ARTICLE 67:12

ASSISTANCE PAYMENTS

Chapter

67:12:01	Assistance applications and eligibility.
67:12:02	Notice to applicants and recipients.
67:12:03	Fair hearings, Transferred.
67:12:04	Limitations on real property.
67:12:05	Limitations on personal property.
67:12:06	Budgeting.
67:12:07	Emergency assistance, Repealed.
67:12:08	Protective, vendor, or two-party payments, Repealed.
67:12:09	Job opportunities and basic skills, Repealed.
67:12:10	Food stamp program, Transferred.
67:12:11	Refugee resettlement program, Repealed.
67:12:12	Dependent children foster care.
67:12:13	Repatriate program.
67:12:14	Optional state supplemental program.
67:12:15	Dependent care, Repealed.
67:12:16	Transitional child care, Repealed.
67:12:17	Transitional medical benefits, Repealed.
67:12:18	Unemployed parent program, Repealed.
67:12:19	Intentional program violations (IPVs), Repealed.

CHAPTER 67:12:02

NOTICE TO APPLICANTS AND RECIPIENTS

Section

67:12:02:01. Adequate notice to applicants. ~~Adequate notice shall be a written notice to applicants of public assistance and medical care at the time the decision is made approving or rejecting each application~~ The department must send adequate, written notice to an applicant of public assistance and medical care when an application is approved or rejected. This written notice ~~shall~~ must include: ~~a~~

(1) A statement of what action the agency intends to take~~, the~~;

(2) The reasons for the intended agency action~~, the~~;

(3) The specific regulations supporting such action~~,~~; and

(4) An explanation of the individual's right ~~to~~:

(a) To request a conference and to be represented by others at the conference~~, the right to and procedure for requesting~~;

(b) To request a fair hearing~~, the right to~~ and the procedure and time for requesting a fair hearing; and

(c) To be represented by others at the hearing ~~and the time in which a hearing may be requested~~. This notice ~~shall~~ must also explain the ~~individual's~~ applicant's rights under the Civil Rights Act of 1964. ~~Nothing in this section shall be construed as indicating that the~~ The department will not pay for an applicant's legal fees ~~for representing applicants~~ at the conferences or hearings held pursuant to this section.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-9, 28-7-10~~ 28-6-1.

67:12:02:02. Requirements for timely and adequate notice. The department shall mail timely and adequate notice to each recipient detailing the reason for a proposed action which may result in termination or reduction of payment or inability to authorize payment. The notice~~ shall inform~~ must:

(1) Inform recipients of any changes in federal or state law requiring automatic grant adjustments for classes of recipients and of a change in the manner or form of payment to a protective, vendor, or two-party payment~~. This notice shall state~~;

(2) State the specific rules supporting the action taken~~ and explain~~;

(3) Explain the~~ individual's~~ recipient's right to request a conference and to be represented by others at the conference~~,~~;

(4) Explain the right to request a fair hearing and the procedure and time for requesting a fair hearing~~,~~; and

(5) Explain the right to be represented by others at the hearing~~, and the time in which a hearing may be requested~~. The department shall mail this timely notice ten days before the date of action, which is the date~~ when~~ the recipient would normally receive an assistance check, or, in the case of a~~ Medicaid~~ medicaid recipient, ten days before the intended~~ change~~ action would be effective.

In cases of probable fraud, notice of a proposed action which may result in termination or reduction of payment or inability to authorize payment is considered timely if it is mailed at least five days before the action would become effective. This notice~~ shall~~ must also explain the circumstances under which assistance may be continued if a hearing is requested. Timely and adequate notice is not required when the recipient of a one-person case has died.

Source: SL 1975, ch 16, § 1; 4 SDR 10, effective August 28, 1977; 7 SDR 23, effective September 18, 1980; 7 SDR 30, effective October 5, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 174, effective June 28, 1982; 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-9~~ 28-6-1.

Cross-Reference: Continuance of aid pending hearing decision, § 67:12:02:09.

67:12:02:03. Adequate notice to recipients without timely notice.~~ In the following situations, the~~ The department may dispense with timely notice and send an adequate notice as provided in § 67:12:02:02 no later than the date of action, which is the date~~ when~~ the recipient would normally receive an assistance payments check or, in the case of a~~ Medicaid~~ medicaid recipient, the date the intended~~ change~~ action would be effective if:

(1) The department has factual information confirming the death of a recipient or of the~~ AFDC~~ Aid to Families With Dependent Children (AFDC) payee when there is no relative available to serve as new payee;

(2) The department receives a clear, written statement signed by a recipient that the recipient no longer wishes assistance or that gives information which requires termination or reduction of assistance, and the recipient has indicated~~, in writing, that the recipient understands that this is~~ knowledge of the consequence of supplying such information;

(3) The recipient has been admitted or committed to an institution, and further payments to that individual do not qualify for federal financial participation under the state plan;

(4) The recipient has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(5) The claimant's whereabouts are unknown and mail from the department ~~directed~~ to the claimant has been returned by the post office indicating no known forwarding address. The department~~ shall~~ must mail the claimant's check to the claimant if the whereabouts of the claimant become known during the payment period covered by a returned check;

(6) A recipient has been accepted for assistance in another state and that fact has been established by the ~~South Dakota Department of Social Services~~ department;

(7) An AFDC child is removed from the home as a result of a judicial determination or voluntarily placed in an alternative care setting by the child's legal guardian; or

(8) The department takes action because of information the recipient furnished in a monthly report or because the recipient failed to submit a complete or timely monthly report as required by § 67:12:06:34.

Source: SL 1975, ch 16, § 1; 1 SDR 53, effective January 22, 1975; 2 SDR 88, effective July 1, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 174, effective June 28, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-9, 28-7-18~~ 28-6-1.

Cross-Reference: Alternative care~~, ch~~ chapter 67:14:31.

67:12:02:03.01. Adequate notice to recipients using monthly report form. The department ~~shall~~ must send adequate notice as provided in § 67:12:02:02 when reducing or terminating assistance to ~~the~~ a recipient who submits a completed monthly report form and to ~~the~~ a recipient who fails to submit a monthly report form. The adequate notice must be received by the recipient no later than the date the recipient would normally receive the assistance payment check or, in the case of ~~Medicaid~~ medicaid eligibility, before the intended change would become effective.

Source: 7 SDR 30, effective October 5, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 125, effective April 4, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-9~~ 28-6-1.

Cross-References:

How monthly reports are treated and what notices are required, 45 C.F.R. § 233.37.

Completed monthly report form required, § 67:12:06:34.

~~How monthly reports are treated and what notices are required, 45 C.F.R. § 233.37.~~

Assistance to be terminated if required report form not received on time, § 67:12:06:37.

67:12:02:04. Recipients' right to request conference -- Time to make request. A recipient whose payment either cannot be authorized,~~ whose payment~~ is terminated or reduced, or~~ whose payment~~ is changed in manner or form has the right to have a conference with the staff of the department if the request is made during the~~ 10-day~~ ten day advance written notice period or within~~ 10~~ ten days from the date of action.~~ The~~ An applicant who has received written notice of the decision made~~ in regard to~~ regarding the applicant's application may also request a conference within 10 days after the written notice has been mailed.

Source: SL 1975, ch 16, § 1; 4 SDR 10, effective August 28, 1977; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL~~ 28-7-2~~ 28-6-1.

Law Implemented: SDCL~~ 28-7-9~~ 28-6-1.

67:12:02:05. Conference held as soon as possible. ~~Arrangement shall be made for the~~ The department shall arrange for a conference ~~as soon as possible and at least~~ within five working days after ~~the~~ receipt of ~~the~~ a conference request.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-9~~ 28-6-1.

67:12:02:06. Final decision of conference. The department shall advise the applicant or recipient ~~must be advised~~ of the final decision at the end of the conference. If a final decision cannot be made, the conference may be extended until a decision is rendered and written notice of final decision delivered to the applicant or recipient at the conclusion. The applicant or recipient has ~~30~~ thirty days from the final decision of the conference to request a hearing.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-9~~ 28-6-1.

67:12:02:07. Definition of conference. A conference is an informal meeting with the caseworker or the caseworker's supervisor who was involved in ~~the decision~~ determining the proposed action. At the conference, the ~~individual will be given an explanation of the~~ reasons for the proposed action ~~and~~ will be explained, and the applicant or recipient will be able to present information to ~~show that~~ demonstrate the proposed action is incorrect. The ~~individual~~ applicant or recipient may ~~speak for himself or~~ be represented by legal counsel ~~or by~~, a friend, or other ~~spokesman~~ person. The department is not responsible for payment of ~~the~~ fees for ~~such~~ representation.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-9~~ 28-6-1.

67:12:02:08. Conference not required before fair hearing. ~~The~~ An applicant or recipient may request a fair hearing without a conference with agency staff.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-10~~ 28-6-1.

67:12:02:09. Continuance of aid pending hearing decision. If the recipient requests a fair hearing within ten days after the department mails the notice of adverse action, the department ~~shall~~ must continue to provide ~~AFDC or aid to dependent foster children~~ Aid to Families With Dependent Children without reducing, terminating, suspending, or changing the manner or form of payment until the fair hearing decision is made unless the recipient requests that continued assistance not be paid during that time.

~~In no case may assistance~~ Assistance may not be continued if ~~any of the following circumstances exist~~:

(1) The recipient fails to submit a required completed monthly report ~~if one is required~~;

(2) The hearing examiner determines at the hearing that the sole issue is one of state or federal law or policy and not of an incorrect grant computation; or

(3) Pending the hearing decision, the recipient's circumstances change in a way that affects the recipient's eligibility for or amount of assistance.

Aid continued under this section is subject to recovery by the department if, as a result of the fair hearing, the department's action is upheld.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:06, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 174, effective June 28, 1982; transferred from § 67:17:02:06, 21 SDR 172, effective April 3, 1995; 22 SDR 188, effective July 8, 1996.

General Authority: SDCL ~~28-1-24.1~~ 28-6-1.

Law Implemented: SDCL ~~28-1-24.1~~ 28-6-1.

Cross-References:

Aid paid pending hearing decision, 45 C.F.R. § 205.10(a)(7).

Requirements for timely and adequate notice, § 67:12:02:02.

~~Department to investigate report -- Notice of action -- Payments made pending fair hearing, § 67:12:16:23.~~

~~Aid paid pending hearing decision, 45 C.F.R. § 205.10(a)(7).~~

67:12:02:10. Written notice required if aid discontinued pending hearing decision. The department shall promptly inform the ~~claimant~~ recipient in writing if aid to dependent children ~~or aid to dependent foster children~~ assistance will be discontinued pending the hearing decision.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:07, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; transferred from § 67:17:02:07, 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-1-24.1~~ 28-6-1.

Law Implemented: SDCL ~~28-1-24.1~~ 28-6-1.

67:12:02:11. Corrective payments. If the hearing decision is favorable to the aid to dependent children~~ or aid to dependent foster children claimant~~ recipient or if the department decides in favor of the~~ claimant~~ recipient before the hearing, the department ~~shall~~ must promptly make corrective payments retroactive to the date the incorrect action was taken. Retroactive corrective payments may only be made~~ only~~ for~~ the 12~~ twelve months preceding the month in which the underpayment is discovered.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:29, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; transferred from § 67:17:02:29, 21 SDR 172, effective April 3, 1995.

General Authority: SDCL~~ 28-1-24.1~~ 28-6-1.

Law Implemented: SDCL~~ 28-1-24.1~~ 28-6-1.

67:12:02:12. Modification of aid. Nothing contained in the fair hearing decision precludes the department from modifying the aid to dependent children ~~or aid to dependent foster children~~ grant or other benefits of the appellant after the decision if there ~~are changed conditions~~ is a change in circumstances related to eligibility.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:30, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; transferred from § 67:17:02:30, 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-1-24.1~~ 28-6-1.

Law Implemented: SDCL ~~28-1-24.1~~ 28-6-1.

67:12:04:01. Definitions. Terms used in this chapter mean:

(1) "Equity value," the current fair market value less encumbrances of record as of the date of valuation;

(2) "Fair market value," the price an item will sell for on the open market in the geographic area involved;

(3) "Homestead property," ~~that~~ property defined in SDCL 43-31-2 and 43-31-3;

(4) "Other real property," real property other than ~~that which has the characteristics of~~ homestead property or real property held in trust;

(5) "Property transferred or assigned," ~~that~~ real or personal property which was at one time owned by an applicant or recipient of public assistance or by the spouse of the applicant or recipient, if they were living together, but was transferred or assigned to another;

(6) "Real property," ~~that~~ property defined in SDCL 43-1-3; and

(7) "Real property held in trust," ~~that~~ real property to which the federal government has the legal title, but ~~which~~ is being held for the benefit of Indians ~~and~~ or other citizens.

Source: SL 1975, ch 16, § 1; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 144, effective July 1, 1984.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:04:01.01. Classification of real property. For purposes of public assistance, real property ~~shall be~~ is classified as homestead property, real property held in trust, ~~and~~ or other real property.

Source: 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:04:03. Home exempt from consideration. The ~~applicant's or recipient's~~ home of an applicant or recipient which is the usual residence of the assistance unit may not be considered when determining eligibility for ~~AFDC~~ Aid to Families With Dependent Children. If the applicant or recipient is temporarily absent from the home, the home may be exempted ~~under the following conditions~~ if:

(1) The applicant or recipient intends to return to the home on a specific date;

(2) The applicant or recipient agrees to immediately inform the department ~~when and~~ if the ~~intentions~~ intention of the applicant or recipient to return to the home ~~change~~ changes; and

(3) The absence will not exceed one year, unless the department authorizes a longer period of time ~~is specifically authorized by the department~~.

