

RECEIVED

JUN 09 2015

S.D. SEC. OF STATE

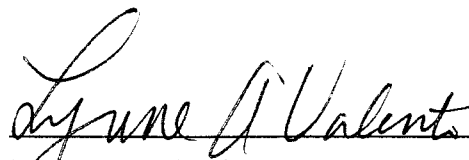
IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

CERTIFICATE

I, Lynne A. Valenti, hereby certify that I am the duly appointed Secretary of the Department of Social Services, and that the attached instruments are full, true, and correct copies of the following rules adopted by the Secretary of the Department of Social Services on May 20, 2015:

§§ 67:11:01:03, 67:15:01:01, 67:15:01:02, 67:15:01:18, 67:15:01:20, 67:16:25:06.07,
67:18:01:01, 67:18:01:56, 67:18:01:65, 67:42:05:04; 67:46:04:13, 67:46:05:15,
67:46:07:03, 67:46:07:12, and 67:46:11:10.

I further certify that the Department has complied with the provisions of SDCL 1-26-4 and 1-26-6 in the adoption of the above rules and that these rules will become effective twenty days after filing with the Secretary of State.



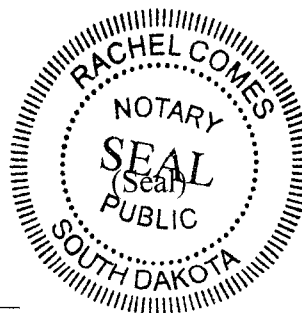
Lynne A. Valenti
Secretary
Department of Social Services

Subscribed and sworn to before
me this 20th day of May, 2015.



Notary Public

My commission expires: March 18, 2021



RECEIVED

JUN 09 2015

S.D. SEC. OF STATE

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

APPROVAL OF RULES

Following public hearing on May 8, 2015, the following rules, attached, are approved
and will become effective twenty days after filing with the Secretary of State:

§§ 67:11:01:03, 67:15:01:01, 67:15:01:02, 67:15:01:18, 67:15:01:20,
67:16:25:06.07, 67:18:01:01, 67:18:01:56, 67:18:01:65, 67:42:05:04;
67:46:04:13, 67:46:05:15, 67:46:07:03, 67:46:07:12, and 67:46:11:10.

Date: May 20, 2015

Lynne A. Valenti

Lynne A. Valenti
Secretary
Department of Social Services

Date: June 1, 2015

Doug Decker

Legislative Research Council

67:11:01:03. Federal poverty level. For programs under Title 67, the department uses the federal poverty level established in ~~79 Fed. Reg. 3,593 (January 22, 2014)~~ 80 Fed. Reg. 3236 (January 22, 2015).

Source: 21 SDR 162, effective March 23, 1995; 22 SDR 188, effective July 8, 1996; 24 SDR 11, effective August 4, 1997; 25 SDR 13, effective August 9, 1998; 26 SDR 109, effective March 5, 2000; 26 SDR 168, effective July 1, 2000; 28 SDR 1, effective July 18, 2001; 28 SDR 178, effective July 3, 2002; 30 SDR 26, effective September 3, 2003; 30 SDR 193, effective June 13, 2004; 32 SDR 33, effective August 31, 2005; 32 SDR 163, effective March 23, 2006; 34 SDR 322, effective July 1, 2008; 35 SDR 234, effective April 1, 2009; 37 SDR 182, effective March 25, 2011; 41 SDR 7, effective July 29, 2014.

General Authority: SDCL 25-4-45.3, 28-1-61, 28-6-1(6), 28-6A-12, 28-7A-3, 28-7A-24.

Law Implemented: SDCL 25-4-45.3, 28-1-60, 28-6-1(6), 28-6A-2, 28-7A-3, 28-7A-20.

Cross-References:

Work activities -- Combined work and education, § 67:10:06:13.01.

Eligibility requirements, § 67:46:01:02.

Computation of community spouse's maintenance allowance and excess shelter allowance, § 67:46:07:12.

Eligibility requirements, § 67:46:10:04.

Household required to participate in child care costs, § 67:47:01:08.

Family pays costs when lump sum income exceeds federal poverty level, § 67:47:01:08.01.

