiver to attend school are not available;

(2) appropriate child care services needed to enable the caregiver to attend school are not available;

(3) the caregiver is ill or incapacitated seriously enough to prevent attendance at school; or

(4) the caregiver is needed in the home because of the illness or incapacity of another member of the household. This includes a caregiver of a child who is younger than six weeks of age.

(b) The caregiver must be enrolled in a secondary school and meeting the school's attendance requirements. The county, social service agency, or job counselor must

verify at least once per quarter that the caregiver is meeting the school's attendance requirements. An enrolled caregiver is considered to be meeting the attendance requirements when the school is not in regular session, including during holiday and summer breaks.

History: 1997 c 85 art 1 s 45; 1998 c 397 art 11 s 3; 1998 c 407 art 6 s 98-101; 1999 c 245 art 6 s 68; 1Sp2001 c 9 art 10 s 66; 1Sp2003 c 14 art 1 s 83-86

256J.545 FAMILY VIOLENCE WAIVER CRITERIA.

(a) In order to qualify for a family violence waiver, an individual must provide documentation of past or current family violence which may prevent the individual from participating in certain employment activities. A claim of family violence must be documented by the applicant or participant providing a sworn statement which is supported by collateral documentation.

(b) Collateral documentation may consist of:

- (1) police, government agency, or court records;
- (2) a statement from a battered women's shelter staff with knowledge of the circumstances or credible evidence that supports the sworn statement;
- (3) a statement from a sexual assault or domestic violence advocate with knowledge of the circumstances or credible evidence that supports the sworn statement;
- (4) a statement from professionals from whom the applicant or recipient has sought assistance for the abuse; or
- (5) a sworn statement from any other individual with knowledge of circumstances or credible evidence that supports the sworn statement.

History: 1Sp2003 c 14 art 1 s 87

256J.55 PARTICIPANT REQUIREMENTS, RIGHTS, AND EXPECTATIONS.

Subdivision 1. **Participation requirements.** (a) All caregivers must participate in employment services under sections 256J.515 to 256J.57 concurrent with receipt of MFIP assistance.

(b) Until July 1, 2004, participants who meet the requirements of section 256J.56 are exempt from participation requirements.

(c) Participants under paragraph (a) must develop and comply with an employment plan under section 256J.521 or section 256J.54 in the case of a participant under the age of 20 who has not obtained a high school diploma or its equivalent.

(d) With the exception of participants under the age of 20 who must meet the education requirements of section 256J.54, all participants must meet the hourly participation requirements of TANF or the hourly requirements listed in clauses (1) to (3), whichever is higher.

(1) In single-parent families with no children under six years of age, the job counselor and the caregiver must develop an employment plan that includes 30 to 35 hours per week of work activities.

(2) In single-parent families with a child under six years of age, the job counselor and the caregiver must develop an employment plan that includes 20 to 35 hours per week of work activities.

(3) In two-parent families, the job counselor and the caregivers must develop employment plans which result in a combined total of at least 55 hours per week of work activities.

(e) Failure to participate in employment services, including the requirement to develop and comply with an employment plan, including hourly requirements, without good cause under section 256J.57, shall result in the imposition of a sanction under section 256J.46.

Subd. 2. **Duty to report.** The participant must inform the job counselor within ten working days regarding any changes related to the participant's employment status.

Subd. 3. **Move to a different county.** MFIP applicants or recipients who move to a different county in Minnesota and are required to participate in employment and training services are subject to the requirements of the destination county. An employment plan that was developed in the county of origin may be continued in the destination county if both the destination county and the participant agree to do so.

Subd. 4. **Choice of provider.** MFIP caregivers must be able to choose from at least two employment and training service providers, unless the county has demonstrated to the commissioner that the provision of multiple employment and training service providers would result in financial hardship for the county, or the county is utilizing a workforce center as specified in section 256J.50, subdivision 8. Both parents in a two-parent family must choose the same employment and training service provider unless a special need, such as bilingual services, is identified but not available through one service provider.

Subd. 5. [Repealed, 1Sp2003 c 14 art 1 s 107]

History: 1997 c 85 art 1 s 46; 1998 c 407 art 6 s 102; 1999 c 245 art 6 s 69; 1Sp2001 c 9 art 10 s 66; 1Sp2003 c 14 art 1 s 88,89

256J.56 EMPLOYMENT AND TRAINING SERVICES COMPONENT; EXEMPTIONS.

(a) Paragraphs (b) and (c) apply only to an MFIP participant who was exempt from participating in employment services as of June 30, 2004, has not been required to develop an employment plan under section 256J.561, and continues to qualify for an exemption under this section. All exemptions under this section expire at the time of the participant's recertification. No new exemptions shall be granted under this section after June 30, 2004.

(b) A participant is exempt from the requirements of sections 256J.515 to 256J.57 if the participant continues to belong to any of the following groups:

- (1) participants who are age 60 or older;
- (2) participants who are suffering from a permanent or temporary illness, injury, or incapacity which has been certified by a qualified professional when the illness, injury, or incapacity is expected to continue for more than 30 days and prevents the person from obtaining or retaining employment. Persons in this category with a temporary illness, injury, or incapacity must be reevaluated at least quarterly;
- (3) participants whose presence in the home is required as a caregiver because of the illness, injury, or incapacity of another member in the assistance unit, a relative in the household, or a foster child in the household when the illness or incapacity and the need for a person to provide assistance in the home has been certified by a qualified professional and is expected to continue for more than 30 days;
- (4) women who are pregnant, if the pregnancy has resulted in an incapacity that prevents the woman from obtaining or retaining employment, and the incapacity has been certified by a qualified professional;
- (5) caregivers of a child under the age of one year who personally provide full-time care for the child. This exemption may be used for only 12 months in a lifetime. In two-parent households, only one parent or other relative may qualify for this exemption;
- (6) participants experiencing a personal or family crisis that makes them incapable of participating in the program, as determined by the county agency. If the participant does not agree with the county agency's determination, the participant may seek certification from a qualified professional, as defined in section 256J.08, that the participant is incapable of participating in the program.

Persons in this exemption category must be reevaluated every 60 days. A personal or family crisis related to family violence, as determined by the county or a job counselor with the assistance of a person trained in domestic violence, should not result in an exemption, but should be addressed through the development or revision of an employment plan under section 256J.521, subdivision 3; or

(7) caregivers with a child or an adult in the household who meets the disability or medical criteria for home care services under section 256B.0627, subdivision 1, paragraph (f), or a home and community-based waiver services program under chapter 256B, or meets the criteria for severe emotional disturbance under section 245.4871; subdivision 6, or for serious and persistent mental illness under section 245.462, subdivision 20, paragraph (c). Caregivers in this exemption category are presumed to be prevented from obtaining or retaining employment.

A caregiver who is exempt under clause (5) must enroll in and attend an early childhood and family education class, a parenting class, or some similar activity, if available, during the period of time the caregiver is exempt under this section. Notwithstanding section 256J.46, failure to attend the required activity shall not result in the imposition of a sanction.

(c) The county agency must provide employment and training services to MFIP participants who are exempt under this section; but who volunteer to participate. Exempt volunteers may request approval for any work activity under section 256J.49, subdivision 13. The hourly participation requirements for nonexempt participants under section 256J.55, subdivision 1, do not apply to exempt participants who volunteer to participate.

(d) This section expires on June 30, 2005.

History: 1997 c 85 art 1 s 47; 1998 c 407 art 6 s 103; 1999 c 245 art 6 s 70; 2000 c 488 art 10 s 21; 1Sp2001 c 9 art 10 s 46; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 90; 2004 c 288 art 4 s 49

256J.561 UNIVERSAL PARTICIPATION REQUIRED.

Subdivision 1. Implementation of universal participation requirements. (a) All caregivers whose applications were received July 1, 2004, or after, are immediately subject to the requirements in subdivision 2.

(b) For all MFIP participants who were exempt from participating in employment services under section 256J.56 as of June 30, 2004, between July 1, 2004, and June 30, 2005, the county, as part of the participant's recertification under section 256J.32, subdivision 6, shall determine whether a new employment plan is required to meet the requirements in subdivision 2. Counties shall notify each participant who is in need of an employment plan that the participant must meet with a job counselor within ten days to develop an employment plan. Until a participant's employment plan is developed, the participant shall be considered in compliance with the participation requirements in this section if the participant continues to meet the criteria for an exemption under section 256J.56 as in effect on June 30, 2004, and is cooperating in the development of the new plan.

Subd. 2. Participation requirements. (a) All MFIP caregivers, except caregivers who meet the criteria in subdivision 3, must participate in employment services. Except as specified in paragraphs (b) to (d), the employment plan must meet the requirements of section 256J.521, subdivision 2, contain allowable work activities, as defined in section 256J.49, subdivision 13, and, include at a minimum, the number of participation hours required under section 256J.55, subdivision 1.