If the applicant or recipient has two or more homes which are used at different times, the applicant or recipient may claim only one home as the residence.

The residence may not include different lots and tracts unless they are contiguous or consistently or regularly used as part of the residence.

Source: SL 1975, ch 16, § 1; 2 SDR 24, effective October 1, 1975; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 58, effective November 29, 1981; 10 SDR 144, effective July 1, 1984; 12 SDR 112, effective January 16, 1986.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

~~**Cross-Reference:** Definitions, § 67:12:04:01.~~

67:12:04:05. Real property held in trust affecting eligibility. Ownership of real property held in trust by the United States government ~~shall~~ must not affect ~~AFDC~~ Aid to Families With Dependent Children eligibility.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 144, effective July 1, 1984.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Periodic and lease income considered, § 67:12:05:49.

67:12:04:07. Proceeds from sale of real property held in trust. Proceeds received from the sale of real property held in trust ~~shall~~ must be considered as a resource and are subject to the resource limit contained in § 67:12:05:05 unless they were paid under ~~PL 92-254, PL 93-134, PL 94-114, or PL 94-540~~ the Act of March 18, 1972, Pub. L. No. 92-254, 86 Stat. 671 (1972), the Indian Tribal Judgment Funds Use or Distribution Act, Pub. L. No. 93-134, 87 Stat. 466 (1973), the Act of October 17, 1975, Pub. L. No. 94-114, 89 Stat. 577 (1975), or the Act of October 18, 1976, Pub. L. No. 94-540, 90 Stat. 2503 (1976).

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 15 SDR 67, effective November 6, 1988.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:04:09. Other real property subject to resource limit. The equity value of other real property is subject to the maximum resource limit contained in § 67:12:05:05.

Source: SL 1975, ch 16, § 1; 2 SDR 24, effective October 1, 1975; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 144, effective July 1, 1984.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:04:10. Other real property to be placed on market. The limitation on ownership in § 67:12:04:09 may be waived for six months if the other real property is placed on the market. Applications may be approved and assistance paid regardless of the ownership of other real property if the owner or owners sign an agreement to sell the property and to ~~repay~~ reimburse the department for the amount of assistance received that would not have been received had the property been sold at the beginning of the period. Repayment may not exceed the amount of the net proceeds of the sale.

After signing the agreement to sell the property, the owner must ~~take immediate action to sell the property. The action to sell must consist of listing~~ immediately list the other real property with a reputable and active real estate broker who will use best efforts to find a buyer. Listing the property in the local newspaper is not sufficient. The property must be sold for a reasonable price ~~as determined~~ according to § 67:12:04:10.01. If the property is not sold within the six-month limit, or the family becomes ineligible for ~~AFDC~~ Aid to Families With Dependent Children, the entire amount of assistance paid during this period is considered an overpayment.

Source: SL 1975, ch 16, § 1; 2 SDR 24, effective October 1, 1975; 7 SDR 66, 7 SDR 89, effective July 1, 1981; repealed, 10 SDR 144, effective July 1, 1984; readopted, 12 SDR 112, effective January 16, 1986.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Exclusion of other real property, 45 C.F.R. § 233.20(a)(3)(i)(B)(5).

67:12:04:10.01. Determining value of other real property -- Responsibility of applicant or recipient. An ~~AFDC~~ Aid to Families With Dependent Children applicant or recipient ~~must~~ shall provide to the department evidence ~~to the department~~ of the value of other real property which the applicant or recipient owns or ~~in which the applicant or recipient~~ has an interest. Evidence of value consists of ~~the following~~ a list of current encumbrances of record against the property and the fair market value as determined:

(1) ~~The fair market value as determined by~~ By a real estate appraiser;

(2) ~~The fair market value as determined by~~ By a ~~BIA~~ Bureau of Indian Affairs realty office;

(3) ~~The fair market value as determined from~~ From an average of three estimates from individuals, other than the applicant or recipient, familiar with and able to place a value on the property;

(4) ~~The fair market value as determined by~~ By a bank or savings and loan official; or

(5) ~~The fair market value as determined by By~~ the Farmers Home Administration~~; and~~

~~(6) A list of current encumbrances of record against the property~~.

Evidence submitted under this section may be verified by the department.

Source: 10 SDR 144, effective July 1, 1984.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Applicant to provide information promptly, § 67:12:01:06.01.

Cooperation of applicant or recipient, § 67:12:01:70~~; Applicant to provide information promptly, § 67:12:01:06.01~~.

67:12:04:10.02. Department reserves right to obtain independent valuation. The department ~~shall~~ must accept the evidence of the fair market value submitted by the applicant or recipient unless ~~the fair market value is obviously too high or too low. If~~, in the ~~department's~~ opinion of the department, the fair market value submitted by the applicant or recipient is ~~obviously too~~ unreasonably high or ~~too~~ low~~, the~~. The department may then obtain an independent fair market valuation of the property~~. The department's fair market valuation shall~~ which must then be used when determining equity value.

If discrepancies exist between the list of encumbrances obtained by the department and the list submitted by the applicant or recipient, the department's list of encumbrances ~~shall~~ must be used when determining equity value.

Source: 10 SDR 144, effective July 1, 1984.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References: Determining value of other real property -- Responsibility of applicant or recipient, § 67:12:04:10.01.

67:12:04:13. Property transferred, sold, or assigned by applicant. ~~The department shall determine an~~ An applicant ~~to~~ shall be ineligible for assistance if ~~it~~ the department can ~~clearly be shown~~ determine that the applicant's intent in transferring, selling, or assigning real or personal property with or without reservations was to render the applicant eligible for assistance. ~~In determining~~ To determine the applicant's intent in making the transfer, sale, or assignment of real or personal property the department ~~shall~~ must consider ~~the following factors~~:

(1) The time period between the applicant's transfer, sale, or assignment of real or personal property and the time of the application for assistance; and

(2) ~~Any information which would indicate~~ Information indicating that the applicant made the transfer, sale, or assignment with the intent of rendering the applicant eligible for assistance.

Any legal reservation retained by the applicant in the transfer, sale, or assignment of real or personal property~~, such as life estates, interest payments, rental payments, or installment payments,~~ is subject to the limitations on real property ~~limitations of~~ contained in chapter 67:12:04 and ~~income~~ the limitations ~~of~~ on personal property contained in chapter 67:12:05.

Source: SL 1975, ch 16, § 1; 3 SDR 52, effective January 27, 1977; 4 SDR 10, effective August 28, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:04:17. Full and adequate consideration in money or money's worth for property transferred. Any item or service which is received for the property ~~shall~~ must be accepted as being within the meaning of the phrase "full and adequate consideration in money or money's worth" as long as the value of the item or service equals the reasonable market value of the property transferred or assigned. When it appears property has been transferred or assigned without full and adequate consideration, the fair market value~~,~~ determined according to § 67:12:04:10.01, less encumbrances of record~~, shall be~~ is used in determining if the recipient received the full and adequate consideration in money or money's worth.

Source: SL 1975, ch 16, § 1; 3 SDR 52, effective January 27, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 12 SDR 112, effective January 16, 1986.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:04:20. Periods of ineligibility. The department shall close the case or deny assistance to a recipient or applicant who fails or refuses to disclose the consideration or absence of consideration in the sale, transfer, or assignment of property or who fails to disclose the receipt of a resource. The applicant or recipient remains ineligible for assistance until the requirements of § 67:12:05:59 have been met. Section 67:12:05:59 applies when determining periods of ineligibility ~~in the following situations~~ for:

(1) ~~The~~ A recipient who ~~had~~ previously failed or refused to provide a full disclosure to the department;

(2) An applicant who ~~has~~ transferred, sold, or assigned property to become eligible for assistance; or

(3) A recipient who ~~has~~ received money or should have received money from the sale, transfer, or assignment of property.

Source: SL 1975, ch 16, § 1; 3 SDR 52, effective January 27, 1977; 4 SDR 10, effective August 28, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

______Full and adequate consideration in money or money's worth of property transferred, § 67:12:04:17~~;~~.

______Determining periods of ineligibility, § 67:12:04:21.

67:12:04:21. Determining periods of ineligibility. The period of ineligibility ~~shall be~~ is determined according to § 67:12:05:59 ~~by including as income~~ and includes the market value received or the appraised market value of the property transferred, assigned, or sold as lump sum income.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Treatment of lump sum income, § 67:12:05:59.

67:12:04:25. Date to begin charge-off computation to determine length of ineligibility. The date to begin the charge-off computation to determine length of ineligibility is ~~as follows~~:

(1) For an applicant who transferred, sold, or assigned property for the purpose of becoming eligible for ~~AFDC~~ Aid to Families With Dependent Children, the date to begin charge-off computations to determine length of ineligibility is the month when the instrument evidencing a transfer or assignment was delivered. If the date of delivery cannot be determined, the department shall consider the month when the instrument was recorded or filed to be the month of the transfer or assignment; or

(2) For a recipient who transferred, sold, or assigned property, the date to begin the charge-off computation to determine length of ineligibility ~~shall be~~ is computed forward from the date that ineligibility was determined and is not retroactive to the date of transfer or receipt of the resources.

Source: SL 1975, ch 16, § 1; 3 SDR 52, effective January 27, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

CHAPTER 67:12:05

LIMITATIONS ON PERSONAL PROPERTY

Section

67:12:05:29.01	Treatment of moneys received under a college work-study program.
67:12:05:29.02	Treatment of loans.
67:12:05:30	Repealed.
67:12:05:31	~~Food stamp coupon allotment~~ Supplemental nutrition assistance benefits not considered available income.
67:12:05:32	Value of federal donated commodities not considered available income.
67:12:05:33	Payment received under the Relocation Act not considered available income.
67:12:05:34	Use of earned income exemption in determining eligibility and computing the assistance payment.
67:12:05:35	Repealed.
67:12:05:36	Determining continuing eligibility.
67:12:05:37	Repealed.
67:12:05:38	Application of child's earned income.
67:12:05:39 to 67:12:05:43	Repealed.
67:12:05:44	Real or personal property income or profits of applicants or recipients of ~~AFDC~~ Aid to Families With Dependent Children.
67:12:05:45	Real or personal property income or profits of parents of dependent children.
67:12:05:46	Repealed.

67:12:05:47	Interest from savings.
67:12:05:48	Tips considered.
67:12:05:49	Periodic and lease income considered.
67:12:05:50	Repealed.
67:12:05:51	Individuals excluded from assistance unit -- Nondependent household members.
67:12:05:52	Treatment of income from nonrecipient.
67:12:05:52.01	Consideration of income of parent of minor parent.
67:12:05:53	Repealed.
67:12:05:54	Proceeds from life insurance.
67:12:05:55	Repealed.
67:12:05:56	Applicants or recipients to take advantage of all resources.
67:12:05:57	Benefits to children and adults derived from government sources.
67:12:05:58	Repealed.
67:12:05:59	Treatment of lump sum income.
67:12:05:60	County welfare funds or ~~BIA~~ Bureau of Indian Affairs general assistance grants.
67:12:05:61	Benefits derived from private sources.
67:12:05:61.01	Income received as gift.

67:12:05:62	Income received by volunteers in the retired senior volunteer program, foster grandparent program, and older Americans community service program.
67:12:05:63	Repealed.
67:12:05:64	Judgment funds paid to Blackfeet Tribe and Gros Ventre Tribe of Montana.
67:12:05:65	Indian judgment funds pursuant to Pub. L. No. 93-134.
67:12:05:66	Exclusion of payments received pursuant to Alaska Native Claims Settlement Act.
67:12:05:67 to 67:12:05:70	Repealed.
67:12:05:71	Exclusion of payments received as volunteer under Title I (VISTA).
67:12:05:72	Exclusion of value of supplemental food assistance.
67:12:05:73	Payments received as volunteer under Titles II and III.
67:12:05:74	Exclusion of dependent child's income received from ~~JTPA~~ Job Training Partnership Act summer youth program.
67:12:05:75	Exclusion of agent orange settlement payments.
67:12:05:76	Exclusion of vehicle owned by dependent child.
67:12:05:77	Exclusion of savings account owned by dependent child.
67:12:05:78	Interest from child's savings account excluded.
67:12:05:79	Exclusion of dependent child's earnings.

67:12:05:01. Definitions. Terms used in this chapter mean:

(1) "Earned income,"~~ for an employed applicant or recipient~~ income in cash or in kind, before deductions such as income taxes, social security taxes, insurance premiums, or savings bonds, earned by an applicant or recipient through the receipt of wages, salary, commissions, or fees; for a self-employed individual, that income remaining after deducting the business expenses allowed in § 67:12:05:12;

(2) "Encumbrance," a claim, lien, charge, legal debt, chattel mortgage, or liability of record attached to and binding real property, personal property, or real and personal property;

(3) "Equity value," the current fair market value minus encumbrances of record as of the date of evaluation;

(4) "Fair market value," the price an item of a particular make, model, size, material, or condition will sell for on the open market in the geographic area involved;

(5) "Liquid assets," cash on hand, plus tangible or intangible personal property~~ as defined in SDCL 43-1-3~~ which can be readily converted into cash within~~ 30~~ thirty days~~, such as bank accounts, current value of securities, burial funds, loan value of insurance policies, and collectible debts~~; and

(6) "Personal property," personal property as defined in SDCL 43-1-2 and 43-1-3. ~~For purposes of public assistance, personal property is divided into liquid assets, tangible personal property, deductible income, and other benefits and earned income; and~~

~~(7) "Tangible personal property," as defined in SDCL 43-1-3, including such items as livestock, farm implements, and automobiles.~~

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 8 SDR 95, effective February 18, 1982; 9 SDR 46, effective October 1, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:02. Sale, transfer, or assignment of personal property.~~ Regulations pertinent to~~ The rules governing real~~ property also apply to~~ and personal property~~. These regulations cover~~ include the sale, transfer, or assignment of personal property and resulting ineligibility periods.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL~~ 28-7-2~~ 28-6-1.