67:15:01:01. Definitions. Terms used in this article mean:

~~(1) "Boarders," individuals to whom a household furnishes lodging and meals for compensation;~~

(1) "Categorically income eligible," if all individuals on the low income energy assistance application receive supplemental nutrition assistance benefits, the household is deemed income eligible for the low income energy assistance program;

(2) "Congregate living arrangement," the housing shared by two or more individuals who live together;

(3) "Department," the Department of Social Services;

(4) "ECIP," energy crisis intervention program;

(5) "Gross income," for non-self-employed households, earned and unearned income before deductions; for self-employed households, earned and unearned income less business-related expenses except those listed in § 67:15:01:18.01;

~~(6) "Indian household," a household which is located in a county or portion of a county served by a tribe and has an Indian as the head of the household;~~

(6) "Independent living arrangement," a living situation in which a household does not share heat or living space in common with another household or individual residing in the same dwelling unit. All household members must be counted when processing the application;

(7) "Institution," a facility that provides living quarters and services for a particular individual or group of individuals, including group homes, nursing homes, higher education facilities, facilities administered by the Department of Human Services under SDCL 1-36A-1.3, facilities administered by the Department of Corrections under SDCL 1-15-1.4, the South Dakota State Veterans' Home administered by the Department of Veterans' Affairs under SDCL 33A-4-

1, community residential facilities, community habilitation facilities, residential treatment centers, special education units, residential school programs, and adjustment training centers;

(8) "LIEAP," low income energy assistance program;

(9) "Native American household," a household which is located in a county or portion of a county served by a tribe and all adult members are Native American;

(9) (10) "Primary heating source," the main source of heat used by the household;

(10) ~~"Roomers," individuals to whom a household furnishes lodging, but not meals, for compensation;~~

(11) ~~"Categorically income eligible," if all individuals on the low income energy assistance application receive supplemental nutrition assistance benefits, the household is deemed income eligible for the low income energy assistance program; and~~

(11) "Shared living arrangement," a living arrangement in which heat or living space is shared by more than one individual. All household members must be counted when processing the application; and

(12) "WIA," the Workforce Investment Act of 1998, Pub. L. 105-220, as amended to July 1, 2013.

Source: 8 SDR 95, effective February 18, 1982; 10 SDR 30, effective October 3, 1983; 11 SDR 96, effective January 27, 1985; 12 SDR 73, effective November 4, 1985; 17 SDR 66, effective November 12, 1990; 23 SDR 101, effective December 22, 1996; 31 SDR 192, effective June 8, 2005; 36 SDR 103, effective December 21, 2009; 40 SDR 122, effective January 7, 2014.

General Authority: SDCL 28-1-50.

Law Implemented: SDCL 28-1-46.

~~Cross-Reference:~~ Definitions, § 67:28:01:01.

67:15:01:02. Household composition. A household may be composed of any of the following:

- (1) ~~Roomers~~ Independent living arrangement;
- (2) ~~Boarders~~ Shared living arrangement;
- (3) Individuals living alone; or
- (4) Individuals in a congregate living arrangement.

These individuals may not be residents of an institution and must be considered vulnerable according to § 67:15:01:06.

The individuals referred to in subdivisions (1), (2), and (3) must be self-supporting and independent.

Source: 8 SDR 95, effective February 18, 1982; 10 SDR 30, effective October 3, 1983; 12 SDR 73, effective November 4, 1985.

General Authority: SDCL 28-1-50.

Law Implemented: SDCL 28-1-46.

67:15:01:18. Income exclusions. In computing a household's income, the department excludes the following:

- (1) Earned income of a household member who is under the age of 18 or, if still in high school, under the age of 19;
- (2) Cash which is administratively difficult to compute and verify;
- (3) Tax refunds, earned income tax credits, and advanced earned income tax credits;
- (4) Reimbursement for expenses, such as medical expenses, mileage incurred in connection with employment, and other employment-related expense, incurred by the household;
- (5) Payments made to others on behalf of household members;
- (6) Money derived from programs established under Title III or Title V of the Older Americans Act of 1965, such as experience works (formerly green thumb), foster grandparents, retired senior volunteer programs, older Americans community service programs, VISTA program, and senior companion program;
- (7) Money borrowed by the household;
- (8) Educational benefits, including grants, scholarships, work study, and loans;
- (9) WIA educational and employment training expense reimbursements;
- (10) Insurance settlements replacing personal or real property;
- (11) ~~Foster care payments or adoption~~ Adoption subsidies received by the household;
- (12) Deductions from social security benefit payments for Medicare;
- (13) The portion of a social security lump-sum death benefit designated for funeral expenses;
- (14) Capital gains;