(b) Minor caregivers and caregivers who are less than age 20 who have not completed high school or obtained a GED are required to comply with section 256J.54.

(c) A participant who has a family violence waiver shall develop and comply with an employment plan under section 256J.521, subdivision 3.

(d) As specified in section 256J.521, subdivision 2, paragraph (c), a participant who meets any one of the following criteria may work with the job counselor to develop an employment plan that contains less than the number of participation hours under section 256J.55, subdivision 1. Employment plans for participants covered under this paragraph must be tailored to recognize the special circumstances of caregivers and families including limitations due to illness or disability and caregiving needs:

(1) a participant who is age 60 or older;

MINNESOTA STATUTES 2004

(2) a participant who has been diagnosed by a qualified professional as suffering from an illness or incapacity that is expected to last for 30 days or more, including a pregnant participant who is determined to be unable to obtain or retain employment due to the pregnancy; or

(3) a participant who is determined by a qualified professional as being needed in the home to care for an ill or incapacitated family member, including caregivers with a child or an adult in the household who meets the disability or medical criteria for home care services under section 256B.0627, subdivision 1, paragraph (f), or a home and community-based waiver services program under chapter 256B, or meets the criteria for severe emotional disturbance under section 245.4871, subdivision 6, or for serious and persistent mental illness under section 245.462, subdivision 20, paragraph (c).

(e) For participants covered under paragraphs (c) and (d), the county shall review the participant's employment services status every three months to determine whether conditions have changed. When it is determined that the participant's status is no longer covered under paragraph (c) or (d), the county shall notify the participant that a new or revised employment plan is needed. The participant and job counselor shall meet within ten days of the determination to revise the employment plan.

Subd. 3. **Child under 12 weeks of age.** (a) A participant who has a natural born child who is less than 12 weeks of age who meets the criteria in clauses (1) and (2) is not required to participate in employment services until the child reaches 12 weeks of age. To be eligible for this provision, the following conditions must be met:

(1) the child must have been born within ten months of the caregiver's application for the diversionary work program or MFIP; and

(2) the assistance unit must not have already used this provision or the previously allowed child under age one exemption. However, an assistance unit that has an approved child under age one exemption at the time this provision becomes effective may continue to use that exemption until the child reaches one year of age.

(b) The provision in paragraph (a) ends the first full month after the child reaches 12 weeks of age. This provision is available only once in a caregiver's lifetime. In a two-parent household, only one parent shall be allowed to use this provision. The participant and job counselor must meet within ten days after the child reaches 12 weeks of age to revise the participant's employment plan.

History: 1Sp2003 c 14 art 1 s 91

256J.57 GOOD CAUSE; FAILURE TO COMPLY; NOTICE; CONCILIATION CONFERENCE.

Subdivision 1. **Good cause for failure to comply.** The county agency shall not impose the sanction under section 256J.46 if it determines that the participant has good cause for failing to comply with the requirements of sections 256J.515 to 256J.57. Good cause exists when:

(1) appropriate child care is not available;

(2) the job does not meet the definition of suitable employment;

(3) the participant is ill or injured;

(4) a member of the assistance unit, a relative in the household, or a foster child in the household is ill and needs care by the participant that prevents the participant from complying with the employment plan;

(5) the participant is unable to secure necessary transportation;

(6) the participant is in an emergency situation that prevents compliance with the employment plan;

(7) the schedule of compliance with the employment plan conflicts with judicial proceedings;

(8) a mandatory MFIP meeting is scheduled during a time that conflicts with a judicial proceeding or a meeting related to a juvenile court matter, or a participant's work schedule;

- (9) the participant is already participating in acceptable work activities;
- (10) the employment plan requires an educational program for a caregiver under age 20, but the educational program is not available;
- (11) activities identified in the employment plan are not available;
- (12) the participant is willing to accept suitable employment, but suitable employment is not available; or
- (13) the participant documents other verifiable impediments to compliance with the employment plan beyond the participant's control.

The job counselor shall work with the participant to reschedule mandatory meetings for individuals who fall under clauses (1), (3), (4), (5), (6), (7), and (8).

Subd. 2. Notice of intent to sanction. (a) When a participant fails without good cause to comply with the requirements of sections 256J.515 to 256J.57, the job counselor or the county agency must provide a notice of intent to sanction to the participant specifying the program requirements that were not complied with, informing the participant that the county agency will impose the sanctions specified in section 256J.46, and informing the participant of the opportunity to request a conciliation conference as specified in paragraph (b). The notice must also state that the participant's continuing noncompliance with the specified requirements will result in additional sanctions under section 256J.46, without the need for additional notices or conciliation conferences under this subdivision. The notice, written in English, must include the Department of Human Services language block, and must be sent to every applicable participant. If the participant does not request a conciliation conference within ten calendar days of the mailing of the notice of intent to sanction, the job counselor must notify the county agency that the assistance payment should be reduced. The county must then send a notice of adverse action to the participant informing the participant of the sanction that will be imposed, the reasons for the sanction, the effective date of the sanction, and the participant's right to have a fair hearing under section 256J.40.

(b) The participant may request a conciliation conference by sending a written request, by making a telephone request, or by making an in-person request. The request must be received within ten calendar days of the date the county agency mailed the ten-day notice of intent to sanction. If a timely request for a conciliation is received, the county agency's service provider must conduct the conference within five days of the request. The job counselor's supervisor, or a designee of the supervisor, must review the outcome of the conciliation conference. If the conciliation conference resolves the noncompliance, the job counselor must promptly inform the county agency and request withdrawal of the sanction notice.

(c) Upon receiving a sanction notice, the participant may request a fair hearing under section 256J.40, without exercising the option of a conciliation conference. In such cases, the county agency shall not require the participant to engage in a conciliation conference prior to the fair hearing.

(d) If the participant requests a fair hearing or a conciliation conference, sanctions will not be imposed until there is a determination of noncompliance. Sanctions must be imposed as provided in section 256J.46.

History: 1997 c 85 art 1 s 48; 1998 c 407 art 6 s 104; 1999 c 245 art 6 s 71; 1Sp2001 c 9 art 10 s 47; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 92; 2004 c 288 art 4 s 50

256J.61 REPORTING REQUIREMENTS.

The commissioner of human services, in cooperation with the commissioner of employment and economic development, shall develop reporting requirements for county agencies and employment and training service providers according to section 256.01, subdivision 2, paragraph (17). Reporting requirements must, to the extent possible, use existing client tracking systems and must be within the limits of funds available. The requirements must include summary information necessary for state agencies and the legislature to evaluate the effectiveness of the services.

History: 1997 c 85 art 1 s 49; 2004 c 206 s 52

256J.62 UNIVERSAL PARTICIPATION IN EMPLOYMENT SERVICES.

Subdivision 1. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 2. [Repealed, 1999 c 245 art 6 s 89]

Subd. 2a. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 3. [Repealed, 1999 c 245 art 6 s 89]

Subd. 4. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 5. [Repealed, 1999 c 159 s 154; 1999 c 245 art 6 s 89]

Subd. 6. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 7. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 8. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 9. **Continuation of certain services.** Only if services were approved as part of an employment plan prior to June 30, 2003, at the request of the participant, the county may continue to provide case management, counseling, or other support services to a participant:

(1) who has achieved the employment goal; or

(2) who under section 256J.42 is no longer eligible to receive MFIP but whose income is below 115 percent of the federal poverty guidelines for a family of the same size.

These services may be provided for up to 12 months following termination of the participant's eligibility for MFIP.

History: 1997 c 85 art 1 s 50; 1999 c 159 s 90-92; 1999 c 245 art 6 s 72-77; 2000 c 260 s 97; 1Sp2001 c 9 art 10 s 48,49; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 93

256J.625 [Repealed, 1Sp2003 c 14 art 1 s 107]

256J.626 MFIP CONSOLIDATED FUND.

Subdivision 1. **Consolidated fund.** The consolidated fund is established to support counties and tribes in meeting their duties under this chapter. Counties and tribes must use funds from the consolidated fund to develop programs and services that are designed to improve participant outcomes as measured in section 256J.751, subdivision 2. Counties may use the funds for any allowable expenditures under subdivision 2. Tribes may use the funds for any allowable expenditures under subdivision 2, except those in clauses (1) and (6).