Law Implemented: SDCL~~ 28-7-4~~ 28-6-1.

Cross-References: Limitations on real property, §§~~ 67:12:04:11~~ 67:12:04:13 to ~~67:12:04:27~~ 67:12:04:25, inclusive.

67:12:05:05. Maximum resource limit. For an ~~AFDC~~ Aid to Families With Dependent Children assistance unit, the maximum resource limit is ~~$1,000~~ one thousand dollars. Real and personal property with an equity value of no more than ~~$1,000~~ one thousand dollars may be reserved for each assistance unit.

Source: SL 1975, ch 16, § 1; 2 SDR 24, effective October 1, 1975; 3 SDR 52, effective January 27, 1977; 4 SDR 10, effective August 28, 1977; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 95, effective February 18, 1982; 12 SDR 112, effective January 16, 1986.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Need and amount of assistance, 45 C.F.R. § 233.20.

Cooperation of caretaker relative as a condition of eligibility, § 67:12:01:66.

~~Need and amount of assistance, 45 C.F.R. § 233.20(a)(3)(i)(B).~~

Other real property to be placed on market, § 67:12:04:10.

67:12:05:06. Tangible personal property considered a resource. Tangible personal property of an applicant or recipient is considered a resource and valued according to its equity value ~~with the following exceptions~~ except:

(1) Household goods essential for day-to-day living~~, such as clothing, furniture, appliances, utensils, and similarly essential personal effects, are excluded from the resource limit~~;

(2) Items of unusual value ~~such as~~ including expensive china, silver, or glassware; art works; oriental, Persian, and similarly expensive carpets; antiques; hobby collections; jewelry, excluding a personal wedding and engagement ring, made with precious stones or metals; and furs ~~are included when determining the resource limit~~ if the item ~~exceeds~~ has an equity value of ~~$500~~ less than five hundred dollars. Final determination of an item's value must be made by an individual, other than the applicant, who is familiar with and can place a value on the property; and

(3) The equity in one vehicle of no more than ~~$1,500 is excluded from the resource limit as long as that~~ one thousand five hundred dollars provided the vehicle is the assistance unit's primary mode of transportation.

Source: SL 1975, ch 16, § ; 2 SDR 24, effective October 1, 1975; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 95, effective February 18, 1982; 14 SDR 140, effective May 1, 1988; 20 SDR 196, effective May 23, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Need and amount of assistance, 45 C.F.R. § 233.20.

Maximum resource limit, § 67:12:05:05.

~~Need and amount of assistance, 45 C.F.R. § 233.20(a)(3)(i)(B)(2).~~

Exclusion of vehicle owned by dependent child, § 67:12:05:76.

67:12:05:07. Bank account considered liquid asset. Money on deposit in a bank is a liquid asset whether in a checking account, ~~a~~ savings account, or ~~a~~ certificate of deposit. Unless the conditions of § 67:12:05:77 apply or the applicant or recipient produces clear and convincing evidence to the contrary, money held in a joint account is considered ~~available to~~ a liquid asset of the applicant or recipient when the applicant or recipient ~~has the power to draw on~~ is permitted to make withdrawals from the account.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 12 SDR 112, effective January 16, 1986; 20 SDR 196, effective May 23, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:08. Savings bond considered liquid asset. A savings bond is a liquid asset to the extent of its current value. Unless the applicant or recipient produces clear and convincing evidence to the contrary, a savings bond ~~held in co-ownership~~ co-owned with another ~~shall be~~ individual is considered ~~available to~~ a liquid asset of the applicant or recipient when the applicant or recipient is the actual purchaser or has the power to cash the bond.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 12 SDR 112, effective January 16, 1986.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:09. Life insurance considered a resource. The cash value of a life insurance ~~policies shall be~~ policy is included as a liquid resource when determining the ~~$1,000~~ one thousand dollar resource limitation.

Source: SL 1975, ch 16, § 1; 2 SDR 24, effective October 1, 1975; 2 SDR 88, effective July 1, 1976; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 95, effective February 18, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Need and amount of assistance, 45 C.F.R. § 233.20.

Maximum resource limit, § 67:12:05:05~~; Need and amount of assistance, 45 C.F.R. § 233.20(a)(3)(ii)(E)~~.

67:12:05:09.01. Prepaid burial contracts. ~~To a maximum of $1,500, the~~ The equity value, up to one thousand five hundred dollars, of a prepaid burial contract designated for use by a member of the assistance unit ~~shall be~~ is excluded as a resource. The burial contract must meet the criteria of SDCL 55-11-1, 55-11-2, and 55-11-3.

Source: 12 SDR 112, effective January 16, 1986.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Exclusion of bona fide funeral agreements, 45 C.F.R. § 233.20(a)(3)(i)(B)(4).

67:12:05:09.02. Burial spaces excluded from resources. Burial spaces owned by the applicant or recipient ~~may be~~ are excluded from resources if they are intended for use by a member of the assistance unit. The number of burial spaces excluded may not exceed the number of persons in the assistance unit. Burial spaces include gravesites, crypts, mausoleums, urns or other repositories, caskets, and concrete vaults.

A grave marker is part of the burial space.

Source: 12 SDR 112, effective January 16, 1986.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Exclusion of burial plot, 45 C.F.R. § 233.20(a)(3)(i)(B)~~(4)~~(3).

67:12:05:10. Personal property held in trust considered a resource. The department ~~shall~~ must consider personal property held in trust as a resource if the trust instrument ~~is~~:

(1) Is revocable~~, allows~~;

(2) Allows the administrator to sell property subject to the trust and use the proceeds to meet the needs of any member of the assistance unit~~,~~; or ~~allows~~

(3) Allows the administrator to invade the principal and use the principal to meet the needs of any member of the assistance unit.

The department shall ~~deem~~ consider a personal property trust created ~~for the purpose of rendering~~ to render an applicant, recipient, or dependent child eligible to receive public assistance to be a transfer ~~resulting~~ that results in ineligibility. The department shall account for the income received from a ~~trust of~~ personal property trust in the same manner as any other income.

Source: SL 1975, ch 16, § 1; 4 SDR 10, effective August 28, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:12. Earned income from business. Net earned income or profit from a business is computed by subtracting business expense from gross business income. Business expenses include the cost of merchandise and building or equipment rental, but do not include depreciation or the purchase of equipment or property. Personal expenses, such as income tax, lunches, ~~and~~ transportation to and from work, and social security tax, are not considered business expenses but are covered under the standard set for earned income deductions. The earned income exemption for eligible applicants or recipients ~~as~~ specified in § 67:12:05:14 ~~shall be~~ is applied to the net income after the standard earned income deduction ~~as~~ specified in § 67:12:05:18 and the dependent care disregard specified in § 67:12:05:21.

Source: SL 1975, ch 16, § 1; 1 SDR 53, effective January 22, 1975; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 9 SDR 24, effective September 2, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:14. Earned income exemption for ~~AFDC~~ Aid to Families With Dependent Children. After the standard earned income deduction has been applied, employed recipients whose financial needs are considered in the ~~AFDC~~ Aid to Families With Dependent Children (AFDC) grant shall each receive an earned income exemption. The amount of the earned income exemption is ~~$30~~ thirty dollars a month plus one-third of the remaining income until the exemption has been applied for ~~4~~ four consecutive months. For the next ~~8~~ eight consecutive months, the exemption is ~~$30~~ thirty dollars. The ~~8~~ eight months are continuous regardless of whether the ~~$30~~ thirty dollar exemption was ~~or was not~~ applied in these months.

A person who becomes ineligible for AFDC after receiving the earned income exemption for ~~4~~ four consecutive months, but before the ~~8~~ eight additional months of the ~~$30~~ thirty dollar exemption have run out, is eligible for the remaining months of the ~~$30~~ thirty dollar exemption if the person returns to AFDC during that time.

The earned income exemption may not be applied again until the individual has been a nonrecipient for ~~12~~ twelve consecutive months.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 12 SDR 4, effective July 21, 1985; 16 SDR 58, effective October 1, 1989.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Disregard of income and resources applicable only to AFDC, 45 C.F.R. § 233.20(a)(11).

Earned income from business, § 67:12:05:12.

Dependent care disregard from earnings -- Employed caretaker relatives, § 67:12:05:21.

Use of earned income exemption in determining eligibility and computing the assistance payment, § 67:12:05:34.

~~Disregard of income, 45 C.F.R. § 233.20(a)(11)(i)(D) and 45 C.F.R. § 233.20(a)(11)(ii)(B).~~

67:12:05:15. Reserves accumulated from earnings. Reserves accumulated from earnings ~~shall be~~ are considered in the same manner as reserves accumulated from any other source.

Source: SL 1975, ch 16, § 1; 4 SDR 10, effective August 28, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

~~**Cross-Reference:** Liquid resources excluded from liquid assets and tangible personal property limitations for AFDC recipients, § 67:12:05:05.01.~~

67:12:05:16. Treatment of tax refunds. Tax refunds received by an applicant or recipient ~~shall be~~ are excluded from income.

Source: SL 1975, ch 16, § 1; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 16 SDR 58, effective October 1, 1989.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:16.01. Treatment of earned income tax credit. ~~Earned~~ An earned income tax credit received by an applicant or recipient is excluded from income.

Source: 8 SDR 125, effective April 4, 1982; 12 SDR 4, effective July 21, 1985; 16 SDR 58, effective October 1, 1989; 16 SDR 161, effective March 20, 1990; 17 SDR 153, effective April 16, 1991.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-Reference: Treatment of earned income tax credit, 45 C.F.R. § 233.20(a)~~(6)(ix)~~(11)(viii).

67:12:05:18. Standard earned income deduction. The standard earned income deduction is ~~$90~~ ninety dollars. This amount must be deducted from the monthly gross earned income of each employed member of the assistance unit whose earned income is considered when determining the ~~ADC~~ Aid to Families With Dependent Children grant. If the individual is self-employed, the deduction must be made after the allowable deductions specified in §§ 67:12:05:12 and 67:12:05:20. The standard earned income deduction may not exceed the earnings.

The standard earned income deduction covers items such as income tax, social security, lunches, transportation to and from work, and mandatory insurance premiums or retirement contributions.

Source: SL 1975, ch 16, § 1; 2 SDR 88, effective July 1, 1976; 4 SDR 10, effective August 28, 1977; 4 SDR 60, effective March 26, 1978; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 9 SDR 46, effective October 1, 1982; 10 SDR 144, effective July 1, 1984; 12 SDR 4, effective July 21, 1985; 14 SDR 40, effective September 24, 1987; 16 SDR 58, effective October 1, 1989.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

~~Exemption of vocational rehabilitation training allowances, § 67:12:05:27.~~

Earned income from business, § 67:12:05:12.

Farming or other self-employment business expenses as deductions from income, § 67:12:05:20.

~~Consideration of JOBS participant's income, § 67:12:05:25.~~

Exemption of vocational rehabilitation training allowances, § 67:12:05:27.

Consideration of income of parent or minor parent, § 67:12:05:52.01.

67:12:05:20. Farming or other self-employment business expenses as deductions from income. Farming or other self-employment business expenses directly related to producing the goods or services, and without which the goods or services could not be produced, are considered allowable deductions for the purposes of determining available earned income.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 42, effective October 10, 1982; 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Definition of earned income for the self-employed individual, 45 C.F.R. § 233.20(a)(6)(v)(B)~~;~~.

Earned income from business, § 67:12:05:12.

67:12:05:21. Dependent care disregard from earnings -- Employed caretaker relatives. ~~Employed~~ An employed recipient caretaker ~~relatives~~ relative whose earnings are considered when determining eligibility for ~~AFDC~~ Aid to Families With Dependent Children (AFDC) and the amount of the assistance grant are allowed a disregard for the cost of dependent care. The amount disregarded ~~shall be computed according to § 67:12:15:05~~ is:

(1) For a recipient caretaker relative who is employed full time throughout the budget month, the disregarded dependent care cost is the amount actually paid by the caretaker, not to exceed one hundred seventy-five dollars a month for each dependent age two or over or two hundred dollars a month for each dependent under age two; or

(2) For a recipient caretaker relative who is employed part time throughout the budget month, the disregarded dependent care cost is the amount actually paid by the caretaker, not to exceed one hundred seventy-four dollars a month for each dependent age two or over or one hundred ninety-nine dollars a month for each dependent under age two.

The disregard must be made after the earned income exemption in § 67:12:05:14 is applied.

Charges for dependent care must include all costs associated with the care.

Dependent care services are limited to those care services provided for the care of a dependent child or an incapacitated adult who is living in the home and who is receiving AFDC.