(15) Proceeds from the sale of a home or farm, a liquidation auction, or the sale of property not normally sold in the household's regular course of doing business;

(16) One-time payments from a welfare agency;

(17) Cash gifts for recurring occasions such as birthdays and Christmas;

(18) Earnings from community work experience programs, tribal work experience programs, and Job Corps programs;

(19) Money earned from taking the census, unless it is the individual's full-time job;

(20) Income used to pay child support;

(21) Income withheld by other entitlement programs to recover overpayments made to a household member by the other program; and

(22) Utility allowances.

Source: 8 SDR 95, effective February 18, 1982; 10 SDR 30, effective October 3, 1983; 11 SDR 96, effective January 27, 1985; 12 SDR 73, effective November 4, 1985; 17 SDR 66, effective November 12, 1990; 23 SDR 101, effective December 22, 1996; 29 SDR 116, effective February 23, 2003; 31 SDR 192, effective June 8, 2005; 36 SDR 103, effective December 21, 2009.

General Authority: SDCL 28-1-50.

Law Implemented: SDCL 28-1-46.

67:15:01:20. Benefit levels. The benefit levels for an eligible household shall be determined by the department based on all of the following:

- (1) The household's income level;
- (2) The type and average cost of the household's primary heating source;
- (3) The region of the state in which the household resides;
- (4) The household size, ~~excluding foster children and foster adults~~; and
- (5) The availability of program funds.

Source: 8 SDR 95, effective February 18, 1982; 10 SDR 30, effective October 3, 1983; 11 SDR 96, effective January 27, 1985; 31 SDR 192, effective June 8, 2005.

General Authority: SDCL 28-1-50.

Law Implemented: SDCL 28-1-46.

67:16:25:06.07 Covered services -- Recipient, escort, or volunteer driver. The following transportation services are covered if the service meets the requirements of § 67:16:25:06.04 and are provided by the recipient, an escort, or a volunteer driver:

(1) Loaded mileage if the transportation is outside the recipient's city of residence and provided when all other means of available transportation are of the same or greater cost and the availability of transportation at no cost to the department does not exist;

(2) Mileage driven by a volunteer driver who lives in another city and drives to the recipient's city of residence to transport the recipient when there is no other means of transporting the recipient;

(3) Mileage driven by a parent or guardian to travel to visit a child who is in a hospital or medical facility and receiving medically necessary services covered under article 67:16 or chapter 67:46:10 and the travel is necessary to meet the requirements of the child's service care plan;

(4) Mileage if the transportation is outside the recipient's city of residence and the escort or volunteer driver is returning to the point of origin after delivering the recipient to a medical provider;

(5) Mileage when the transportation is outside the recipient's city of residence to transport a recipient who is being discharged from a hospital or medical facility;

(6) Lodging for travel to or from a medical provider if the provider is at least ~~400~~ 150 miles from the recipient's city of residence and travel is to obtain specialty care or treatment that results in an overnight stay. Lodging is limited to 14 days for each medical stay unless the department prior authorizes additional days. A recipient may not receive reimbursement for lodging for days the recipient is an inpatient in a hospital or medical facility; and

(7) Meals for travel to or from a medical provider if the provider is outside the recipient's city of residence and travel is to obtain specialty care or treatment that results in an overnight stay. Meals are limited to 14 days for each medical stay unless the department prior authorizes additional days. A recipient may not receive reimbursement for meals for days the recipient is an inpatient in a hospital or medical facility.

The department may waive any of the conditions of this section if paying for the transportation costs results in a cost savings for the department.