Subd. 2. **Allowable expenditures.** (a) The commissioner must restrict expenditures under the consolidated fund to benefits and services allowed under title IV-A of the federal Social Security Act. Allowable expenditures under the consolidated fund may include, but are not limited to:

(1) short-term, nonrecurring shelter and utility needs that are excluded from the definition of assistance under Code of Federal Regulations, title 45, section 260.31, for families who meet the residency requirement in section 256J.12, subdivisions 1 and 1a. Payments under this subdivision are not considered TANF cash assistance and are not counted towards the 60-month time limit;

(2) transportation needed to obtain or retain employment or to participate in other approved work activities;

(3) direct and administrative costs of staff to deliver employment services for MFIP or the diversionary work program, to administer financial assistance, and to provide specialized services intended to assist hard-to-employ participants to transition to work;

(4) costs of education and training including functional work literacy and English as a second language;

(5) cost of work supports including tools, clothing, boots, and other work-related expenses;

(6) county administrative expenses as defined in Code of Federal Regulations, title 45, section 260(b);

(7) services to parenting and pregnant teens;

(8) supported work;

(9) wage subsidies;

(10) child care needed for MFIP or diversionary work program participants to participate in social services;

(11) child care to ensure that families leaving MFIP or diversionary work program will continue to receive child care assistance from the time the family no longer qualifies for transition year child care until an opening occurs under the basic sliding fee child care program; and

(12) services to help noncustodial parents who live in Minnesota and have minor children receiving MFIP or DWP assistance, but do not live in the same household as the child, obtain or retain employment.

(b) Administrative costs that are not matched with county funds as provided in subdivision 8 may not exceed 7.5 percent of a county's or 15 percent of a tribe's allocation under this section. The commissioner shall define administrative costs for purposes of this subdivision.

Subd. 3. Eligibility for services. Families with a minor child, a pregnant woman, or a noncustodial parent of a minor child receiving assistance, with incomes below 200 percent of the federal poverty guideline for a family of the applicable size, are eligible for services funded under the consolidated fund. Counties and tribes must give priority to families currently receiving MFIP or diversionary work program, and families at risk of receiving MFIP or diversionary work program.

Subd. 4. County and tribal biennial service agreements. (a) Effective January 1, 2004, and each two-year period thereafter, each county and tribe must have in place an approved biennial service agreement related to the services and programs in this chapter. In counties with a city of the first class with a population over 300,000, the county must consider a service agreement that includes a jointly developed plan for the delivery of employment services with the city. Counties may collaborate to develop multicounty, multitribal, or regional service agreements.

(b) The service agreements will be completed in a form prescribed by the commissioner. The agreement must include:

(1) a statement of the needs of the service population and strengths and resources in the community;

(2) numerical goals for participant outcomes measures to be accomplished during the biennial period. The commissioner may identify outcomes from section 256J.751, subdivision 2, as core outcomes for all counties and tribes;

(3) strategies the county or tribe will pursue to achieve the outcome targets. Strategies must include specification of how funds under this section will be used and may include community partnerships that will be established or strengthened; and

(4) other items prescribed by the commissioner in consultation with counties and tribes.

(c) The commissioner shall provide each county and tribe with information needed to complete an agreement, including: (1) information on MFIP cases in the county or tribe; (2) comparisons with the rest of the state; (3) baseline performance on outcome measures; and (4) promising program practices.

(d) The service agreement must be submitted to the commissioner by October 15, 2003, and October 15 of each second year thereafter. The county or tribe must allow a period of not less than 30 days prior to the submission of the agreement to solicit comments from the public on the contents of the agreement.

(e) The commissioner must, within 60 days of receiving each county or tribal service agreement, inform the county or tribe if the service agreement is approved. If

MINNESOTA STATUTES 2004

the service agreement is not approved, the commissioner must inform the county or tribe of any revisions needed prior to approval.

(f) The service agreement in this subdivision supersedes the plan requirements of section 116L.88.

Subd. 5. **Innovation projects.** Beginning January 1, 2005, no more than \$3,000,000 of the funds annually appropriated to the commissioner for use in the consolidated fund shall be available to the commissioner for projects testing innovative approaches to improving outcomes for MFIP participants, and persons at risk of receiving MFIP as detailed in subdivision 3. Projects shall be targeted to geographic areas with poor outcomes as specified in section 256J.751, subdivision 5, or to subgroups within the MFIP case load who are experiencing poor outcomes.

Subd. 6. **Base allocation to counties and tribes.** (a) For purposes of this section, the following terms have the meanings given them:

(1) "2002 historic spending base" means the commissioner's determination of the sum of the reimbursement related to fiscal year 2002 of county or tribal agency expenditures for the base programs listed in clause (4), items (i) through (iv), and earnings related to calendar year 2002 in the base program listed in clause (4), item (v), and the amount of spending in fiscal year 2002 in the base program listed in clause (4), item (vi), issued to or on behalf of persons residing in the county or tribal service delivery area.

(2) "Initial allocation" means the amount potentially available to each county or tribe based on the formula in paragraphs (b) through (d).

(3) "Final allocation" means the amount available to each county or tribe based on the formula in paragraphs (b) through (d), after adjustment by subdivision 7.

(4) "Base programs" means the:

(i) MFIP employment and training services under Minnesota Statutes 2002, section 256J.62, subdivision 1, in effect June 30, 2002;

(ii) bilingual employment and training services to refugees under Minnesota Statutes 2002, section 256J.62, subdivision 6, in effect June 30, 2002;

(iii) work literacy language programs under Minnesota Statutes 2002, section 256J.62, subdivision 7, in effect June 30, 2002;

(iv) supported work program authorized in Laws 2001, First Special Session chapter 9, article 17, section 2, in effect June 30, 2002;

(v) administrative aid program under section 256J.76 in effect December 31, 2002; and

(vi) emergency assistance program under Minnesota Statutes 2002, section 256J.48, in effect June 30, 2002.

(b)(1) Beginning July 1, 2003, the commissioner shall determine the initial allocation of funds available under this section according to clause (2).

(2) All of the funds available for the period beginning July 1, 2003, and ending December 31, 2004, shall be allocated to each county or tribe in proportion to the county's or tribe's share of the statewide 2002 historic spending base.

(c) For calendar year 2005, the commissioner shall determine the initial allocation of funds to be made available under this section in proportion to the county or tribe's initial allocation for the period of July 1, 2003; to December 31, 2004.

(d) The formula under this subdivision sunsets December 31, 2005.

(e) With the commencement of a new or expanded tribal TANF program or an agreement under section 256.01, subdivision 2, paragraph (g), in which some or all of the responsibilities of particular counties under this section are transferred to a tribe, the commissioner shall:

(1) in the case where all responsibilities under this section are transferred to a tribal program, determine the percentage of the county's current caseload that is transferring to a tribal program and adjust the affected county's allocation accordingly; and

MINNESOTA STATUTES 2004

1411

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.626

(2) in the case where a portion of the responsibilities under this section are transferred to a tribal program, the commissioner shall consult with the affected county or counties to determine an appropriate adjustment to the allocation.

(f) Effective January 1, 2005, counties and tribes will have their final allocations adjusted based on the performance provisions of subdivision 7.

Subd. 7. Performance base funds. (a) Beginning calendar year 2005, each county and tribe will be allocated 95 percent of their initial calendar year allocation. Counties and tribes will be allocated additional funds based on performance as follows:

(1) for calendar year 2005, a county or tribe that achieves a 30 percent rate or higher on the MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(2) for calendar year 2006, a county or tribe that achieves a 40 percent rate or a five percentage point improvement over the previous year's MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(3) for calendar year 2007, a county or tribe that achieves a 50 percent rate or a five percentage point improvement over the previous year's MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(4) for calendar year 2008 and yearly thereafter, a county or tribe that achieves a 50 percent MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(5) for calendar years 2005 and thereafter, a county or tribe that performs above the top of its range of expected performance on the three-year self-support index under section 256J.751, subdivision 2, clause (7), in both measurements in the preceding year will receive an additional allocation equal to five percent of its initial allocation; or

(6) for calendar years 2005 and thereafter, a county or tribe that performs within its range of expected performance on the three-year self-support index under section 256J.751, subdivision 2, clause (7), in both measurements in the preceding year, or above the top of its range of expected performance in one measurement and within its expected range of performance in the other measurement, will receive an additional allocation equal to 2.5 percent of its initial allocation.

(b) Funds remaining unallocated after the performance-based allocations in paragraph (a) are available to the commissioner for innovation projects under subdivision 5.

(c)(1) If available funds are insufficient to meet county and tribal allocations under paragraph (a), the commissioner may make available for allocation funds that are unobligated and available from the innovation projects through the end of the current biennium.

(2) If after the application of clause (1) funds remain insufficient to meet county and tribal allocations under paragraph (a), the commissioner must proportionally reduce the allocation of each county and tribe with respect to their maximum allocation available under paragraph (a).

Subd. 8. Reporting requirement and reimbursement. (a) The commissioner shall specify requirements for reporting according to section 256.01, subdivision 2, clause (17). Each county or tribe shall be reimbursed for eligible expenditures up to the limit of its allocation and subject to availability of funds.

(b) Reimbursements for county administrative-related expenditures determined through the income maintenance random moment time study shall be reimbursed at a rate of 50 percent of eligible expenditures.

MINNESOTA STATUTES 2004

(c) The commissioner of human services shall review county and tribal agency expenditures of the MFIP consolidated fund as appropriate and may reallocate unencumbered or unexpended money appropriated under this section to those county and tribal agencies that can demonstrate a need for additional money.