Dependent care services do not include those care services provided by the dependent child's parent or caretaker relative.

Source: SL 1975, ch 16, § 1; 2 SDR 88, effective July 1, 1976; 3 SDR 40, effective November 30, 1976; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 24, effective September 2, 1982; 14 SDR 40, effective September 24, 1987; 16 SDR 58, effective October 1, 1989.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Disregard of cost for care of dependent child or incapacitated adult, 45 C.F.R. § 233.20(a)(11)(i)(D).

Use of earned income exemption in determining eligibility and computing the assistance payment, § 67:12:05:34~~; Dependent care, ch 67:12:15~~.

67:12:05:22. Alimony and child support paid by member of assistance unit considered exempt income. The actual amount of alimony or child support, if any, payable on a recurring monthly basis by a member of the assistance unit under court or administrative order to maintain, in whole or in part, children or a former spouse in another household is exempt income.

Source: SL 1975, ch 16, § 1; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 13 SDR 193, effective June 22, 1987.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Collection of child support, SDCL chapter 25-7A.

67:12:05:23. Supplementary medical insurance benefit premiums as deductible from available income. ~~In those medical only applicants or recipients of payments assistance who are eligible for supplemental medical coverage under part B of Medicare program, the~~ The supplemental medical insurance premiums paid by ~~them are considered~~ a medical-only applicant or recipient eligible for supplemental medical coverage under Medicare part B is deductible from available income.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

~~**Note:** Those receiving a money payment will have the supplemental medical insurance premium paid by the department through the buy-in contract with Social Security Administration.~~

67:12:05:24. Foster care payment not considered as available income. In those ~~AFDC~~ Aid to Families With Dependent Children (AFDC) households where a child has been placed for foster care by the department, the foster care payment to the foster parents ~~shall~~ is not ~~be~~ considered ~~as~~ income in determining the AFDC grant. This foster care payment ~~shall be~~ is considered sufficient only to meet the needs of the foster child ~~only~~ and ~~shall not~~ cannot result in any significant income or profit available to the foster parent. The foster child ~~shall~~ must not be shown in the assistance plan.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:25. Consideration of JOBS participant's income. ~~For all activities under JOBS, advance payments or reimbursements to the participant for child care, transportation, work-related expenses, or work-related support services are excluded when determining eligibility and computing the amount of the assistance grant~~ Repealed.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 8 SDR 174, effective June 28, 1982; 16 SDR 99, effective December 7, 1989; 21 SDR 172, effective April 3, 1995.

~~**General Authority:** SDCL 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-4.~~

~~**Cross-References:**~~

~~Earned income exemption for AFDC, § 67:12:05:14.~~

~~Definitions, § 67:12:09:00.~~

~~Supportive assistance, § 67:12:09:05.06.~~

~~CWEP-related expenses, § 67:12:09:05.08.~~

~~Use of earned income exemption in determining eligibility and computing the assistance payment, § 67:12:05:34.~~

~~Need and amount of assistance, 45 C.F.R. § 233.20(a)(11)(v).~~

67:12:05:27. Exemption of vocational rehabilitation training allowances. A training allowance paid to an applicant or recipient ~~who is under~~ in a vocational rehabilitation training program is considered income available to the assistance unit only if the training allowance duplicates a portion of the need standard as defined in § 67:12:06:00. The balance of the training allowance is exempt.

Source: SL 1975, ch 16, § 1; 1 SDR 30, effective October 13, 1974; 2 SDR 88, effective July 1, 1976; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 24, effective September 2, 1982; 12 SDR 204, effective July 1, 1986; 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:28. Educational grants, stipends, or loans insured by commissioner of education not considered available income. Any grant, stipend, or loan to any undergraduate student for educational purposes made or insured under any program administered by the United States ~~commissioner~~ Secretary of ~~education~~ Education shall not be considered available income.

Source: SL 1975, ch 16, § 1; 5 SDR 48, effective December 19, 1978; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Educational grants insured by the ~~commissioner~~ Secretary of ~~education~~ Education, 45 C.F.R. § 233.20(a)(4)(ii)(d).

67:12:05:29. Scholarships, grants, awards, and loans for educational purposes. Scholarships, grants, awards, and loans for educational purposes which are given because of need or achievement by the Bureau of Indian Affairs, state sources, federal sources, civic, fraternal, and alumni organizations, relatives, and lending institutions are considered complementary assistance. Complementary assistance is assistance which is for a different purpose than ~~AFDC~~ Aid to Families With Dependent Children. The total amount of such assistance will be disregarded.

Complementary assistance does not include social security benefits received by full-time students in a postsecondary school, college, or university. Social security student benefits ~~will be~~ are considered ~~as~~ income when determining eligibility and the amount of the assistance grant.

Source: SL 1975, ch 16, § 1; 1 SDR 53, effective January 22, 1975; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 42, effective October 10, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Consideration of income when determining amount of assistance, 45 C.F.R. § 233.20(a)(3)~~(ii)~~(vii).

67:12:05:29.01. Treatment of moneys received under a college work-study program. Moneys received under a college work-study program ~~shall be totally~~ are disregarded for the purposes of the ~~AFDC~~ Aid to Families With Dependent Children program.

Source: 7 SDR 66, 7 SDR 89, effective July 1, 1981; 16 SDR 58, effective October 1, 1989.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-2~~ 28-6-1.

67:12:05:29.02. Treatment of loans. A loan obtained in good faith and expected to be paid back is excluded from income.

Source: 14 SDR 140, effective May 1, 1988; 17 SDR 200, effective July 1, 1991.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Income and resources -- Treatment of loans, 45 C.F.R. § 233.20(a)(3)~~(iv)(B)~~(xxi).

67:12:05:31. ~~**Food stamp coupon allotment**~~ **Supplemental nutrition assistance benefits not considered available income.** ~~The value of the coupon allotment under the federal Food Stamp Act of 1977~~ Supplemental nutrition assistance benefits shall not be considered available income.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law implemented: SDCL ~~28-7-4~~ 28-6-1.

~~**Cross-Reference:** Food Stamp Act of 1977, Pub. L. No. 95-113.~~

67:12:05:32. Value of federal donated commodities not considered available income. The value of ~~U.S. department of agriculture~~ United States Department of Agriculture donated foods shall not be considered available income.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:33. Payment received under the Relocation Act not considered available income. Any payment received under Title II of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 et. Seq. (April 2, 1987) shall not be considered as a resource and shall not count against the liquid asset limitation or as income to meet current needs.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Disregard of income ~~common to AFDC~~, 45 C.F.R. § 233.20(a)(4)(ii)(c).

~~**Example:** Urban renewal is taking place or the building of a highway causes inconvenience to a recipient and the federal government compensates the recipient for this inconvenience. In some instances this might be a payment of $500 to $1,000.~~

67:12:05:34. Use of earned income exemption in determining eligibility and computing the assistance payment. In determining eligibility and computing the assistance payment, the earned income exemption ~~shall be~~ is applied as follows:

(1) Initial eligibility for a new applicant ~~shall be~~ is determined without using the earned income exemption. If eligibility for a money payment can be established, the amount of the assistance payment ~~shall be~~ is computed using the earned income exemption;

(2) When determining continuing eligibility and the amount of assistance, the earned income exemption ~~shall be~~ is applied according to § 67:12:05:14;

(3) If a recipient is penalized for failing to report earned income or for terminating employment, reducing earned income, or refusing an offer of employment, the earned income exemption may not be applied for the month the penalty is in effect; and

(4) The earned income exemption ~~shall be~~ is applied as follows in determining initial eligibility for a former recipient who is reapplying:

(a) ~~The $30~~ A thirty dollar plus one-third exemption ~~shall be~~ is applied if the former recipient is eligible for it under § 67:12:05:14 and received ~~AFDC~~ Aid to Families With Dependent Children in one or more of the four preceding months;

(b) ~~The $30~~ A thirty dollar exemption ~~shall be~~ is applied if the former recipient is eligible ~~for it~~ under § 67:12:05:14; or

(c) Eligibility ~~shall be~~ is determined according to subdivision (1) of this section if the former recipient does not qualify under (a) or (b) of this subdivision but is otherwise eligible under § 67:12:05:14.

Source: SL 1975, ch 16, § 1; 2 SDR 88, effective July 1, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 12 SDR 4, effective July 21, 1985.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Earned income exemption for ~~AFDC~~ Aid to Families With Dependent Children, § 67:12:05:14.

67:12:05:36. Determining continuing eligibility. To determine continuing eligibility, the department shall apply total income, less exclusions, against the applicable need standard in § 67:12:06:04.01 for a similar ~~AFDC~~ Aid to Families With Dependent Children (AFDC) household. If this income exceeds ~~185~~ one hundred eighty-five percent of the standard, the assistance unit is no longer eligible for AFDC.

If the assistance unit is eligible, the department shall review the case to determine eligibility for the earned income exemption as specified in § 67:12:05:14. If a member of the assistance unit is eligible for the earned income exemption, the department shall apply the member's gross income minus the standard earned income deduction, the earned income exemption, and the dependent care disregard against the applicable need standard. If income exceeds the need, the assistance unit is no longer eligible for AFDC.

If a member of the assistance unit is not eligible for the earned income exemption, the department shall apply the member's gross income minus the standard earned income deduction and the dependent care disregard against the applicable need standard. If income exceeds the need, the assistance unit is no longer eligible for AFDC.

Source: SL 1975, ch 16, § 1; 2 SDR 88, effective July 1, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 8 SDR 174, effective June 28, 1982; 12 SDR 4, effective July 21, 1985; 12 SDR 112, effective January 16, 1986; 12 SDR 204, effective July 1, 1986; 16 SDR 58, effective October 1, 1989.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Income and resources, 45 C.F.R. § 233.20(a)(3).

Standard earned income deduction, § 67:12:05:18.

Dependent care disregard from earnings -- Employed caretaker relative, § 67:12:05:21.

~~Need and amount of assistance, 45 C.F.R. § 233.20(a)(3).~~

67:12:05:38. Application of child's earned income. When determining ~~AFDC~~ Aid to Families With Dependent Children eligibility and the amount of the assistance grant, ~~a child's~~ the earned income of a dependent child, except income earned from participation in the ~~JTPA~~ Job Training Partnership Act summer youth program, is ~~considered as follows~~:

(1) ~~The earned income of a dependent child who is~~ Considered when the child is not a student or who is a part-time student working full-time ~~is considered~~ when determining eligibility and the amount of the assistance grant;

(2) ~~The earned income of a dependent child who~~ Considered when the child is a part-time student working part time ~~is considered~~ when determining eligibility and disregarded when determining the amount of the assistance grant; or

(3) ~~The earned income of a dependent child who~~ Excluded when the child is a full-time student ~~is excluded~~ when determining eligibility and the amount of the assistance grant for a maximum of six months each calendar year. After six months of exclusion, the child's earned income is considered when determining eligibility and disregarded when determining the amount of the assistance grant.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 9 SDR 42, effective October 10, 1982; 12 SDR 4, effective July 21, 1985; 20 SDR 196, effective May 23, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Disregard of income and resources applicable only to AFDC, 45 C.F.R. § 233.20(a)(11).

~~Financial eligibility -- Gross income limit, § 67:12:06:03.~~

Exclusion of dependent child's income received from ~~JTPA~~ Job Training Partnership Act summer youth program, § 67:12:05:74.

Exclusion of dependent child's earnings, § 67:12:05:79.

Financial eligibility -- Gross income limit, § 67:12:06:03.

67:12:05:44. Real or personal property income or profits of applicants or recipients of ~~AFDC~~ Aid to Families With Dependent Children. The net income or profits ~~derived~~ a dependent child derives from real or personal property ~~by a dependent child, such as interest, dividends, trust funds, annuities, or lease or rental income,~~ is considered available to the dependent child and ~~deductible~~ deducted from the need standard.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Need standard, § 67:12:06:04.01.

67:12:05:45. Real or personal property income or profits of parents of dependent children. If ~~the~~ a dependent child is living in the home of the child's natural or adoptive parents or stepparent, the department shall consider the net income or profits ~~derived~~ these parents derive from real or personal property ~~by these parents~~ to be available to meet the ~~requirements~~ needs of the dependent child and ~~shall~~ deduct ~~them~~ the net income or profits from the assistance plan.

Source: SL 1975, ch 16, § 1; 4 SDR 10, effective August 28, 1977; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:47. Interest from savings. ~~In those instances where the~~ If an applicant or recipient has savings less than the maximum resource limit, interest on the savings is considered unearned income available to the assistance unit at the time it is credited to the account.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 13 SDR 193, effective June 22, 1987; 20 SDR 196, effective May 23, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Maximum resource limit, § 67:12:05:05~~;~~.

Interest from child's savings account excluded, § 67:12:05:78.

67:12:05:48. Tips considered. Tips are considered earned income when determining the assistance unit's financial eligibility and the amount of the assistance grant.

Source: SL 1975, ch 16, § 1; 2 SDR 88, effective July 1, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:49. Periodic and lease income considered. The department considers income received from trust land leases by the fiscal year, July 1 through June 30.