Source: 35 SDR 253, effective May 12, 2009; 40 SDR 122, effective January 7, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:18:01

CHILD SUPPORT ENFORCEMENT PROGRAM

Section

- | | |
|----------------|---|
| 67:18:01:01 | Definitions. |
| 67:18:01:02 | Administration -- Income withholding services. |
| 67:18:01:03 | Repealed. |
| 67:18:01:04 | General authority of DCS. |
| 67:18:01:05 | Specific authority of DCS. |
| 67:18:01:06 | Repealed. |
| 67:18:01:07 | Repealed. |
| 67:18:01:08 | Repealed. |
| 67:18:01:09 | Repealed. |
| 67:18:01:10 | Repealed. |
| 67:18:01:11 | Repealed. |
| 67:18:01:12 | Repealed. |
| 67:18:01:13 | Repealed. |
| 67:18:01:14 | Repealed. |
| 67:18:01:15 | Assignment remains in effect for support furnished by department. |
| 67:18:01:16 | Repealed. |
| 67:18:01:17 | Continued services when individual no longer receives assistance -- Notice. |
| 67:18:01:17.01 | Provisions for charging fees for continued services for former recipients. |
| 67:18:01:17.02 | Availability of enforcement services for individual not receiving assistance --
Power of attorney. |

67:18:01:17.03 Enforcement services for families eligible for Medicaid

67:18:01:18 Repealed.

67:18:01:19 Termination of services -- Case closure.

67:18:01:19.01 Request to reopen closed case.

67:18:01:20 Nonrecipient application fees.

67:18:01:20.01 Department subject to annual fee.

67:18:01:21 Repealed.

67:18:01:22 Requests for use of federal parent locator service.

67:18:01:23 Repealed.

67:18:01:24 Repealed.

67:18:01:25 Distribution of amounts collected from sources other than federal income tax
offset.

67:18:01:25.01 Distribution of amounts collected for foster care maintenance.

67:18:01:25.02 Distribution of IRS federal income tax refund offsets.

67:18:01:25.03 Distribution of IRS federal income tax refund offsets in foster care maintenance
cases.

67:18:01:26 Repealed.

67:18:01:27 Repealed.

67:18:01:28 Date of collection designated.

67:18:01:29 Repealed.

67:18:01:30 DCS report to Division of Economic Assistance.

67:18:01:31 Repealed.

67:18:01:32 Repealed.

67:18:01:33	Prepayment of future support obligations.
67:18:01:34	Incentive payments.
67:18:01:35	Repealed.
67:18:01:36	Repealed.
67:18:01:37	Repealed.
67:18:01:38	Intergovernmental collections.
67:18:01:39	Repealed.
67:18:01:40	Repealed.
67:18:01:41	Repealed.
67:18:01:42	Repealed.
67:18:01:43	Repealed.
67:18:01:44	Cooperative agreements.
67:18:01:45	Repealed.
67:18:01:46	Repealed.
67:18:01:47	Enforcement of support obligations.
67:18:01:48	Repealed.
67:18:01:49	Methods of enforcement of support obligation.
67:18:01:49.01	Guidelines for imposition of liens.
67:18:01:49.02	Guidelines for posting of bond or other security.
67:18:01:49.03	Furnishing information to consumer reporting agencies.
67:18:01:50	Notice of failure to cooperate.
67:18:01:51	Failure to cooperate.
67:18:01:52	Transferred.

- 67:18:01:53 Repealed.
- 67:18:01:54 Repealed.
- 67:18:01:55 Notice of claim of good cause.
- 67:18:01:56 Effect of determination of good cause.
- 67:18:01:57 Repealed.
- 67:18:01:58 Repealed.
- 67:18:01:58.01 Administrative review of withholding action.
- 67:18:01:58.02 Right to fair hearing following review of petition to stay withholding.
- 67:18:01:58.03 Administrative review -- Lottery setoff.
- 67:18:01:59 Allocation of obligation to each child.
- 67:18:01:60 Notice of collection of assigned support.
- 67:18:01:61 Notice to noncustodial parent before restricting issuance of license, registration, certification, or permit.
- 67:18:01:62 Administrative review and fair hearing before restricting issuance of license, registration, certification, or permit.
- 67:18:01:63 Payment of costs for obtaining affidavit of paternity.
- 67:18:01:64 Repealed.
- 67:18:01:65 Certain distributions limited to parent, legal guardian, or caretaker ~~relative~~.
- 67:18:01:66 Repealed.
- 67:18:01:67 State directory of new hires -- Reporting requirements.