Subd. 9. **Report.** The commissioner shall, in consultation with counties and tribes:

(1) determine how performance-based allocations under subdivision 7, paragraph (a), clauses (2) and (3), will be allocated to groupings of counties and tribes when groupings are used to measure expected performance ranges for the self-support index under section 256J.751, subdivision 2, clause (7); and

(2) determine how performance-based allocations under subdivision 7, paragraph (a), clauses (2) and (3), will be allocated to tribes.

The commissioner shall report to the legislature on the formulas developed in clauses (1) and (2) by January 1, 2004.

History: *1Sp2003 c 14 art 1 s 94,106; 2004 c 206 s 52; 2004 c 288 art 4 s 51-53*

256J.645 INDIAN TRIBE MFIP EMPLOYMENT SERVICES.

Subdivision 1. **Authorization to enter into agreements.** Effective July 1, 1997, the commissioner may enter into agreements with federally recognized Indian tribes with a reservation in the state to provide MFIP employment services to members of the Indian tribe and to other caregivers who are a part of the tribal member's MFIP assistance unit. For purposes of this section, "Indian tribe" means a tribe, band, nation, or other federally recognized group or community of Indians. The commissioner may also enter into an agreement with a consortium of Indian tribes providing the governing body of each Indian tribe in the consortium complies with the provisions of this section.

Subd. 2. **Tribal requirements.** The Indian tribe must:

(1) agree to fulfill the responsibilities provided under the employment services component of MFIP regarding operation of MFIP employment services, as designated by the commissioner;

(2) operate its employment services program within a geographic service area not to exceed the counties within which a border of the reservation falls;

(3) operate its program in conformity with section 13.46 and any applicable federal regulations in the use of data about MFIP recipients;

(4) coordinate operation of its program with the county agency, Workforce Investment Act programs, and other support services or employment-related programs in the counties in which the tribal unit's program operates;

(5) provide financial and program participant activity record keeping and reporting in the manner and using the forms and procedures specified by the commissioner and permit inspection of its program and records by representatives of the state; and

(6) have the Indian tribe's employment service provider certified by the commissioner of employment and economic development, or approved by the county.

Subd. 3. **Funding.** If the commissioner and an Indian tribe are parties to an agreement under this subdivision, the agreement shall annually provide to the Indian tribe the funding allocated in section 256J.626.

Subd. 4. **County agency requirement.** Indian tribal members receiving MFIP benefits and residing in the service area of an Indian tribe operating employment services under an agreement with the commissioner must be referred by county agencies in the service area to the Indian tribe for employment services.

History: *1997 c 85 art 1 s 51; 1998 c 407 art 6 s 105; 1Sp2001 c 9 art 10 s 53; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 1 s 95; 2004 c 206 s 52*

256J.65 THE SELF-EMPLOYMENT INVESTMENT DEMONSTRATION PROGRAM (SEID).

(a) A caregiver who enrolls and participates in the SEID program as specified in section 268.95, may, at county option, be exempted from other employment and training participation requirements for a period of up to 24 months, except for the school attendance requirements as specified in section 256J.54.

(b) The following income and resource considerations apply to SEID participants:

(1) an unencumbered cash reserve fund, composed of proceeds from a SEID business, is not counted against the grant if those funds are reinvested in the business and the value of the business does not exceed \$3,000. The value of the business is determined by deducting outstanding encumbrances from retained business profit; and

(2) the purchase of capital equipment and durable goods of an amount up to \$3,000 during a 24-month project period is allowed as a business expense.

(c) SEID participants with a county-approved employment plan are also eligible for employment and training services, including child care and transportation.

History: 1997 c 85 art 1 s 52

256J.655 [Repealed, 1Sp2003 c.14 art.1 s 107]

256J.66 ON-THE-JOB TRAINING.

Subdivision 1. Establishing the on-the-job training program. (a) County agencies may develop on-the-job training programs for MFIP caregivers who are participating in employment and training services. A county agency that chooses to provide on-the-job training may make payments to employers for on-the-job training costs that, during the period of the training, must not exceed 50 percent of the wages paid by the employer to the participant. The payments are deemed to be in compensation for the extraordinary costs associated with training participants under this section and in compensation for the costs associated with the lower productivity of the participants during training.

(b) Provision of an on-the-job training program under the Job Training Partnership Act, in and of itself, does not qualify as an on-the-job training program under this section.

(c) Participants in on-the-job training shall be compensated by the employer at the same rates, including periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the federal or applicable state minimum wage, whichever is higher.

Subd. 2. Training and placement. (a) County agencies shall limit the length of training based on the complexity of the job and the caregiver's previous experience and training. Placement in an on-the-job training position with an employer is for the purpose of training and employment with the same employer who has agreed to retain the person upon satisfactory completion of training.

(b) Placement of any participant in an on-the-job training position must be compatible with the participant's assessment and employment plan under section 256J.521.

History: 1997 c 85 art 1 s 53; 1Sp2001 c 9 art 10 s 66; 1Sp2003 c 14 art 1 s 96

256J.67 COMMUNITY WORK EXPERIENCE.

Subdivision 1. Establishing the community work experience program. To the extent of available resources, each county agency may establish and operate a work experience component for MFIP caregivers who are participating in employment and training services. This option for county agencies supersedes the requirement in section 402(a)(1)(B)(iv) of the Social Security Act that caregivers who have received assistance for two months and who are not exempt from work requirements must participate in a work experience program. The purpose of the work experience component is to enhance the caregiver's employability and self-sufficiency and to provide meaningful, productive work activities. The county shall use this program for an individual after

exhausting all other employment opportunities. The county agency shall not require a caregiver to participate in the community work experience program unless the caregiver has been given an opportunity to participate in other work activities.

Subd. 2. **Commissioner's duties.** The commissioner shall assist counties in the design and implementation of these components.

Subd. 3. **Employment options.** (a) Work sites developed under this section are limited to projects that serve a useful public service such as: health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, community service, services to aged or disabled citizens, and child care. To the extent possible, the prior training, skills, and experience of a caregiver must be considered in making appropriate work experience assignments.

(b) Structured, supervised volunteer work with an agency or organization, which is monitored by the county service provider, may, with the approval of the county agency, be used as a work experience placement.

(c) As a condition of placing a caregiver in a program under this section, the county agency shall first provide the caregiver the opportunity:

(1) for placement in suitable subsidized or unsubsidized employment through participation in a job search; or

(2) for placement in suitable employment through participation in on-the-job training, if such employment is available.

Subd. 4. **Employment plan.** (a) The caretaker's employment plan must include the length of time needed in the work experience program, the need to continue job-seeking activities while participating in work experience, and the caregiver's employment goals.

(b) After each six months of a caregiver's participation in a work experience job placement, and at the conclusion of each work experience assignment under this section, the county agency shall reassess and revise, as appropriate, the caregiver's employment plan.

(c) A caregiver may claim good cause under section 256J.57, subdivision 1, for failure to cooperate with a work experience job placement.

(d) The county agency shall limit the maximum number of hours any participant may work under this section to the amount of the MFIP standard of need divided by the federal or applicable state minimum wage, whichever is higher. After a participant has been assigned to a position for nine months, the participant may not continue in that assignment unless the maximum number of hours a participant works is no greater than the amount of the MFIP standard of need divided by the rate of pay for individuals employed in the same or similar occupations by the same employer at the same site. This limit does not apply if it would prevent a participant from counting toward the federal work participation rate.

History: 1997 c 85 art 1 s 54; 1999 c 245 art 6 s 78; 1Sp2001 c 9 art 10 s 66

256J.68 INJURY PROTECTION FOR WORK EXPERIENCE PARTICIPANTS.

Subdivision 1. **Applicability.** (a) This section must be used to determine payment of any claims resulting from an alleged injury or death of a person participating in a county or a tribal community work experience program that is approved by the commissioner and is operated by:

(i) the county agency;

(ii) the tribe;

(iii) a department of the state; or

(iv) a community-based organization under contract, prior to April 1, 1997, with a county agency to provide a community work experience program or a food stamp community work experience program, provided the organization has not experienced any individual injury loss or claim greater than \$1,000.

(b) This determination method is available to the community-based organization under paragraph (a), clause (iv), only for claims incurred by participants in the community work experience program or the food stamp community work experience program.

(c) This determination method applies to work experience programs authorized by the commissioner for persons applying for or receiving cash assistance and food stamps, and to the Minnesota parent's fair share program and the community service program under section 518.551, subdivision 5a, in a county with an approved community investment program for obligors.

Subd. 2. Investigation of the claim. Claims that are subject to this section must be investigated by the county agency or the tribal program responsible for supervising the work to determine whether the claimed injury occurred, whether the claimed medical expenses are reasonable, and whether the loss is covered by the claimant's insurance. If insurance coverage is established, the county agency or tribal program shall submit the claim to the appropriate insurance entity for payment. The investigating county agency or tribal program shall submit all valid claims, in the amount net of any insurance payments, to the Department of Human Services.