~~Effective January 1, 1994, the~~ The department shall exclude up to ~~$2,000~~ two thousand dollars a year of lease income received by an Indian from real property held in trust by the federal government. If the income from the trust land lease is expected to continue to be over ~~$2,000~~ two thousand dollars after the date of application or after the date of the continuing eligibility determination, the department shall prorate for the current fiscal year the lease income received in the previous fiscal year when determining eligibility and computing the current assistance grant. The department may consider only that portion of income from the previous fiscal year's lease that is expected to continue in the current fiscal year.

All other periodic or contractual lease income is prorated over the length of the lease.

Source: SL 1975, ch 16,§ 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 48, effective November 21, 1983; 20 SDR 144, effective March 10, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:51. Individuals excluded from assistance unit -- Nondependent household members. The following individuals are considered nondependent household members ~~and~~, are excluded from the assistance unit~~;~~ and their needs may not be considered when determining the amount of the assistance grant:

(1) ~~Parents and siblings~~ A parent or sibling who ~~receive SSI~~ receives supplemental security income benefits;

(2) ~~Parents and siblings~~ A parent or sibling who ~~are aliens~~ is an alien and ~~are~~ is ineligible for ~~AFDC~~ Aid to Families With Dependent Children (AFDC) because of the application of sponsor-to-alien deeming required by § 67:12:01:14.01;

(3) ~~Parents and siblings~~ A parent or sibling who ~~are aliens~~ is an alien and ~~are~~ is ineligible for AFDC because they do not meet the citizenship and alienage requirements;

(4) ~~Parents and siblings~~ A parent or sibling who ~~are~~ is ineligible for AFDC as the result of the imposition of a sanction;

(5) ~~Parents and siblings~~ A parent or sibling previously entitled to AFDC who ~~are~~ is ineligible due to receipt of lump sum income; and

(6) ~~Parents and siblings~~ A parent or sibling for whom foster care maintenance payments ~~are~~ is received.

Source: SL 1975, ch 16, § 1; 2 SDR 88, effective July 1, 1976; 3 SDR 52, effective January 27, 1977; 5 SDR 48, effective December 19, 1978; 5 SDR 102, effective June 6, 1979; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 11 SDR 54, effective October 1, 1984; 21 SDR 172, effective April 3, 1995; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-1, 28-7-4~~ 28-6-1.

Cross-References:

~~Definition, 45 C.F.R. § 233.90(a).~~

Application, determination of eligibility and furnishing of assistance, 45 C.F.R. § 206.10.

Citizenship and alienage, 45 C.F.R. § 233.50.

~~Deeming of sponsor's income and resources to~~ Eligibility of sponsored alien, 45 C.F.R. § 233.51.

Factors specific to AFDC, 45 C.F.R. § 233.90(a).

Individuals who must be included in assistance unit, § 67:12:01:69.

~~**Collateral Reference:** Definition, King v Smith, 392 U.S. 309 (1968).~~

67:12:05:52. Treatment of income from nonrecipient. Except for ~~those~~ nonrecipients whose income is deemed available to the assistance unit according to §§ 67:12:01:14.01 and 67:12:05:52.01, income from a nonrecipient is treated as follows:

(1) The cash contribution of a boarder ~~shall be~~ is considered ~~as~~ income. A boarder is an individual who pays a home owner a stipulated sum for regular meals or meals and lodging. If the household offers board to people as a business, the provisions of § 67:12:05:12 apply;

(2) The cash contribution of a roomer ~~shall be~~ is considered ~~as~~ income. A roomer generally does not receive meals in addition to room. If the household offers room to people as a business, the provisions of § 67:12:05:12 apply;

(3) The income of a sanctioned individual who except for the sanction would be required to be included in the assistance unit according to § 67:12:01:69 ~~shall be~~ is considered available to meet and shall be deducted from the budgetary needs of the assistance unit; and

(4) For an assistance unit in an independent living arrangement, the cash contribution made by a nonrecipient household member for the assistance unit's rent or mortgage ~~shall be~~ is considered unearned income to the assistance unit when either the rent contribution is made in the absence of a landlord-tenant agreement between the nonrecipient and the landlord or the mortgage contribution is made in the absence of an agreement between the nonrecipient and the mortgage holder.

For purposes of this rule, a nonrecipient is an individual who is not a part of the assistance unit for which income is being considered.

Source: SL 1975, ch 16, § 1; 5 SDR 102, effective June 6, 1979; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 11 SDR 54, effective October 1, 1984; 12 SDR 204, effective July 1, 1986.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Definitions, § 67:12:06:00.

67:12:05:52.01. Consideration of income of parent of minor parent. The department shall consider the income of a minor parent's parent when determining eligibility for and the amount of the ~~AFDC~~ Aid to Families With Dependent Children (AFDC) payment if the minor parent's parent lives in the same household as the minor parent and the dependent child. The department shall consider the income of the minor parent's parent available after the following disregards are applied~~;~~:

(1) Ninety dollars for work expenses for each employed minor parent's parent;

(2) An amount equal to the applicable AFDC need standard for each minor parent's parent living in the home who is not a part of the assistance unit but is a dependent of the minor parent's parent;

(3) Amounts paid by the minor parent's parent to support an individual outside the home who could be claimed as a dependent; and

(4) Payments by the minor parent's parent for child support and alimony to an individual outside the home.

The needs of a sanctioned individual who would otherwise be required to be a member of the assistance unit may not be taken into consideration when computing the allowable disregards from the income of the minor parent's parent.

For purposes of this rule, a minor is one who is under age 18, regardless of school attendance or marital status.

Source: 12 SDR 4, effective July 21, 1985; 12 SDR 204, effective July 1, 1986; 13 SDR 193, effective June 22, 1987; 16 SDR 58, effective October 1, 1989; 19 SDR 68, effective November 9, 1992.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-2~~ 28-6-1.

Cross-Reference: Consideration of income of minor parent's parent, 45 C.F.R. § 233.20(a)(3)(xviii).

67:12:05:54. Proceeds from life insurance. Receipt of proceeds from life insurance ~~shall be~~ is treated as specified in § 67:12:05:59.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:56. Applicants or recipients to take advantage of all resources. An applicant or recipient of assistance payments must take advantage of all resources to which the applicant or recipient is entitled~~, such as social security, workers' compensation, and unemployment compensation~~. Failure or refusal to do so~~ affects~~ may result in ineligibility for the~~ applicant's or recipient's eligibility status~~ applicant or recipient.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL~~ 28-7-2~~ 28-6-1.

Law Implemented: SDCL~~ 28-7-4~~ 28-6-1.

67:12:05:57. Benefits to children and adults derived from government sources. All benefits derived from governmental sources~~, such as OASDI, unemployment compensation, worker's compensation, military allotments,~~ and compensations which are actually received by applicants for or recipients of public assistance ~~shall~~ must be considered available to and deductible from the requirements recognized on the assistance plan on the same basis as net income derived from real or personal property. If an individual within the household receives ~~SSI~~ supplemental security income (SSI), the department may not consider that individual's income or resources when determining ~~AFDC~~ Aid to Families With Dependent Children (AFDC) eligibility and the amount of assistance. If the recipient payee's only child is determined eligible for and becomes a recipient of SSI, the recipient payee continues to be eligible for AFDC provided all other eligibility factors are met.

If an individual receives educational assistance from the veterans' administration, that part of the payment that is for the student and ~~that actually~~ is used for items ~~such as tuition, books, fees, equipment, transportation~~ for school purposes, and child care services necessary for school attendance ~~shall~~ is not ~~be~~ considered ~~as~~ income for purposes of the AFDC program. That part of the payment received from the veterans administration for the individual's dependents who are in an AFDC assistance unit ~~shall~~ must be ~~counted~~ considered available as nonexempt income.

Source: SL 1975, ch 16, § 1; 2 SDR 88, effective July 1, 1976; 4 SDR 27, effective November 6, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 42, effective October 10, 1982; 11 SDR 54, effective October 1, 1984.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

______Consideration of grants from other agencies, 45 C.F.R. § 233.20(a)(3)(vii)~~;~~.

______Exclusion of SSI benefits, 45 C.F.R. § 233.20(a)(3)(x).

67:12:05:59. Treatment of lump sum income. Nonrecurring earned or unearned lump sum income not otherwise excluded ~~shall~~ must be added together with all other monthly income received by the assistance unit and considered available for current use after application of the disregards in §§ 67:12:05:14, 67:12:05:18, and 67:12:05:21 and in subdivisions 67:12:05:38(2) and (3). When this total exceeds the need standard for the family, each member of the assistance unit is ineligible for ~~AFDC~~ Aid to Families With Dependent Children for the number of full months derived by dividing the total income by the need standard applicable to the family. Any amount remaining after this calculation is treated as if it is income received in the first month following the period of ineligibility and is considered available for use at that time.

Lump sum income includes insurance settlements, personal injury awards, and workers' compensation awards; retroactive payments ~~such as OASDI~~ from old-age, survivors, and disability insurance and child support; and windfalls ~~such as inheritances or lottery winnings~~. A windfall is a sum that is not earned, does not occur regularly, and does not represent accumulated monthly income received in a single sum.

Lump sum income earmarked and used for the purpose for which it was paid, for example, money for back medical bills resulting from an accident or injury, funeral and burial costs, replacement or repair of resources, or any portion of the lump sum designated for a specific purpose, such as attorney fees involved in obtaining the lump sum income, ~~shall~~ must be subtracted from the total lump sum income amount before determining the length of ineligibility.

The department shall consider changes in circumstances requiring expenditure of resources or income in connection with medical and life-threatening situations as justification for shortening the period of ineligibility.

Source: SL 1975, ch 16, § 1; 5 SDR 48, effective December 19, 1978; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 88, effective January 13, 1982; 9 SDR 24, effective September 2, 1982; 10 SDR 11, effective August 15, 1983; 12 SDR 4, effective July 21, 1985; 13 SDR 110, effective February 15, 1987; 15 SDR 67, effective November 6, 1988; 16 SDR 161, effective March 20, 1990; 17 SDR 200, effective July 1, 1991.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Need and amount of assistance -- Income and resources, 45 C.F.R. § 233.20(a)(3)(ii)(F).

67:12:05:60. County welfare funds or ~~BIA~~ Bureau of Indian Affairs general assistance grants. County welfare funds or ~~BIA~~ Bureau of Indian Affairs (BIA) general assistance grants payable to applicants for or recipients of ~~AFDC shall~~ Aid to Families With Dependent Children (AFDC) must be considered ~~as~~ income only to the extent that the county welfare funds or BIA general assistance grants are designated to meet all or a portion of the needs of the eligible AFDC household.

County welfare funds or BIA general assistance grants for medical or hospital expenses ~~shall~~ are not ~~be~~ considered in determining eligibility for or the amount of the AFDC grant.

Source: SL 1975, ch 16, § 1; 3 SDR 52, effective January 27, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 12 SDR 112, effective January 16, 1986; 13 SDR 193, effective June 22, 1987.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:61. Benefits derived from private sources. All benefits derived from private sources~~, including but not limited to contributions~~, pensions~~ from various firms or associations~~, and annuities,~~ shall~~ must be considered available to and deductible from the requirements of the applicant or recipient on the same basis as net income derived from real or personal property. These benefits may take the form of cash contributions.

Source: SL 1975, ch 16, § 1; 1 SDR 30, effective October 13, 1974; 2 SDR 88, effective July 1, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL~~ 28-7-2~~ 28-6-1.

Law Implemented: SDCL~~ 28-7-4~~ 28-6-1.

67:12:05:61.01. Income received as gift. Nonrecurring income in the amount of ~~$30~~ thirty dollars or less which is received in the form of a gift ~~shall be~~ is excluded up to a maximum of ~~$30~~ thirty dollars per recipient per calendar quarter.

A gift received by one member of the assistance unit without evidence it is intended for the entire assistance unit ~~shall~~ must be divided if the recipient claims that the gift is intended for the entire assistance unit. A gift for the entire assistance unit ~~shall~~ must be divided in the way that is most financially advantageous to the assistance unit.

For purposes of this rule, a gift is defined as anything that is bestowed voluntarily and without compensation. Birthday, Christmas, and graduation gifts are considered nonrecurring.

Source: 13 SDR 193, effective June 22, 1987; 14 SDR 40, effective September 24, 1987.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Small nonrecurring gifts, 45 C.F.R. § 233.20(a)(3)(iv)(F).

67:12:05:62. Income received by volunteers in the retired senior volunteer program, foster grandparent program, and older Americans community service program. Compensation provided to individual volunteers under the retired senior volunteer program, foster grandparent, ~~and~~ or older Americans community service programs established under Title VI of the Older Americans Act of 1965, 42 U.S.C. § 3001, ~~January, 1995~~ (September 30, 1992), is excluded when determining initial and continuing eligibility for the ~~AFDC~~ Aid to Families With Dependent Children program.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:64. Judgment funds paid to Blackfeet Tribe and Gros Ventre Tribe of Montana. Per capita judgment funds paid under the Act of March 18, 1972, Pub. L. No. 92-254, 86 Stat. 671 (1972) to members of the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana, and the Gros Ventre Tribe of the Fort Belknap Reservation, Montana, ~~shall~~ must be excluded as income or resources. Payments received by the member as a result of the investment of the per capita judgment funds ~~shall~~ must be considered income.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:65. Indian judgment funds pursuant to Pub. L. No. 93-134. The per capita payments of Indian judgment funds made pursuant to the provisions of the Indian Tribal Judgment Funds Use or Distribution Act, Pub. L. No. 93-134, 87 Stat. 466 (1973) ~~shall be~~ are excluded as income or resources when determining the ~~extent of~~ eligibility for assistance. Payments received by the member as a result of the investment of the per capita judgment funds ~~shall be~~ are be considered income.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

67:12:05:66. Exclusion of payments received pursuant to Alaska Native Claims Settlement Act. Payments under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (August 13, 2018), which are exempt from taxation under 43 U.S.C. § 1620 (October 14, 1992) ~~shall be~~ are excluded as income in determining ~~the~~ eligibility ~~for~~ or the amount of assistance payment. Income which is not exempted from taxation under the Alaska Native Claims Settlement Act ~~shall be~~ must considered to the same extent as any other income. Payments received by the member as a result of the investment of funds under this Act ~~shall be~~ are considered income.