67:18:01:01. Definitions. Terms used in this article mean:

- (1) "Act" Title IV-D of the Social Security Act;
- (2) "Aid," or "assistance," the grant amount paid to a family under the TANF program, the foster care maintenance payment paid under Title IV-E of the Social Security Act, or the temporary assistance to needy families program;
- (3) "Amount collected," the amount collected by DCS and retained as reimbursement of federal and state aid expenditures in the month in which the collection was made or for a previous month in which aid was paid or the amount collected and paid to a nonrecipient or a former recipient;
- (4) "Applicant" and "recipient," a caretaker ~~relative~~, the children, and any other individual whose financial needs are considered by the department in determining the amount of aid under SDCL chapter 28-7A;
- (5) "Assignment," the transferring to and vesting in the department, by virtue of SDCL 28-7A-7 or by written instrument, all rights of support from any person payable, whether accrued, pending, or continuing, to or on behalf of an applicant for or recipient of aid, or on behalf of another family member for whom the applicant or recipient is applying for or receiving aid;
- (6) "Assistance unit," an individual or a group of related recipients within a household whose needs are recognized in one assistance grant and whose support rights have been assigned to the department under SDCL 28-7A-7;
- (7) "Department," the Department of Social Services of the state of South Dakota;
- (8) "Family," the children of an obligee and an obligor and the obligee, legal guardian, or caretaker who has custody of or responsibility for the children for the purpose of distribution of support payments;

(9) "Federal parent locator service" or "FPLS," a service operated by the federal office of child support enforcement to locate noncustodial parents for purposes of support enforcement or to locate parents and children in parental kidnapping and child custody cases;

(10) "Incentive payment," a payment made to a political subdivision in connection with the enforcement and collection of support obligations;

(11) "Nonrecipient," a resident parent or legal guardian who has legal custody of a child or, in the absence of a custody order, a parent who has actual custody of a child not otherwise eligible for or receiving assistance from the department;

(12) "DCS," the Division of Child Support;

(13) "Power of attorney," an instrument authorizing the department to act on behalf of a nonrecipient to enforce and collect a support obligation, whether accrued, pending, or continuing, from another person;

(14) "State parent locator service" or "SPLS," the service established to identify and locate noncustodial parents;

(15) "State plan," the state plan for child support enforcement submitted by the Department under Title IV-D of the Social Security Act; and

(16) "Support obligation," a financial obligation of a person for child or spousal support, whether accrued, pending, or continuing, which is vested in the department by a recipient through an assignment or SDCL 28-7A-7 or is granted to the department by a nonrecipient through a power of attorney.

Source: 2 SDR 31, effective October 30, 1975; 4 SDR 84, effective June 11, 1978; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 177, effective July 8, 1982; 9 SDR 43, effective

October 10, 1982; 13 SDR 34, effective September 29, 1986; 13 SDR 89, effective January 19, 1987; 15 SDR 197, effective June 25, 1989; 24 SDR 72, effective November 30, 1997; 41 SDR 108, effective January 6, 2015.

General Authority: SDCL 28-7A-3(9).

Law Implemented: SDCL 28-1-65, 28-1-66, 28-7A-3(9).

67:18:01:56. Effect of determination of good cause. DCS may not undertake to establish paternity or secure child support in any case in which the Division of Economic Assistance has determined that an applicant or recipient has good cause for refusing to cooperate, unless the Division of Economic Assistance further determines that child support enforcement activities may proceed without the participation or cooperation of the caretaker ~~relative~~.

Source: 5 SDR 48, effective December 19, 1978; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 24 SDR 72, effective November 30, 1997; 41 SDR 108, effective January 6, 2015.

General Authority: SDCL 28-7A-3(9).

Law Implemented: SDCL 28-1-65, 28-7A-3(9).

67:18:01:65. Certain distributions limited to parent, legal guardian, or caretaker relative. When distributing collections to a family under this chapter, distribution is limited to the parent, legal guardian, or caretaker having custody of or responsibility for the child or children on whose behalf the collection was made.