Subd. 3. Submission of claim. The commissioner shall submit all claims for permanent partial disability compensation to the commissioner of labor and industry. The commissioner of labor and industry shall review all submitted claims and recommend to the Department of Human Services an amount of compensation comparable to that which would be provided under the permanent partial disability compensation schedule of section 176.101, subdivision 2a.

Subd. 4. Claims less than \$1,000. The commissioner shall approve a claim of \$1,000 or less for payment if appropriated funds are available, if the county agency or tribal program responsible for supervising the work has made the determinations required by this section, and if the work program was operated in compliance with the safety provisions of this section. The commissioner shall pay the portion of an approved claim of \$1,000 or less that is not covered by the claimant's insurance within three months of the date of submission. On or before February 1 of each year, the commissioner shall submit to the appropriate committees of the senate and the house of representatives a list of claims of \$1,000 or less paid during the preceding calendar year and shall be reimbursed by legislative appropriation for any claims that exceed the original appropriation provided to the commissioner to operate this program. Any unspent money from this appropriation shall carry over to the second year of the biennium, and any unspent money remaining at the end of the second year shall be returned to the state general fund.

Subd. 5. Claims more than \$1,000. On or before February 1 of each year, the commissioner shall submit to the appropriate committees of the senate and the house of representatives a list of claims in excess of \$1,000 and a list of claims of \$1,000 or less that were submitted to but not paid by the commissioner, together with any recommendations of appropriate compensation. These claims shall be heard and determined by the appropriate committees of the senate and house of representatives and, if approved, must be paid under the legislative claims procedure.

Subd. 6. Compensation for certain costs. Compensation paid under this section is limited to reimbursement for reasonable medical expenses and permanent partial disability compensation for disability in like amounts as allowed in section 176.101, subdivision 2a. Compensation for injuries resulting in death shall include reasonable medical expenses and burial expenses in addition to payment to the participant's estate in an amount up to \$200,000. No compensation shall be paid under this section for pain and suffering, lost wages, or other benefits provided in chapter 176. Payments made under this section shall be reduced by any proceeds received by the claimant from any insurance policy covering the loss. For the purposes of this section, "insurance policy" does not include the medical assistance program authorized under chapter 256B or the general assistance medical care program authorized under chapter 256D.

Subd. 7. **Exclusive procedure.** The procedure established by this section is exclusive of all other legal, equitable, and statutory remedies against the state, its political subdivisions, or employees of the state or its political subdivisions. The claimant shall not be entitled to seek damages from any state, county, tribal, or reservation insurance policy or self-insurance program.

Subd. 8. **Invalid claims.** A claim is not valid for purposes of this section if the county agency responsible for supervising the work cannot verify to the commissioner:

(1) that appropriate safety training and information is provided to all persons being supervised by the agency under this section; and

(2) that all programs involving work by those persons comply with federal Occupational Safety and Health Administration and state Department of Labor and Industry safety standards: A claim that is not valid because of failure to verify safety training or compliance with safety standards will not be paid by the Department of Human Services or through the legislative claims process and must be heard, decided, and paid, if appropriate, by the local government unit or tribal program responsible for supervising the work of the claimant.

History: 1997 c 85 art 1 s 55

256J.69 GRANT DIVERSION.

Subdivision 1. **Establishing the grant diversion program.** (a) County agencies may develop grant diversion programs for MFIP participants participating in employment and training services. A county agency that chooses to provide grant diversion may divert to an employer part or all of the MFIP cash payment for the participant's assistance unit, in compliance with federal regulations and laws. Such payments to an employer are to subsidize employment for MFIP participants as an alternative to public assistance payments.

(b) In addition to diverting the MFIP grant to the employer, employment and training funds may be used to subsidize the grant diversion placement.

(c) Participants in grant diversion shall be compensated by the employer at the same rates, including periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the federal or applicable state minimum wage, whichever is higher.

Subd. 2. **Training and placement.** (a) County agencies shall limit the length of training to nine months. Placement in a grant diversion training position with an employer is for the purpose of training and employment with the same employer who has agreed to retain the person upon satisfactory completion of training.

(b) Placement of any participant in a grant diversion subsidized training position must be compatible with the assessment and employment plan or employability development plan established for the recipient under section 256J.521.

History: 1997 c 85 art 1 s 56; 1Sp2001 c 9 art 10 s 66; 1Sp2003 c 14 art 1 s 97

256J.72 NONDISPLACEMENT IN WORK ACTIVITIES.

Subdivision 1. **Nondisplacement protection.** For job assignments under jobs programs established under this chapter or chapter 256, 256D, or 256K, the county agency must provide written notification to and obtain the written concurrence of the appropriate exclusive bargaining representatives with respect to job duties covered under collective bargaining agreements and ensure that no work assignment under this chapter or chapter 256, 256D, or 256K results in:

(1) termination, layoff, or reduction of the work hours of an employee for the purpose of hiring an individual under this section;

(2) the hiring of an individual if any other person is on layoff, including seasonal layoff, from the same or a substantially equivalent job;

(3) any infringement of the promotional opportunities of any currently employed individual;

MINNESOTA STATUTES 2004

1417

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.74

(4) the impairment of existing contract for services of collective bargaining agreements; or

(5) a participant filling an established unfilled position vacancy, except for on-the-job training.

The written notification must be provided to the appropriate exclusive bargaining representatives at least 14 days in advance of placing recipients in temporary public service employment. The notice must include the number of individuals involved, their work locations and anticipated hours of work, a summary of the tasks to be performed, and a description of how the individuals will be trained and supervised.

Subd. 2. Dispute resolution. (a) If there is a dispute between an exclusive bargaining representative and a county provider or employer over whether job duties are within the scope of a collective bargaining unit, the exclusive bargaining representative, the county, the provider, or the employer may petition the Bureau of Mediation Services to determine if the job duties are within the scope of a collective bargaining unit, and the bureau shall render a binding decision.

(b) In the event of a dispute under this section, the parties may:

(1) use a grievance and arbitration procedure of an existing collective bargaining agreement to process a dispute over whether a violation of the nondisplacement provisions has occurred; or

(2) if no grievance and arbitration procedure is in place, either party may submit the dispute to the bureau. The commissioner of the Bureau of Mediation Services shall establish a procedure for a neutral, binding resolution of the dispute.

Subd. 3. Status of participant. A participant may not work in a temporary public service or community service job for a public employer for more than 67 working days or 536 hours, whichever is greater, as part of a work program established under this chapter, or chapter 256, 256D, or 256K. A participant who exceeds the time limits in this subdivision is a public employee, as that term is used in chapter 179A. Upon the written request of the exclusive bargaining representative, a county or public service employer shall make available to the affected exclusive bargaining representative a report of hours worked by participants in temporary public service or community service jobs.

History: 1997 c 85 art 1 s 57.

256J.74 RELATIONSHIP TO OTHER PROGRAMS.

Subdivision 1. Social services. The county agency shall refer a participant for social services that are offered in the county of financial responsibility according to the criteria established by that county agency under Minnesota Rules, parts 9550.0010 to 9550.0092. A payment issued from federal funds under title XX of the Social Security Act, state funds under the Community Social Services Act, federal or state child welfare funds, or county funds in a payment month must not restrict MFIP eligibility or reduce the monthly assistance payment for that participant.

Subd. 2. Concurrent eligibility, limitations. (a) An individual whose needs have been otherwise provided for in another state, in whole or in part by county, state, or federal dollars during a month, is ineligible to receive MFIP for the month.

(b) A county agency must not count an applicant or participant as a member of more than one assistance unit in this state in a given payment month, except as provided in clauses (1) and (2).

(1) A participant who is a member of an assistance unit is eligible to be included in a second assistance unit the month after the month the participant joins the second unit.

(2) An applicant whose needs are met through federal, state, or local foster care payments for the first part of an application month is eligible to receive assistance for the remaining part of the month in which the applicant returns home. Foster care payments must be considered prorated payments rather than a duplication of MFIP need.

Subd. 3. [Repealed, 1Sp2003 c 14 art 1 s 107]

Subd. 4. **Medical assistance.** Medical assistance eligibility for MFIP participants shall be determined as described in chapter 256B.

Subd. 5. **Food stamps.** For any month an individual receives Food Stamp Program benefits, the individual is not eligible for the MFIP food portion of assistance, except as provided under section 256J.28, subdivision 5.

History: 1997 c 85 art 1 s 58; 1998 c 407 art. 6 s 106,107; 1999 c 245 art 6 s 79; 1Sp2001 c 9 art 10 s 66

256J.75. COUNTY OF FINANCIAL RESPONSIBILITY POLICIES.