Source: 1 SDR 53, effective January 22, 1975; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 43 U.S.C. §§ 1601, 1620~~ 28-6-1.

67:12:05:71. Exclusion of payments received as volunteer under Title I (VISTA). Payments received as a volunteer under Title I (VISTA) of the Domestic Volunteer Service Act of 1973, Pub. L. No. 93-113 ~~shall~~, 87 Stat. 394 (1973) must be excluded in determining ~~AFDC~~ Aid to Families With Dependent Children (AFDC) eligibility and the amount of AFDC payment.

Source: 3 SDR 52, effective January 27, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Disregard of income ~~common to AFDC~~, ~~45 C.F.R. § 233.209(a)(4)(ii)(h)~~ 45 C.F.R. § 233.20(a)(4)(ii)(h).

67:12:05:72. Exclusion of value of supplemental food assistance. The value of supplemental food assistance under the Child Nutrition Act of 1966 Pub. L. No. 89-642, 80 Stat. 885 (October 11, 1966), as amended through Pub. L. No. 117-362 (January 5, 2023), and the special food service program for children under the National School Lunch Act, 60 Stat. 230 (June 4, 1946), as amended through Pub. L. No. 118-42 (March 9, 2024), ~~shall be~~ are excluded in determining ~~AFDC~~ Aid to Families With Dependent Children (AFDC) eligibility and the amount of AFDC payment.

Source: 3 SDR 52, effective January 27, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

~~Child Nutrition Act, Pub. L. No. 92-433 (September 26, 1972), 42 U.S.C. § 1774.~~

~~National School Lunch Act, Pub. L. No. 93-150 (June 30, 1974), 42 U.S.C. § 1752.~~

Disregard of income ~~common to AFDC~~, 45 C.F.R. § 233.20(a)(4)(ii)(i).

67:12:05:73. Payments received as volunteer under Titles II and III. Payments received as a volunteer in the Service Corps of Retired Executives ~~(SCORE)~~, the Active Corps of Executives ~~(ACE)~~ or any other program under Title II or Title III ~~shall be~~ are excluded in determining ~~AFDC~~ Aid to Families With Dependent Children (AFDC) eligibility and the amount of AFDC payment.

Source: 4 SDR 10, effective August 28, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-Reference: Disregard of income ~~common to AFDC~~, 45 C.F.R. § 233.20(a)(4)(ii)(g).

67:12:05:74. Exclusion of dependent child's income received from ~~JTPA~~ Job Training Partnership Act summer youth program. A dependent child's income received as a result of participating in the ~~JTPA~~ Job Training Partnership Act summer youth program is excluded when determining eligibility for and the amount of ~~AFDC~~ Aid to Families With Dependent Children benefits. This exclusion is limited to six months a calendar year.

Source: 8 SDR 82, effective January 13, 1982; 10 SDR 144, effective July 1, 1984; 11 SDR 85, effective December 30, 1984.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Disregard of income earned under JTPA, 45 C.F.R. § 233.20(a)(3)(xvii)(B).

Disregard of income and resources applicable only to AFDC, 45 C.F.R. § 233.20(a)(11)(v)~~; Disregard of income earned under JTPA, 45 C.F.R. § 233.20(a)(3)(xvii)(B)~~.

67:12:05:75. Exclusion of agent orange settlement payments. Payments received pursuant to the agent orange product liability settlement are excluded when determining ~~AFDC~~ Aid to Families With Dependent Children (AFDC) eligibility and the amount of the AFDC assistance payment.

Source: 17 SDR 8, effective July 23, 1990.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References: ~~Pub. L. No. 101-201; Pub. L. No. 101-239~~

Agent Orange settlement payments excluded from income and resources, 103 Stat. 1795 (December 6, 1989).

Agent Orange settlement payments excluded from income and resources, 103 Stat. 2489 (December 19, 1989).

67:12:05:76. Exclusion of vehicle owned by dependent child. The trade-in value of a vehicle owned by a dependent child is excluded from the resource limit if ~~all of the following requirements are met~~:

(1) The household has been assigned to the 1115 waiver group under the provisions of § 67:12:01:73;

(2) The trade-in value does not exceed ~~$2,500~~ two thousand five hundred dollars;

(3) The child who owns the vehicle is at least ~~14~~ fourteen years old;

(4) The child is at least a part-time student;

(5) The child is employed at least part-time or has been employed at least part-time in the preceding ~~12~~ twelve months;

(6) The vehicle is owned solely by the child or is owned jointly by the child and the child's caretaker or another adult relative; and

(7) A portion of the payment for the car comes from the child's earnings.

This exclusion is limited to one vehicle for each qualifying dependent child.

Source: 20 SDR 196, effective May 23, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-1~~ 28-6-1.

67:12:05:77. Exclusion of savings account owned by dependent child. One or more savings accounts with a cumulative balance of ~~$1,000~~ one thousand dollars or less is excluded as a liquid asset if ~~all of the following requirements are met~~:

(1) The assistance unit has been assigned to the 1115 waiver group under the provisions of § 67:12:01:73;

(2) The excluded account is owned solely by the dependent child or the child owns the savings account jointly with the caretaker or another adult relative;

(3) The child is at least a part-time student;

(4) The child is employed at least part-time or has been employed at least part-time in the preceding ~~12~~ twelve months; and

(5) A portion of the account was derived from the child's earnings.

Source: 20 SDR 196, effective May 23, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-1~~ 28-6-1.

67:12:05:78. Interest from child's savings account excluded. The department excludes interest earned on a child's savings account if the requirements of § 67:12:05:77 are met.

Source: 20 SDR 196, effective May 23, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-1~~ 28-6-1.

67:12:05:79. Exclusion of dependent child's earnings. When determining eligibility and the amount of the assistance payment, the department excludes a dependent child's earned income if the dependent child is at least a part-time student and a member of an assistance unit assigned to the 1115 waiver group under the provisions of § 67:12:01:73.

Source: 20 SDR 196, effective May 23, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-1~~ 28-6-1.

CHAPTER 67:12:06

BUDGETING

Section

67:12:06:13	Rental subsidy considered unearned income -- Independent living arrangements.
67:12:06:14	Lodging expenses presumed in-kind.
67:12:06:15 to 67:12:06:25	Repealed.
67:12:06:26	Amount of assistance grant -- Limitation.
67:12:06:26.01	Repealed.
67:12:06:27	Unrestricted payments.
67:12:06:28to 67:12:06:31	Repealed.
67:12:06:32	Notification by recipient to initiate procedure for writing duplicate warrant.
67:12:06:33	Definitions, Repealed.
67:12:06:34	Completed monthly report form required.
67:12:06:34.01	Assistance units exempt from monthly reporting.
67:12:06:35 and 67:12:06:36	Repealed.
67:12:06:37	Assistance to be terminated if required report form not received on time.
67:12:06:37.01	Penalty for late filing of monthly report.
67:12:06:37.02	Good cause for late filing of monthly report.
67:12:06:38	Computing assistance payment and determining eligibility in initial month of assistance for applicant or former recipient.
67:12:06:38.01	Determination of initial month's benefits.

67:12:06:39	Computing assistance payment after initial month of assistance.
67:12:06:40	Repealed.
67:12:06:41	Determining eligibility after initial month of assistance.
67:12:06:42	Penalty for terminating employment, reducing earned income, and refusing offer of employment.
67:12:06:42.01	Penalty for terminating employment -- 1115 waiver group.
67:12:06:42.02	Medicaid eligibility when employment terminated -- 1115 waiver group.
67:12:06:43	Good cause for terminating employment or reducing earned income.
67:12:06:43.01	Good cause for terminating employment -- 1115 waiver group.
67:12:06:44	Good cause for refusal to accept employment.
67:12:06:45	Medical verification supporting applicant's or recipient's inability to be employed.

67:12:06:00. Definitions. Words used in this chapter ~~have the following meanings unless specifically indicated otherwise~~ mean:

(1) ~~"Need standard," the amount recognized by the department as meeting an assistance unit's basic living needs, such as shelter, utilities, food, clothing, household items, and personal care items and, if applicable, day care costs pursuant to § 67:12:15:02~~ "Dependent living arrangement," a situation where the assistance unit resides in a household owned or rented by an individual who is neither a member of the assistance unit nor a caretaker relative who is a recipient of supplemental security income (SSI) or where a member of the assistance unit has a landlord-tenant agreement but is not expected to contribute monetarily toward rent;

(2) ~~"Dependent living arrangement," that situation which exists when the assistance unit resides in a household owned or rented by an individual who is neither a member of the assistance unit nor a caretaker relative who is a recipient of SSI or when a member of the assistance unit has a landlord-tenant agreement but is not expected to contribute monetarily toward rent~~ "Homeowner's expenses," costs associated with residing in a home owned by the assistance unit or a caretaker relative who is an SSI recipient, including the mortgage payment, heat, electricity, water, real estate taxes, insurance, trailer parking fees, general maintenance, and other utility costs;

(3) "Independent living arrangement," ~~that~~ a situation ~~which exists when~~ where a member of the assistance unit or a caretaker relative who is an SSI recipient has a landlord-tenant agreement and contributes or expects to contribute monetarily toward rent or when a member of the assistance unit or a caretaker relative who is an SSI recipient has homeowner's expenses;

(4)~~ "Homeowner's expenses," those costs associated with residing in a home owned by the assistance unit or a caretaker relative who is an SSI recipient, such as mortgage payments, heat, lights, real estate taxes, insurance, trailer parking fees, and general maintenance~~ "In-kind," for an assistance unit in a dependent living arrangement, the lodging expenses provided on behalf of the assistance unit at no cost to the assistance unit;

(5) "Landlord-tenant agreement," an agreement between a landlord and a tenant who do not reside in the same household in which the landlord gives the tenant temporary possession and use of real property for a specified sum of money and the tenant agrees to return the property to the landlord at a future time;

~~(5)~~(6) "Lodging expenses,"~~ those~~ costs associated with residing in a home not owned by the assistance unit or a caretaker relative who is an SSI recipient, such as rent, heat, lights, and trailer parking fees;

~~(6) "In-kind" or "In-kind shelter," for an assistance unit in a dependent living arrangement, those lodging expenses provided in the assistance unit's behalf at no cost to the assistance unit;~~

(7) "Need standard," the amount recognized by the department as meeting an assistance unit's basic living needs, such as shelter, utilities, food, clothing, household items, and personal care items and, if applicable, day care costs pursuant to § 67:12:15:02;

(8) "Payment month for retrospective budgeting," the calendar month for which the Aid to Families With Dependent Children (AFDC) payment is made. The payment month for retrospective budgeting immediately follows the retrospective budget month;

(9) "Prospective budgeting," the method of computing the amount of AFDC assistance for a payment month based on the caseworker's best estimate of income and circumstances which will exist in that month;

(10) "Prospective budget month," a calendar month;

(11) "Prospective eligibility," the determination of a client's eligibility for AFDC based on the caseworker's best estimate of income and circumstances which will exist in that month;

(12) "Rental subsidy," for an assistance unit in an independent living arrangement, the difference between the amount the tenant pays for rent and the amount the department of housing and urban development or the farmers home administration determines to be the rent or operating costs for a particular rental unit;~~ and~~

~~(8) "Landlord-tenant agreement," a bona fide agreement between a landlord and a tenant who do not reside in the same household in which the landlord gives the tenant temporary possession and use of real property for a specified sum of money and the tenant agrees to return the property to the landlord at a future time~~ (13) "Retrospective budgeting of income," the method of computing the amount of AFDC assistance for a payment month based on actual income which existed in a previous month, which is the budget month;

(14) "Retrospective budget month," the fifteenth of one month through the fourteenth of the following month; and

(15) "To make an assistance payment," to deposit in the United States mail or to hand deliver the assistance payments check to the recipient.

Source: 12 SDR 204, effective July 1, 1986; 15 SDR 67, effective November 6, 1988.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-Reference:

Definitions, 45 C.F.R. § 233.21(b).

67:12:06:01. Recovery of overpayments. The department shall recover overpayments as soon as possible through restitution by the individual or ~~recovered~~ through recoupment by reducing the amount of the ~~AFDC~~ Aid to Families With Dependent Children grant. The reduced grant combined with other income and liquid resources may not be less than ~~90~~ ninety percent of the need standard for the assistance unit.

An overpayment results when a recipient receives a larger AFDC allotment than the recipient is entitled to receive. For recovery purposes, overpayments may result when ~~any of the following occur~~:

(1) The recipient fails to report a change in the household's circumstances;

(2) The recipient reports a change in the household's circumstances, but the change is reported incorrectly;

(3) The department fails to react to a reported change in circumstances; or

(4) There is a change in the household's circumstances after the AFDC payment is made.