Source: 28 SDR 112, effective February 20, 2002; 41 SDR 108, effective January 6, 2015.

General Authority: SDCL 28-7A-3(9).

Law Implemented: SDCL 25-7A-3.2, 28-1-65.

Cross-Reference: Payments to the family, § 45 C.F.R. § 302.38.

67:42:05:04. Status and number of children cared for -- Exceptions. The family foster parent may provide care for up to 6 children, including the foster parent's own children who are under 18 years of age and residing in the home. There may be no more than 2 children under the age of 2, including the foster parent's own children. Exceptions to this requirement may be made by the department or the child placement agency to keep siblings together or to place a child with a foster parent who is their relative. The maximum number of 6 children may be waived for a period of up to 10 days for emergency placements or respite care.

Source: 4 SDR 2, effective July 25, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 11 SDR 101, effective February 3, 1985; 39 SDR 220, effective June 27, 2013.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:46:04:13. Department to refer certain individuals to Social Security Administration to apply for SSI. The department shall refer an individual to the Social Security Administration to apply for SSI if the individual's income minus \$20 is less than one of the following:

(1) The standard \$30 SSI payment if the individual is living in a medical or nursing facility; or

(2) The SSI standard benefit amount of ~~\$721~~ 733 if the individual is not institutionalized but living in an adult foster care home or an assisted living facility.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 35, effective December 22, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; 15 SDR 2, effective July 17, 1988; 16 SDR 203, effective May 27, 1990; transferred from § 67:16:19:08, effective August 23, 1992; 20 SDR 92, effective December 21, 1993; 21 SDR 162, effective March 23, 1995; 22 SDR 188, effective July 8, 1996; 24 SDR 67, effective November 26, 1997; 26 SDR 99, effective January 30, 2000; 28 SDR 178, effective July 3, 2002; 30 SDR 193, effective June 13, 2004; 31 SDR 107, effective February 1, 2005; 33 SDR 124, effective January 2, 2007; 34 SDR 271, effective April 17, 2008; 35 SDR 234, effective April 1, 2009; 38 SDR 123, effective January 23, 2012; 41 SDR 7, effective July 29, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: 42 U.S.C. § 1382(b)(1), 1974; Long-term care residency requirements and beginning of eligibility, § 67:46:03:03.

67:46:05:15. Home property exclusion. If an individual's eligibility for long-term care assistance is based on an application that was received by the department before January 1, 2006, the individual's home property is excluded from assets if it continues to be the individual's principal place of residence or continues to be occupied by and the primary residence of the individual's spouse, child, stepchild, grandchild, parent, stepparent, grandparent, aunt, uncle, niece, nephew, brother, sister, stepbrother, stepsister, half brother, half sister, cousin or in-law who is dependent on the applicant or recipient.

The value of the individual's ownership interest in a jointly owned home is an excluded resource for as long as sale of the property would cause undue hardship, due to loss of housing, to a co-owner. In order for undue hardship to be met the individual must provide clear and convincing evidence that the co-owner uses the property as their principal place of residence; would have to move if the property were sold; and has no other readily available housing.

If an individual's eligibility for long-term care assistance is based on an application that was received by the department after December 31, ~~2013~~2014, the individual's home property interest up to an equity value of ~~\$543,000~~ 552,000 is excluded from the individual's assets if it continues to be the individual's principal place of residence. Beginning with calendar year 2015 and each succeeding year, the department shall increase the amount by the percentage increase in the consumer price index for all urban consumers, rounded to the nearest \$1,000.

If the equity interest in the home is greater than the amount specified, the individual is ineligible for long-term care medical assistance regardless of whether or not the individual will be returning to the home to live.

The equity limit contained in this section does not apply if the individual's spouse or child, who is either under age 21 or is blind or permanently and totally disabled, is lawfully residing in the home.

Nothing in this rule prevents the individual from using a reverse mortgage or home equity loan to reduce the total equity interest in the home.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 10, effective August 28, 1977; 5 SDR 109, effective July 1, 1979; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; transferred from § 67:16:20:05, effective August 23, 1992; 33 SDR 44, effective August 31, 2006.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References:

Disqualification for long-term care assistance for individuals with substantial home equity, 42 U.S.C. § 1396p(f).