Subdivision 1. **County of financial responsibility.** The county of financial responsibility is the county in which a minor child or pregnant woman lives on the date the application is signed, unless subdivision 4 applies. When more than one county is financially responsible for the members of an assistance unit, financial responsibility must be assigned to a single county beginning the first day of the calendar month after the assistance unit members are required to be in a single assistance unit. Financial responsibility must be assigned to the county that was initially responsible for the assistance unit member with the earliest date of application. The county in which the assistance unit is currently residing becomes financially responsible for the entire assistance unit beginning two full calendar months after the month in which financial responsibility was consolidated in one county.

Subd. 2. **Change in residence.** (a) When an assistance unit moves from one county to another and continues to receive assistance, the new county of residence becomes the county of financial responsibility when that assistance unit has lived in that county in nonexcluded status for two full calendar months. "Nonexcluded status" means the period of residence that is not considered excluded time under section 256G.02, subdivision 6. When a minor child moves from one county to another to reside with a different caregiver, the caregiver in the former county is eligible to receive assistance for that child only through the last day of the month of the move. The caregiver in the new county becomes eligible to receive assistance for the child the first day of the month following the move or the date of application, whichever is later.

(b) When an applicant moves from one county to another while the application is pending, the county where application first occurred is the county of financial responsibility until the applicant has lived in the new county for two full calendar months, unless the applicant's move is covered under section 256G.02, subdivision 6.

Subd. 3. **Responsibility for incorrect assistance payments.** A county of residence, when different from the county of financial responsibility, will be charged by the commissioner for the value of incorrect assistance payments paid to or on behalf of a person who was not eligible to receive that amount. Incorrect payments include payments to an ineligible person or family resulting from decisions, failures to act, miscalculations, or overdue recertification. However, financial responsibility does not accrue for a county when the recertification is overdue at the time the referral is received by the county of residence or when the county of financial responsibility does not act on the recommendation of the county of residence.

Subd. 4. **Excluded time.** When an applicant or participant resides in an excluded time facility as described in section 256G.02, subdivision 6, the county that is financially responsible for the applicant or participant is the county in which the applicant or participant last resided outside such a facility immediately before entering the facility. When an applicant or participant has not resided in this state for any time other than excluded time as defined in section 256G.02, subdivision 6, the county that is financially responsible for the applicant or participant is the county in which the applicant or participant resides on the date the application is signed.

History: 1997 c 85 art 1 s 59; 1Sp2003 c 14 art 1 s 98

256J.751 COUNTY PERFORMANCE MANAGEMENT.

Subdivision 1. **Monthly county caseload report.** The commissioner shall report monthly to each county the following caseload information:

- (1) total number of cases receiving MFIP, and subtotals of cases with one eligible parent, two eligible parents, and an eligible caregiver who is not a parent;
- (2) total number of child only assistance cases;
- (3) total number of eligible adults and children receiving an MFIP grant, and subtotals for cases with one eligible parent, two eligible parents, an eligible caregiver who is not a parent, and child only cases;
- (4) number of cases with an exemption from the 60-month time limit based on a family violence waiver;
- (5) number of MFIP cases with work hours, and subtotals for cases with one eligible parent, two eligible parents, and an eligible caregiver who is not a parent;
- (6) number of employed MFIP cases, and subtotals for cases with one eligible parent, two eligible parents, and an eligible caregiver who is not a parent;
- (7) average monthly gross earnings, and averages for subgroups of cases with one eligible parent, two eligible parents, and an eligible caregiver who is not a parent;
- (8) number of employed cases receiving only the food portion of assistance;
- (9) number of parents or caregivers exempt from work activity requirements, with subtotals for each exemption type; and
- (10) number of cases with a sanction, with subtotals by level of sanction for cases with one eligible parent, two eligible parents, and an eligible caregiver who is not a parent.

Subd. 2. **Quarterly comparison report.** The commissioner shall report quarterly to all counties on each county's performance on the following measures:

- (1) percent of MFIP caseload working in paid employment;
- (2) percent of MFIP caseload receiving only the food portion of assistance;
- (3) number of MFIP cases that have left assistance;
- (4) federal participation requirements as specified in Title 1 of Public Law 104-193;
- (5) median placement wage rate;
- (6) caseload by months of TANF assistance;
- (7) percent of MFIP and diversionary work program (DWP) cases off cash assistance or working 30 or more hours per week at one-year, two-year, and three-year follow-up points from a baseline quarter. This measure is called the self-support index. Twice annually, the commissioner shall report an expected range of performance for each county, county grouping, and tribe on the self-support index. The expected range shall be derived by a statistical methodology developed by the commissioner in consultation with the counties and tribes. The statistical methodology shall control differences across counties in economic conditions and demographics of the MFIP and DWP case load; and

(8) the MFIP work participation rate, defined as the participation requirements specified in title 1 of Public Law 104-193 applied to all MFIP cases except child only cases and cases exempt under section 256J.56.

Subd. 3. [Repealed, 1Sp2003 c 14 art 1 s 107].

Subd. 4. [Repealed, 1Sp2003 c 14 art 1 s 107].

Subd. 5. **Failure to meet federal performance standards.** (a) If sanctions occur for failure to meet the performance standards specified in title 1 of Public Law 104-193 of the Personal Responsibility and Work Opportunity Act of 1996, the state shall pay 88 percent of the sanction. The remaining 12 percent of the sanction will be paid by the counties. The county portion of the sanction will be distributed across all counties in proportion to each county's percentage of the MFIP average monthly caseload during the period for which the sanction was applied.

(b) If a county fails to meet the performance standards specified in title 1 of Public Law 104-193 of the Personal Responsibility and Work Opportunity Act of 1996 for any year, the commissioner shall work with counties to organize a joint state-county technical assistance team to work with the county. The commissioner shall coordinate any technical assistance with other departments and agencies including the Departments of Employment and Economic Development and Education as necessary to achieve the purpose of this paragraph.

(c) For state performance measures, a low-performing county is one that:

(1) performs below the bottom of their expected range for the measure in subdivision 2, clause (7), in both measurements during the year; or

(2) performs below 40 percent for the measure in subdivision 2, clause (8), as averaged across the four quarterly measurements for the year, or the ten counties with the lowest rates if more than ten are below 40 percent.

(d) Low-performing counties under paragraph (c) must engage in corrective action planning as defined by the commissioner. The commissioner may coordinate technical assistance as specified in paragraph (b) for low-performing counties under paragraph (c).

History: 1999 c 245 art 6 s 80; 1Sp2001 c 9 art 10 s 54; 2002 c 379 art 1 s 113; 2003 c 130 s 12; 1Sp2003 c 14 art 1 s 99-101; 2004 c 206 s 52; 2004 c 288 art 4 s 54

256J.76 [Repealed, 1Sp2003 c 14 art 1 s 107]

256J.77 AGING OF CASH BENEFITS.

Cash benefits under chapters 256D, 256J, and 256K by warrants or electronic benefit transfer that have not been accessed within 90 days of issuance shall be canceled. Cash benefits may be replaced after they are canceled, for up to one year after the date of issuance, if failure to do so would place the client or family at risk. For purposes of this section, "accessed" means cashing a warrant or making at least one withdrawal from benefits deposited in an electronic benefit account.

History: 1998 c 407 art 6 s 108

CHILD ONLY TANF PROGRAM

256J.88 CHILD ONLY TANF PROGRAM.

Children who receive assistance under this chapter, in which the assistance unit does not include a caregiver, but only includes a minor child, shall become part of the program established under this section.

History: 2000 c 488 art 10 s 24

DIVERSIONARY WORK PROGRAM

256J.95 DIVERSIONARY WORK PROGRAM.

Subdivision 1. **Establishing a diversionary work program (DWP).** (a) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, establishes block grants to states for temporary assistance for needy families (TANF). TANF provisions allow states to use TANF dollars for nonrecurrent, short-term diversionary benefits. The diversionary work program established on July 1, 2003, is Minnesota's TANF program to provide short-term diversionary benefits to eligible recipients of the diversionary work program.

(b) The goal of the diversionary work program is to provide short-term, necessary services and supports to families which will lead to unsubsidized employment, increase economic stability, and reduce the risk of those families needing longer term assistance, under the Minnesota family investment program (MFIP).

(c) When a family unit meets the eligibility criteria in this section, the family must receive a diversionary work program grant and is not eligible for MFIP.

(d) A family unit is eligible for the diversionary work program for a maximum of four consecutive months. During the four consecutive months, family maintenance needs as defined in subdivision 2, shall be vendor paid, up to the cash portion of the MFIP standard of need for the same size household. To the extent there is a balance available between the amount paid for family maintenance needs and the cash portion of the transitional standard, a personal needs allowance of up to \$70 per DWP recipient in the family unit shall be issued. The personal needs allowance payment plus the family maintenance needs shall not exceed the cash portion of the MFIP standard of need. Counties may provide supportive and other allowable services funded by the MFIP consolidated fund under section 256J.626 to eligible participants during the four-month diversionary period.

Subd. 2. Definitions. The terms used in this section have the following meanings.

(a) "Diversionary Work Program (DWP)" means the program established under this section.