Source: SL 1975, ch 16, § 1; 1 SDR 30, effective October 13, 1974; 2 SDR 88, effective July 1, 1976; 4 SDR 10, effective August 28, 1977; 5 SDR 48, effective December 19, 1978; 5 SDR 102, effective June 6, 1979; 7 SDR 30, effective October 5, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 95, effective February 18, 1982; 12 SDR 204, effective July 1, 1986; 15 SDR 67, effective November 6, 1988.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-Reference: Recovery of overpayments and correction of underpayments for AFDC, 45 C.F.R. § 233.20(a)(13).

67:12:06:01.06. Recovery of overpayment to alien. If an overpayment to an alien is made by the department because the sponsor withheld information concerning the sponsor's income and resources, the department shall recover the overpayment according to § 67:12:06:01. The sponsor and the alien are jointly and severally liable for the repayment.

Source: 8 SDR 95, effective February 18, 1982.

General Authority: SDCL ~~28-7-~~2 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-References:

Overpayment to aliens, 45 C.F.R. § 233.52.

Deeming of sponsor's income and resources to alien when sponsor is an individual -- Cooperation of sponsor is condition of eligibility, § 67:12:01:14.01.

Aliens exempt from sponsor deeming, § 67:12:01:14.02.

~~Overpayment to aliens, 45 C.F.R. § 233.52.~~

67:12:06:02. Correction of underpayments. Corrections of underpayments ~~shall~~ must be made by the department as soon as possible. The amount of a retroactive payment made to a recipient ~~shall~~ must not be considered as income or a resource in the month paid or in the following month; however, the retroactive payment or any balance remaining ~~shall be~~ is considered in the determination of the continuing eligibility of the recipient in the succeeding months.

Source: SL 1975, ch 16, § 1; 1 SDR 30, effective October 13, 1974; 4 SDR 10, effective August 28, 1977; 7 SDR 30, effective October 5, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 95, effective February 18, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-Reference: Recovery of overpayments and correction of underpayments for AFDC, 45 C.F.R. § 233.20(a)(13).

67:12:06:03. Financial eligibility -- Gross income limit. There is no financial eligibility when the assistance unit's nonexcluded income, without application of disregards in §§ 67:12:05:14, 67:12:05:18, 67:12:05:21, and subdivisions 67:12:05:38(2) and (3), exceeds ~~185~~ one hundred eighty-five percent of the need standard for the assistance unit.

Source: SL 1975, ch 16, § 1; 1 SDR 30, effective October 13, 1974; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 8 SDR 174, effective June 28, 1982; 10 SDR 11, effective August 15, 1983; 12 SDR 4, effective July 21, 1985; 12 SDR 204, effective July 1, 1986; 15 SDR 67, effective November 6, 1988.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-References:

Need and amount of assistance -- Income and resources, 45 C.F.R. § 233.20(a)(3)(xiii).

Need standard, § 67:12:06:04.01~~; Need and amount of assistance -- Income and resources, 45 C.F.R. § 233.20(a)(3)(xiii)~~.

67:12:06:04.01. Need standard. Based on the number of members in the assistance unit and the unit's living arrangement, the need standard amounts are~~ as follows~~:

UNIT SIZE	INDEPENDENT LIVING	DEPENDENT LIVING
1 person	$ 358	$ 204
2 persons	448	295
3 persons	507	354
4 persons	563	412
5 persons	622	470
6 persons	680	528
7 persons	738	587
8 persons	795	643
9 persons	852	701
10 persons	910	758
11 persons	968	816
12 persons	1,026	872
13 persons	1,083	931
14 persons	1,140	988
15 persons	1,198	1,047
16 persons	1,256	1,103
17 persons	1,312	1,160
18 persons	1,370	1,218
19 persons	1,428	1,275

20 persons	1,486	1,332
21 persons	1,543	1,390
22 persons	1,599	1,448
23 persons	1,658	1,505
24 persons	1,715	1,562
25 persons	1,772	1,620

Source: 1 SDR 30, effective October 13, 1974; 5 SDR 6, effective August 6, 1978; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 144, effective July 1, 1984; 12 SDR 204, effective July 1, 1986; 15 SDR 67, effective November 6, 1988; 15 SDR 203, effective July 2, 1989; 16 SDR 99, effective December 7, 1989; 17 SDR 8, effective July 23, 1990; 17 SDR 200, effective July 1, 1991; 19 SDR 26, effective August 23, 1992; 20 SDR 18, effective August 17, 1993; 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

67:12:06:07. Allowances for child attending college, vocational, or boarding school. An otherwise eligible child who regularly attends a college, vocational school, or boarding school, as defined in § 67:12:01:21, ~~and is at or away from home shall be~~ is included as a household member when ~~figuring~~ determining the need standard to be used. No additional allowance for these educational arrangements may be authorized.

Source: SL 1975, ch 16, § 1; 1 SDR 53, effective January 22, 1975; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 12 SDR 204, effective July 1, 1986.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

67:12:06:12. In-kind shelter considered unearned income -- Dependent living arrangement. In ~~computing~~ determining the ~~AFDC~~ Aid to Families With Dependent Children grant, a standard amount of ~~$112~~ one hundred twelve dollars is considered ~~as~~ unearned income to an assistance unit in a dependent living arrangement when all of the assistance unit's lodging expenses are being supplied in-kind.

Source: SL 1975, ch 16, § 1; 1 SDR 53, effective January 22, 1975; 6 SDR 11, effective August 15, 1979; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 12 SDR 204, effective July 1, 1986; 19 SDR 26, effective August 23, 1992; 20 SDR 18, effective August 17, 1993; 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-Reference: Lodging expenses presumed in-kind, § 67:12:06:14.

67:12:06:12.03. Need standard when nonrecipient individual resides in household of applicant or recipient. If a nonrecipient individual resides in the household of an applicant or recipient, the need standard for the assistance unit ~~shall be~~ is determined without additional allowances for the nonrecipient members.

Source: Transferred from § 67:12:06:09, 12 SDR 112, effective January 16, 1986; 12 SDR 204, effective July 1, 1986.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

67:12:06:13. Rental subsidy considered unearned income -- Independent living arrangements. In computing the ~~AFDC~~ Aid to Families With Dependent Children grant, an amount up to ~~$150~~ one hundred fifty dollars but not exceeding the assistance unit's average monthly rental subsidy is considered ~~as~~ unearned income when the assistance unit lives in an independent living arrangement and has benefit of a rental subsidy.

Source: SL 1975, ch 16, § 1; 1 SDR 30, effective October 13, 1974; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 12 SDR 204, effective July 1, 1986; 19 SDR 26, effective August 23, 1992; 20 SDR 18, effective August 17, 1993; 21 SDR 171, effective April 3, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

67:12:06:14. Lodging expenses presumed in-kind. In computing the ~~AFDC~~ Aid to Families With Dependent Children grant, the lodging expenses of an assistance unit in a dependent living arrangement is presumed to be furnished in-kind unless the assistance unit can provide documentation to show that it participates in meeting those costs.

Based on the documentation submitted, if the department determines that the assistance unit is participating in meeting the lodging expenses, the assistance unit will not be subject to the unearned income standard in § 67:12:06:12.

Source: SL 1975, ch 16, § 1; 1 SDR 30, effective October 13, 1974; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 12 SDR 204, effective July 1, 1986; 19 SDR 26, effective August 23, 1992; 20 SDR 18, effective August 17, 1993; 21 SDR 172, effective April 3, 1995.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

67:12:06:26. Amount of assistance grant -- Limitation. The amount of assistance ~~which can be~~ paid to an assistance unit is ~~derived by the following computation~~ computed by:

(1) ~~Add~~ Adding the earned and unearned income and other benefits available to or received by the assistance unit, except unemployment compensation and disregarded and excluded income;

(2) ~~Subtract~~ Subtracting the sum from the need standard specified in § 67:12:06:04.01;

(3) ~~Multiply~~ Multiplying the remainder by ~~85~~ eighty-five percent;

(4) ~~Round~~ Rounding the resulting figure down to the nearest dollar; and

(5) ~~Subtract~~ Subtracting unemployment compensation.

No payment may be made to a recipient in any month in which the amount of the assistance payment, not considering recoupment amounts, is less than ~~$10~~ ten dollars. ~~Those recipients~~ A recipient denied solely because of this limitation ~~shall be~~ is considered ~~AFDC recipients~~ an Aid to Families With Dependent Children recipient for all other purposes.

Source: SL 1975, ch 16, § 1; 7 SDR 90, effective April 1, 1981; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 82, effective January 13, 1982; 19 SDR 26, effective August 23, 1993.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-References:

Determining financial eligibility and amount of the assistance payment, 45 C.F.R. § 233.20(a)(3)(ii)(B).

Assistance applications and eligibility, ~~ch~~ chapter 67:12:01.

Limitations on real property, ~~ch~~ chapter 67:12:04.

Limitations on personal property, ~~ch~~ chapter 67:12:05.

Budgeting, ~~ch~~ chapter 67:12:06.

~~Determining financial eligibility and amount of the assistance payment, 45 C.F.R. § 233.20(a)(3)(ii)(B).~~

67:12:06:27. Unrestricted payments. The department shall make payments without direction on the warrant, without a letter or agreement as a condition of receiving the payment, or without any other notification that the recipient must use the money in a specified way or for specified purposes. The ~~following conditions are construed as restrictions on payments~~ department may not:

(1) ~~Directing~~ Direct that all or part of the assistance payments must be applied to specific bills or for the purchase of specified foods or services;

(2) ~~Requiring~~ Require that the recipient submit receipts for the purpose of showing how the recipient spent all or any part of the assistance payments;

(3) ~~Requiring~~ Require the return to or deposit of all or part of the ~~AFDC~~ Aid to Families With Dependent Children payments for use in a designated way by the department; and

(4) ~~Providing~~ Provide service to recipient's creditors, such as assisting them in the collection of the recipient's debt.

The department shall inform the client of the client's rights to an unrestricted payment.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

67:12:06:32. Notification by recipient to initiate procedure for writing duplicate warrant. To initiate the procedure for writing a duplicate warrant if a warrant is lost, stolen, or forged, the recipient must notify the department of the ~~nonreceipt of~~ need for a duplicate warrant within ~~10~~ ten days from the department's established mailing dates and the normal time required for postal delivery to the recipient's locality.

Source: 2 SDR 62, effective April 5, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-12~~ 28-6-1.

67:12:06:33. Definitions. ~~Terms used in this chapter mean:~~

~~(1) "Prospective budgeting," the method of computing the amount of AFDC assistance for a payment month based on the caseworker's best estimate of income and circumstances which will exist in that month;~~

~~(2) "Prospective eligibility," the determination of a client's eligibility for AFDC based on the caseworker's best estimate of income and circumstances which will exist in that month;~~

~~(3) "Retrospective budgeting of income," the method of computing the amount of AFDC assistance for a payment month based on actual income which existed in a previous month, which is the budget month;~~

~~(4) "Retrospective budget month," the fifteenth of one month through the fourteenth of the following month;~~

~~(5) "Prospective budget month," a calendar month;~~

~~(6) "To make an assistance payment," to deposit in the United States mail or to hand deliver the assistance payments check to the recipient; and~~

~~(7) "Payment month for retrospective budgeting," the calendar month for which the AFDC payment is made. The payment month for retrospective budgeting immediately follows the retrospective budget month~~ Repealed.

Source: 7 SDR 30, effective October 5, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 125, effective April 4, 1982.

~~**General Authority:** SDCL 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-4, 28-7-9.~~

~~**Cross-Reference:** Definitions, 45 C.F.R. § 233.21(b).~~

67:12:06:34. Completed monthly report form required. The department shall furnish each assistance unit with a monthly report form~~ which shall be filled~~. The assistance unit must fill out,~~ signed~~ sign, and~~ returned~~ return the monthly report form to the department or have the mail postmarked by the twentieth of the month before the month of payment. The monthly report form contains the information necessary to allow the caseworker to determine eligibility and compute the amount of assistance payment.

Source: 7 SDR 30, effective October 5, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 125, effective April 4, 1982.

General Authority: SDCL~~ 28-7-2~~ 28-6-1.

Law Implemented: SDCL~~ 28-7-4, 28-7-9~~ 28-6-1.

Cross-References:

Monthly reporting (AFDC), 45 C.F.R. § 233.36.

Recipient to report change of circumstances, § 67:12:01:12.

Adequate notice to recipients using monthly report form, § 67:12:02:03.01.

~~Recipient to report change of circumstances, § 67:12:01:12.~~

67:12:06:34.01. Assistance units exempt from monthly reporting. An assistance unit is exempt from the monthly reporting requirements contained in § 67:12:06:34 if~~ it meets all of the following criteria~~:

(1) The caretaker relative is not a member of the assistance unit and is not currently sanctioned for not cooperating with the department;~~ and~~

(2) The members have no earned income and have not received any earned income in the past two months~~; and~~

~~(3) If receiving food stamps, the unit is exempt from monthly reporting under § 67:23:03:08~~.

Source: 15 SDR 203, effective July 2, 1989.

General Authority: SDCL~~ 28-7-2~~ 28-6-1.

Law Implemented: SDCL~~ 28-7-4, 28-7-9~~ 28-6-1.

Cross-References:

Recipient to report change in circumstances, § 67:12:01:12.

Cooperation of applicant or recipient, § 67:12:01:70.