Period of ineligibility waived under certain circumstances, § 67:46:05:10.

67:46:07:03. Determination of spousal share. The spousal share of resources may not exceed the greatest of the following:

(1) ~~Twenty three thousand four hundred forty eight dollars~~ Twenty three thousand eight hundred forty four dollars;

(2) One-half of the value of the total aggregate nonexempt resources of the community spouse and the institutionalized spouse up to \$~~17,240~~ 119,220;

(3) An amount determined in a fair hearing; or

(4) An amount determined by the circuit court under SDCL 25-7-1 to 25-7-5, inclusive.

Pursuant to subdivision (3) or (4) of this section, the hearing officer or the court may increase the spousal share of resources if it is determined to be inadequate to support the community spouse.

Source: 16 SDR 203, effective May 27, 1990; transferred from § 67:16:32:03, effective August 23, 1992; 30 SDR 166, effective July 1, 2004; 31 SDR 107, effective February 1, 2005; 33 SDR 124, effective January 2, 2007; 34 SDR 271, effective April 17, 2008; 35 SDR 234, effective April 1, 2009; 41 SDR 7, effective July 29, 2014.

General Authority: SDCL 28-6-1, 28-6-18.

Law Implemented: SDCL 28-6-1, 28-6-18.

Cross-References:

Community spouse resource allowance defined, 42 U.S.C. § 1396r-5(f)(2).

Fair hearings, ch 67:17:02.

67:46:07:12. Computation of community spouse's maintenance allowance and excess shelter allowance. The community spouse's monthly minimum maintenance allowance is 150 percent of the federal poverty income level established in § 67:11:01:03 for two persons divided by 12.

The excess shelter allowance is determined by subtracting 30 percent of the minimum maintenance allowance from the community spouse's shelter costs. Shelter costs include rent or mortgage costs, trailer parking space fees, taxes and insurance on the premises, and condominium or cooperative maintenance charges for the couple's principal residence. Shelter costs also include the applicable supplemental nutrition assistance program utility allowance pursuant to §§67:13:01:02, 67:13:01:05 or 67:13:01:06.

Rent, mortgage, taxes, insurance, and condominium and cooperative maintenance charges paid less frequently than monthly are prorated for the period of intent.

The combined spousal allowances may not exceed ~~\$2,931~~ 2,981 unless a greater allowance is provided for under a court order of support or if through the fair hearing process it is determined that a greater amount of need exists because of circumstances resulting in financial duress.

These deductions are not permissible if the institutionalized spouse does not make the income available to the community spouse.

Source: 16 SDR 203, effective May 27, 1990 and July 1, 1990; transferred from § 67:16:32:12, effective August 23, 1992; 19 SDR 141, effective March 25, 1993; 20 SDR 92, effective December 21, 1993; 20 SDR 170, effective April 21, 1994; 21 SDR 162, effective March 23, 1995; 31 SDR 107, effective February 1, 2005; 33 SDR 124, effective January 2,

2007; 34 SDR 271, effective April 17, 2007; 35 SDR 234, effective April 1, 2009; 41 SDR 7, effective July 29, 2014.

General Authority: SDCL 28-6-1, 28-6-18.

Law Implemented: SDCL 28-6-1, 28-6-18.

~~Cross-Reference:~~ ~~Standard utility allowance, § 67:13:01:02.~~

67:46:11:10. Resource limit. The maximum resource limit for a QI, QMB or SLMB is ~~\$7,160~~ 7,280 for a single individual and ~~\$10,750~~ 10,930 for an individual with a spouse effective January 1, ~~2014~~ 2015. The resource limit is adjusted on January 1 of each year, based upon the change in the annual consumer price index since September of the previous year. For a married couple living together, their combined resources are considered available to each other and shared equally.

Source: 15 SDR 171, effective May 15, 1989; transferred from § 67:16:30:10, effective August 23, 1992; 19 SDR 141, effective March 25, 1993; 41 SDR 7, effective July 29, 2014; 41 SDR 93, effective December 3, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Premium and cost-sharing subsidies for low-income individuals – maximum resource level annual adjustment, 42 U.S.C. § 1395w-114(a)(3).