(b) "Employment plan" means a plan developed by the job counselor and the participant which identifies the participant's most direct path to unsubsidized employment, lists the specific steps that the caregiver will take on that path, and includes a timetable for the completion of each step. For participants who request and qualify for a family violence waiver in section 256J.521, subdivision 3, an employment plan must be developed by the job counselor, the participant, and a person trained in domestic violence and follow the employment plan provisions in section 256J.521, subdivision 3. Employment plans under this section shall be written for a period of time not to exceed four months.

(c) "Employment services" means programs, activities, and services in this section that are designed to assist participants in obtaining and retaining employment.

(d) "Family maintenance needs" means current housing costs including rent; manufactured home lot rental costs, or monthly principal, interest, insurance premiums, and property taxes due for mortgages or contracts for deed; association fees required for homeownership; utility costs for current month expenses of gas and electric, garbage, water and sewer; and a flat rate of \$35 for telephone services.

(e) "Family unit" means a group of people applying for or receiving DWP benefits together. For the purposes of determining eligibility for this program, the unit includes the relationships in section 256J.24, subdivisions 2 and 4.

(f) "Minnesota family investment program (MFIP)" means the assistance program as defined in section 256J.08, subdivision 57.

(g) "Personal needs allowance" means an allowance of up to \$70 per month per DWP unit member to pay for expenses such as household products and personal products.

(h) "Work activities" means allowable work activities as defined in section 256J.49, subdivision 13.

Subd. 3. Eligibility for diversionary work program. (a) Except for the categories of family units listed below, all family units who apply for cash benefits and who meet MFIP eligibility as required in sections 256J.11 to 256J.15 are eligible and must participate in the diversionary work program. Family units that are not eligible for the diversionary work program include:

- (1) child only cases;
- (2) a single-parent family unit that includes a child under 12 weeks of age. A parent is eligible for this exception once in a parent's lifetime and is not eligible if the parent has already used the previously allowed child under age one exemption from MFIP employment services;
- (3) a minor parent without a high school diploma or its equivalent;
- (4) an 18- or 19-year-old caregiver without a high school diploma or its equivalent who chooses to have an employment plan with an education option;
- (5) a caregiver age 60 or over;

MINNESOTA STATUTES 2004

(6) family units with a caregiver who received DWP benefits in the 12 months prior to the month the family applied for DWP, except as provided in paragraph (c);

(7) family units with a caregiver who received MFIP within the 12 months prior to the month the family unit applied for DWP;

(8) a family unit with a caregiver who received 60 or more months of TANF assistance; and

(9) a family unit with a caregiver who is disqualified from DWP or MFIP due to fraud.

(b) A two-parent family must participate in DWP unless both caregivers meet the criteria for an exception under paragraph (a), clauses (1) through (5), or the family unit includes a parent who meets the criteria in paragraph (a), clause (6), (7), (8), or (9).

(c) Once DWP eligibility is determined, the four months run consecutively. If a participant leaves the program for any reason and reappplies during the four-month period, the county must redetermine eligibility for DWP.

Subd. 4. Cooperation with program requirements. (a) To be eligible for DWP, an applicant must comply with the requirements of paragraphs (b) to (d).

(b) Applicants and participants must cooperate with the requirements of the child support enforcement program but will not be charged a fee under section 518.551, subdivision 7.

(c) The applicant must provide each member of the family unit's Social Security number to the county agency. This requirement is satisfied when each member of the family unit cooperates with the procedures for verification of numbers, issuance of duplicate cards, and issuance of new numbers which have been established jointly between the Social Security Administration and the commissioner.

(d) Before DWP benefits can be issued to a family unit, the caregiver must, in conjunction with a job counselor, develop and sign an employment plan. In two-parent family units, both parents must develop and sign employment plans before benefits can be issued. Food support and health care benefits are not contingent on the requirement for a signed employment plan.

Subd. 5. Submitting application form. The eligibility date for the diversionary work program begins with the date the signed combined application form (CAF) is received by the county agency or the date diversionary work program eligibility criteria are met, whichever is later. The county agency must inform the applicant that any delay in submitting the application will reduce the benefits paid for the month of application. The county agency must inform a person that an application may be submitted before the person has an interview appointment. Upon receipt of a signed application, the county agency must stamp the date of receipt on the face of the application. The applicant may withdraw the application at any time prior to approval by giving written or oral notice to the county agency. The county agency must follow the notice requirements in section 256J.09, subdivision 3, when issuing a notice confirming the withdrawal.

Subd. 6. Initial screening of applications. Upon receipt of the application, the county agency must determine if the applicant may be eligible for other benefits as required in sections 256J.09, subdivision 3a, and 256J.28, subdivisions 1 and 5. The county must also follow the provisions in section 256J.09, subdivision 3b, clause (2).

Subd. 7. Program and processing standards. (a) The interview to determine financial eligibility for the diversionary work program must be conducted within five working days of the receipt of the cash application form. During the intake interview, the financial worker must discuss:

(1) the goals, requirements, and services of the diversionary work program;

(2) the availability of child care assistance. If child care is needed, the worker must obtain a completed application for child care from the applicant before the interview is terminated. The same day the application for child care is received, the application must be forwarded to the appropriate child care worker. For purposes of eligibility for

MINNESOTA STATUTES 2004

1423

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.95

child care assistance under chapter 119B, DWP participants shall be eligible for the same benefits as MFIP recipients; and

(3) if the applicant has not requested food support and health care assistance on the application, the county agency shall, during the interview process, talk with the applicant about the availability of these benefits.

(b) The county shall follow section 256J.74, subdivision 2, paragraph (b), clauses (1) and (2); when an applicant or a recipient of DWP has a person who is a member of more than one assistance unit in a given payment month.

(c) If within 30 days the county agency cannot determine eligibility for the diversionary work program, the county must deny the application and inform the applicant of the decision according to the notice provisions in section 256J.31. A family unit is eligible for a fair hearing under section 256J.40.

Subd. 8. Verification requirements. (a) A county agency must only require verification of information necessary to determine DWP eligibility and the amount of the payment. The applicant or participant must document the information required or authorize the county agency to verify the information. The applicant or participant has the burden of providing documentary evidence to verify eligibility. The county agency shall assist the applicant or participant in obtaining required documents when the applicant or participant is unable to do so.

(b) A county agency must not request information about an applicant or participant that is not a matter of public record from a source other than county agencies, the Department of Human Services, or the United States Department of Health and Human Services without the person's prior written consent. An applicant's signature on an application form constitutes consent for contact with the sources specified on the application. A county agency may use a single consent form to contact a group of similar sources, but the sources to be contacted must be identified by the county agency prior to requesting an applicant's consent.

(c) Factors to be verified shall follow section 256J.32, subdivision 4. Except for personal needs, family maintenance needs must be verified before the expense can be allowed in the calculation of the DWP grant.

Subd. 9. Property and income limitations. The asset limits and exclusions in section 256J.20 apply to applicants and recipients of DWP. All payments, unless excluded in section 256J.21, must be counted as income to determine eligibility for the diversionary work program. The county shall treat income as outlined in section 256J.37, except for subdivision 3a. The initial income test and the disregards in section 256J.21, subdivision 3, shall be followed for determining eligibility for the diversionary work program.

Subd. 10. Diversionary work program grant. (a) The amount of cash benefits that a family unit is eligible for under the diversionary work program is based on the number of persons in the family unit, the family maintenance needs, personal needs allowance, and countable income. The county agency shall evaluate the income of the family unit that is requesting payments under the diversionary work program. Countable income means gross earned and unearned income not excluded or disregarded under MFIP. The same disregards for earned income that are allowed under MFIP are allowed for the diversionary work program.

(b) The DWP grant is based on the family maintenance needs for which the DWP family unit is responsible plus a personal needs allowance. Housing and utilities, except for telephone service, shall be vendor paid. Unless otherwise stated in this section, actual housing and utility expenses shall be used when determining the amount of the DWP grant.

(c) The maximum monthly benefit amount available under the diversionary work program is the difference between the family unit's needs under paragraph (b) and the family unit's countable income not to exceed the cash portion of the MFIP standard of need as defined in section 256J.08, subdivision 55a, for the family unit's size.

(d) Once the county has determined a grant amount, the DWP grant amount will not be decreased if the determination is based on the best information available at the

MINNESOTA STATUTES 2004

time of approval and shall not be decreased because of any additional income to the family unit. The grant must be increased if a participant later verifies an increase in family maintenance needs or family unit size. The minimum cash benefit amount, if income and asset tests are met, is \$10. Benefits of \$10 shall not be vendor paid.

(e) When all criteria are met, including the development of an employment plan as described in subdivision 14 and eligibility exists for the month of application, the amount of benefits for the diversionary work program retroactive to the date of application is as specified in section 256J.35, paragraph (a).

(f) Any month during the four-month DWP period that a person receives a DWP benefit directly or through a vendor payment made on the person's behalf, that person is ineligible for MFIP or any other TANF cash assistance program except for benefits defined in section 256J.626, subdivision 2, clause (1).

If during the four-month period a family unit that receives DWP benefits moves to a county that has not established a diversionary work program, the family unit may be eligible for MFIP the month following the last month of the issuance of the DWP benefit.

Subd. 11. **Universal participation required.** (a) All DWP caregivers, except caregivers who meet the criteria in paragraph (d), are required to participate in DWP employment services. Except as specified in paragraphs (b) and (c), employment plans under DWP must, at a minimum, meet the requirements in section 256J.55, subdivision 1.

(b) A caregiver who is a member of a two-parent family that is required to participate in DWP who would otherwise be ineligible for DWP under subdivision 3 may be allowed to develop an employment plan under section 256J.521, subdivision 2, paragraph (c), that may contain alternate activities and reduced hours.

(c) A participant who is a victim of family violence shall be allowed to develop an employment plan under section 256J.521, subdivision 3. A claim of family violence must be documented by the applicant or participant by providing a sworn statement which is supported by collateral documentation in section 256J.545, paragraph (b).

(d) One parent in a two-parent family unit that has a natural born child under 12 weeks of age is not required to have an employment plan until the child reaches 12 weeks of age unless the family unit has already used the exclusion under section 256J.561, subdivision 2, or the previously allowed child under age one exemption under section 256J.56, paragraph (a), clause (5).

(e) The provision in paragraph (d) ends the first full month after the child reaches 12 weeks of age. This provision is allowable only once in a caregiver's lifetime. In a two-parent household, only one parent shall be allowed to use this category.

(f) The participant and job counselor must meet within ten working days after the child reaches 12 weeks of age to revise the participant's employment plan. The employment plan for a family unit that has a child under 12 weeks of age that has already used the exclusion in section 256J.561 or the previously allowed child under age one exemption under section 256J.56, paragraph (a), clause (5), must be tailored to recognize the caregiving needs of the parent.

Subd. 12. **Conversion or referral to MFIP.** (a) If at any time during the DWP application process or during the four-month DWP eligibility period, it is determined that a participant is unlikely to benefit from the diversionary work program, the county shall convert or refer the participant to MFIP as specified in paragraph (d). Participants who are determined to be unlikely to benefit from the diversionary work program must develop and sign an employment plan. Participants who meet any one of the criteria in paragraph (b) shall be considered to be unlikely to benefit from DWP, provided the necessary documentation is available to support the determination.

(b) A participant who:

(1) has been determined by a qualified professional as being unable to obtain or retain employment due to an illness, injury, or incapacity that is expected to last at least 60 days;

MINNESOTA STATUTES 2004

1425

MINNESOTA FAMILY INVESTMENT PROGRAM 256J.95

(2) is required in the home as a caregiver because of the illness, injury, or incapacity, of a family member, or a relative in the household, or a foster child, and the illness, injury, or incapacity and the need for a person to provide assistance in the home has been certified by a qualified professional and is expected to continue more than 60 days;

(3) is determined by a qualified professional as being needed in the home to care for a child or adult meeting the special medical criteria in section 256J.561, subdivision 2, paragraph (d), clause (3);

(4) is pregnant and is determined by a qualified professional as being unable to obtain or retain employment due to the pregnancy; or

(5) has applied for SSI or SSDI.

(c) In a two-parent family unit, both parents must be determined to be unlikely to benefit from the diversionary work program before the family unit can be converted or referred to MFIP.

(d) A participant who is determined to be unlikely to benefit from the diversionary work program shall be converted to MFIP and, if the determination was made within 30 days of the initial application for benefits, no additional application form is required. A participant who is determined to be unlikely to benefit from the diversionary work program shall be referred to MFIP and, if the determination is made more than 30 days after the initial application, the participant must submit a program change request form. The county agency shall process the program change request form by the first of the following month to ensure that no gap in benefits is due to delayed action by the county agency. In processing the program change request form, the county must follow section 256J.32, subdivision 1, except that the county agency shall not require additional verification of the information in the case file from the DWP application unless the information in the case file is inaccurate, questionable, or no longer current.

(e) The county shall not request a combined application form for a participant who has exhausted the four months of the diversionary work program, has continued need for cash and food assistance, and has completed, signed, and submitted a program change request form within 30 days of the fourth month of the diversionary work program. The county must process the program change request according to section 256J.32, subdivision 1, except that the county agency shall not require additional verification of information in the case file unless the information is inaccurate, questionable, or no longer current. When a participant does not request MFIP within 30 days of the diversionary work program benefits being exhausted, a new combined application form must be completed for any subsequent request for MFIP.

Subd. 13. Immediate referral to employment services. Within one working day of determination that the applicant is eligible for the diversionary work program, but before benefits are issued to or on behalf of the family unit, the county shall refer all caregivers to employment services. The referral to the DWP employment services must be in writing and must contain the following information:

(1) notification that, as part of the application process, applicants are required to develop an employment plan or the DWP application will be denied;

(2) the employment services provider name and phone number;

(3) the date, time, and location of the scheduled employment services interview;

(4) the immediate availability of supportive services, including, but not limited to, child care, transportation, and other work-related aid; and

(5) the rights, responsibilities, and obligations of participants in the program, including, but not limited to, the grounds for good cause, the consequences of refusing or failing to participate fully with program requirements, and the appeal process.

Subd. 14. Employment plan; DWP benefits. As soon as possible, but no later than ten working days of being notified that a participant is financially eligible for the diversionary work program, the employment services provider shall provide the participant with an opportunity to meet to develop an initial employment plan. Once the initial employment plan has been developed and signed by the participant and the job counselor, the employment services provider shall notify the county within one working

MINNESOTA STATUTES 2004

day that the employment plan has been signed. The county shall issue DWP benefits within one working day after receiving notice that the employment plan has been signed.

Subd. 15. **Limitations on certain work activities.** (a) Except as specified in paragraphs (b) to (d), employment activities listed in section 256J.49, subdivision 13, are allowable under the diversionary work program.

(b) Work activities under section 256J.49, subdivision 13, clause (5), shall be allowable only when in combination with approved work activities under section 256J.49, subdivision 13, clauses (1) to (4), and shall be limited to no more than one-half of the hours required in the employment plan.

(c) In order for an English as a second language (ESL) class to be an approved work activity, a participant must:

(1) be below a spoken language proficiency level of SPL6 or its equivalent, as measured by a nationally recognized test; and

(2) not have been enrolled in ESL for more than 24 months while previously participating in MFIP or DWP. A participant who has been enrolled in ESL for 20 or more months may be approved for ESL until the participant has received 24 total months.

(d) Work activities under section 256J.49, subdivision 13; clause (6), shall be allowable only when the training or education program will be completed within the four-month DWP period. Training or education programs that will not be completed within the four-month DWP period shall not be approved.

Subd. 16. **Failure to comply with requirements.** A family unit that includes a participant who fails to comply with DWP employment service or child support enforcement requirements; without good cause as defined in sections 256.741 and 256J.57, shall be disqualified from the diversionary work program. The county shall provide written notice as specified in section 256J.31 to the participant prior to disqualifying the family unit due to noncompliance with employment service or child support. The disqualification does not apply to food support or health care benefits.

Subd. 17. **Good cause for not complying with requirements.** A participant who fails to comply with the requirements of the diversionary work program may claim good cause for reasons listed in sections 256.741 and 256J.57, subdivision 1, clauses (1) to (13). The county shall not impose a disqualification if good cause exists.

Subd. 18. **Reinstatement following disqualification.** A participant who has been disqualified from the diversionary work program due to noncompliance with employment services may regain eligibility for the diversionary work program by complying with program requirements. A participant who has been disqualified from the diversionary work program due to noncooperation with child support enforcement requirements may regain eligibility by complying with child support requirements under section 256.741. Once a participant has been reinstated, the county shall issue prorated benefits for the remaining portion of the month. A family unit that has been disqualified from the diversionary work program due to noncompliance shall not be eligible for MFIP or any other TANF cash program during the period of time the participant remains noncompliant. In a two-parent family, both parents must be in compliance before the family unit can regain eligibility for benefits.

Subd. 19. **DWP overpayments and underpayments.** DWP benefits are subject to overpayments and underpayments. Anytime an overpayment or an underpayment is determined for DWP, the correction shall be calculated using prospective budgeting. Corrections shall be determined based on the policy in section 256J.34, subdivision 1, paragraphs (a), (b), and (c), and subdivision 3, paragraph (b), clause (1). ATM errors must be recovered as specified in section 256J.38, subdivision 5. DWP overpayments are not subject to cross program recoupment.

Subd. 20. **Implementation of DWP.** Counties may establish a diversionary work program according to this section any time on or after July 1, 2003. Prior to establishing a diversionary work program, the county must notify the commissioner. All counties must implement the provisions of this section no later than July 1, 2004.

History: 1Sp2003 c 14 art 1 s 102; 2004 c 288 art 4 s 55-59