~~Households exempt from monthly reporting, § 67:13:03:08.~~

67:12:06:37. Assistance to be terminated if required report form not received on time. If the department does not receive the required report form from the recipient by the date specified in § 67:12:06:34, the department shall terminate assistance and notify the recipient according to § 67:12:02:03.01. If the recipient notifies the department to reclaim a need for assistance and files a completed report within ~~10~~ ten days after the notice, assistance ~~shall~~ must be reinstated subject to penalty, as specified in § 67:12:06:37.01, provided the recipient is still eligible.

Source: 7 SDR 30, effective October 5, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 125, effective April 4, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-References:

~~Adequate notice to recipients using monthly report form, § 67:12:02:03.01.~~

Action necessary due to non-receipt of report form, 45 C.F.R. § 233.29(c).

Completed monthly report not received by agency, 45 C.F.R. § 233.37(b).

Adequate notice to recipients using monthly report form, § 67:12:02:03.01.

67:12:06:37.01. Penalty for late filing of monthly report. If the caretaker relative fails, without good cause, to report earned income on the monthly report form by the date specified in § 67:12:06:34, the department shall determine eligibility and compute the amount of assistance without ~~benefit of~~ considering the disregards in §§ 67:12:05:14, 67:12:05:18, and 67:12:05:21. In addition, when earned income is present, the disregard in § 67:12:05:14 ~~shall be~~ is counted as one of the four consecutive months in the limitation specified in subdivision 67:12:05:34(4).

Source: 8 SDR 125, effective April 4, 1982; 9 SDR 24, effective September 2, 1982; 10 SDR 68, effective January 1, 1984; 15 SDR 67, effective November 6, 1988.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-References:

______Completed monthly report received but not timely, 45 C.F.R. § 233.20(a)(11)(iii)(C)~~;~~.

______Good cause for late filing of monthly report, § 67:12:06:37.02.

67:12:06:37.02. Good cause for late filing of monthly report. The department shall consider ~~the~~ an applicant's transition into a reporting cycle and ~~those~~ circumstances which are beyond ~~the~~ a recipient's control as good cause for late filing of the monthly report. ~~Examples of these circumstances include weather conditions, mailing problems, and the recipient's indisposition for health reasons.~~ If the recipient can verify good cause, the assistance shall not be affected.

Source: 8 SDR 125, effective April 4, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-Reference: Good cause for failing to make a timely report, 45 C.F.R. § 33.20(a)(11)(iii)(C).

67:12:06:38. Computing assistance payment and determining eligibility in initial month of assistance for applicant or former recipient. The department shall determine eligibility for ~~AFDC~~ Aid to Families With Dependent Children assistance for an applicant or a former recipient and compute the assistance payment prospectively in the initial month of assistance.

If a former recipient requests an assistance payment in the same month in which the former recipient was determined to be ineligible and the case subsequently terminated, the provisions of §§ 67:12:06:39 and 67:12:06:41 apply.

Source: 7 SDR 30, effective October 5, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 114, effective March 6, 1983.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-References:

______Determining eligibility and computing the assistance payment in the initial one or two months, 45 C.F.R. § 233.24(a)~~;~~.

______Determination of initial month's benefits, § 67:12:06:38.01.

67:12:06:38.01. Determination of initial month's benefits. ~~Effective October 1, 1982, the~~ The first month's assistance payment ~~shall be~~ is prorated based on the date of application. The payment level ~~shall be~~ is computed as follows: subtract the date of application from ~~31~~ thirty-one and multiply by the full month's benefit; then divide the total by ~~30~~ thirty. Assistance units applying on the ~~31st~~ thirty-first of the month ~~shall~~ must be considered as having applied on the ~~30th~~ thirtieth. For purposes of this provision a month ~~shall consist of 30~~ is thirty days.

Source: 9 SDR 72, effective December 14, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4~~ 28-6-1.

Cross-References:

Application, determination of eligibility and furnishing assistance, 45 C.F.R. § 206.10.

Date entitlement for financial assistance begins, § 67:12:01:11~~; Application, determination of eligibility and furnishing assistance, 45 C.F.R. § 206.10(c)(6)~~.

67:12:06:39. Computing assistance payment after initial month of assistance. After the initial month of assistance, the department shall compute the amount of each subsequent payment retrospectively and shall base the amount on the income received in the corresponding budget month.

Noncontinuous income received before the month of application or previously considered under § 67:12:06:38 may not be counted again.

The needs and income of an individual determined eligible and added to an existing assistance unit ~~shall~~ must be considered prospectively.

Source: 7 SDR 30, effective October 5, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 125, effective April 4, 1982; 9 SDR 24, effective September 2, 1982; 9 SDR 114, effective March 6, 1983.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-Reference: Computing the assistance payment after the initial one or two months, 45 C.F.R. § 233.35(a).

67:12:06:41. Determining eligibility after initial month of assistance. Continued eligibility for all factors ~~shall be~~ is determined both retrospectively and prospectively. However, a regular and periodic extra paycheck from a recurring source ~~shall be~~ is considered retrospectively but not prospectively.

Source: 7 SDR 30, effective October 5, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 125, effective April 4, 1982; 9 SDR 42, effective October 10, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-References:

~~Determining~~ Retrospective budgeting; determining eligibility after the initial ~~month~~ one or two months, 45 C.F.R. § 233.26.

Determining eligibility prospectively for all payment months (AFDC), 45 C.F.R. § 233.33.

~~Definitions, § 67:12:06:33.~~

67:12:06:42. Penalty for terminating employment, reducing earned income, and refusing offer of employment. If an applicant or recipient terminates employment, reduces earned income, or refuses an offer of employment without good cause, the amount of assistance ~~shall be~~ is computed without benefit of the disregards in §§ 67:12:05:14, 67:12:05:18, and 67:12:05:21. In addition, the disregard in § 67:12:05:14 ~~shall be~~ is counted as one of the four consecutive months in the limitation specified in subdivision 67:12:05:34(4).

Source: 8 SDR 125, effective April 4, 1982; 9 SDR 24, effective September 2, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-References:

Penalty for terminating employment, reducing earned income, and for refusing an offer of employment, 45 C.F.R. § 233.20(a)(11)(iii).

Good cause for terminating employment or reducing earned income, § 67:12:06:43.

Good cause for refusal to accept employment, § 67:12:06:44.

67:12:06:42.01. Penalty for terminating employment -- 1115 waiver group. If an applicant is a parent caretaker relative, is assigned to the 1115 waiver group, and terminates employment without good cause within the ~~60~~ sixty days preceding the date of application, the assistance unit is ineligible for ~~AFDC~~ Aid to Families With Dependent Children (AFDC) cash payments. The period of ineligibility is limited to a maximum of ~~90~~ ninety days from the date the employment was terminated.

If a recipient is a parent caretaker relative, is assigned to the 1115 waiver group, and terminates employment without good cause, the assistance unit is ineligible for AFDC cash payments. The period of ineligibility is limited to three payment months. The first month of ineligibility is the first month after the notice requirements of chapter 67:12:02 are met.

~~In either case, the~~ The length of the penalty expires if the parent caretaker relative secures employment with comparable hours and earnings or is no longer living in the home.

The assistance unit must make a new application for AFDC cash benefits when the penalty period expires, the parent caretaker relative secures employment with comparable earnings, or the parent caretaker relative is no longer living in the home.

Source: 20 SDR 196, effective May 23, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-1~~ 28-6-1.

Cross-Reference: Assistance unit randomly assigned to groups, § 67:12:01:73.

67:12:06:42.02. Medicaid eligibility when employment terminated -- 1115 waiver group. An assistance unit which is ineligible for ~~AFDC~~ Aid to Families With Dependent Children (AFDC) under § 67:12:06:42.01 is eligible for ~~Medicaid~~ medicaid if, except for the penalty for terminating employment, the assistance unit meets all other AFDC eligibility requirements.

Source: 20 SDR 196, effective May 23, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-1~~ 28-6-1.

67:12:06:43. Good cause for terminating employment or reducing earned income. Good cause criteria for voluntarily leaving employment or reducing earned income ~~include the following~~ is established if:

(1) Continued employment or ~~continuing to work~~ full-time ~~presents~~ work is a hazard to the ~~client's~~ applicant’s or recipient’s health;

(2) The employer required the ~~client~~ applicant or recipient to relocate the ~~client's~~ applicant’s or recipient’s residence to hold the job;

(3) The employer's conduct ~~demonstrates~~ demonstrated a substantial disregard of the standards of behavior that the ~~client~~ applicant or recipient as an employee has a right to expect ~~of~~ from the employer;

(4) The employer has breached or substantially altered the employment contract ~~for employment~~; ~~and~~ or

(5) While on layoff, a ~~client~~ applicant or recipient accepted employment which the ~~client~~ applicant or recipient quit to return to work for the ~~client's~~ applicant’s or recipient’s regular employer.

Source: 8 SDR 125, effective April 4, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-References: ~~Good cause for terminating employment or reducing earned income, 45 C.F.R. § 233.20(a)(11)(iii)(A);~~ Medical verification of evidence supporting applicant's or recipient's inability to be employed, § 67:12:06:45.

67:12:06:43.01. Good cause for terminating employment -- 1115 waiver group. In addition to the criteria established in § 67:12:06:43, good cause criteria for an applicant or recipient who is part of the 1115 waiver group and who voluntarily terminates employment ~~include the following~~ is established if:

(1) The employment was less than ~~20~~ twenty hours a week at federal minimum wage;

(2) Child care arrangements are not available;

(3) The employer discriminated against the applicant or recipient;

(4) Working conditions or demands from the employer make continued employment unreasonable~~, such as working without being paid on time~~;

(5) The applicant or recipient accepted other employment with comparable salary or hours;

(6) The applicant or recipient is enrolled in an approved training program that requires the applicant or recipient to leave employment; ~~and~~ or

(7) After accepting employment, the employment did not materialize for a reason beyond the control of the applicant or recipient or became unsuitable for one of the reasons contained in § 67:12:06:44~~. The fact that the job did not materialize must have been beyond the control of the applicant or recipient~~.

Source: 20 SDR 196, effective May 23, 1994.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-1~~ 28-6-1.

Cross-References:

Federal minimum wage, 29 U.S.C. § 206(a)(1).

~~Approved training -- State JOBS participant, § 67:12:09:11.04.~~

Assistance unit randomly assigned to groups, § 67:12:01:73.

67:12:06:44. Good cause for refusal to accept employment. For purposes of public assistance, good cause for refusing to accept employment ~~shall be~~ is determined by the department ~~on the basis of the following criteria~~ if:

(1) The individual is not physically or mentally capable of performing the work on a regular basis;

(2) The offered wages, hours, or other work conditions ~~of the work offered~~ are substantially less favorable than those ~~applicable or prevailing~~ found for similar work in the locality;

(3) The position is vacant due directly to a strike, lockout, or other labor dispute;

(4) The individual is, as a condition of ~~being employed~~ employment, required to join ~~or to~~, resign from, or refrain from joining a labor organization; ~~and~~ or

(5) The total daily commuting time to and from home to the work site by available transportation exceeds two hours ~~by available transportation~~, exclusive of the time necessary to transport children to and from a child care facility. If a longer commuting ~~distance and~~ time is ~~generally accepted~~ common in the community, the round trip commuting time may not exceed the ~~generally accepted~~ commuting time common in the community ~~standards~~.

Source: 8 SDR 125, effective April 15, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

Cross-References:

______Good cause for refusing employment, 45 C.F.R. § 233.20(a)(11)(iii)(B)~~;~~.

______Medical verification of evidence supporting applicant's or recipient's inability to be employed, § 67:12:06:45.

67:12:06:45. Medical verification supporting applicant's or recipient's inability to be employed. If an applicant or recipient indicates ~~that the applicant or recipient is unable~~ an inability to accept employment or continue employment for physical or mental health reasons~~, either physical or mental~~, the applicant or recipient ~~is responsible for obtaining~~ must obtain a written statement ~~completed and~~ signed by a licensed or certified physician, physician's assistant, nurse practitioner, psychologist, or ~~a~~ psychiatric social worker which verifies the inability to ~~be employed~~ accept or continue employment.

Source: 8 SDR 125, effective April 4, 1982.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-4, 28-7-9~~ 28-6-1.

CHAPTER 67:12:12

DEPENDENT CHILDREN FOSTER CARE

67:12:12:01. Eligibility for ~~AFDC~~ Aid to Families With Dependent Children foster care. Applicants for ~~AFDC~~ Aid to Families With Dependent Children (AFDC) foster care funds must meet the following criteria:

(1) The child must have been removed from the home of the child's parent, parents, or specified relative, as provided in ~~|~~ § 67:12:01:27, ~~as~~ by a ~~result of~~ court action ~~which determined~~ determining that being in the home was contrary to the child's welfare ~~for any reason~~. ~~A~~ The removed child ~~removed from the child's home as a result of court action~~ must also ~~meet the criterion established in~~ have been either ~~(a) or (b) as follows~~:

(a) ~~The child was living~~ Living with a specified relative and was a recipient of AFDC benefits during the month the court action was initiated or would have been eligible to receive AFDC had an application been made; or

(b) ~~The child not~~ Not living with a specified relative during the month of initial court action, but must have been living with a specified relative as defined in § 67:12:01:27 ~~during~~ at any ~~period of~~ time within six months prior to the month of initial court action. If the specified relative requirement is met, the child must also meet all other eligibility requirements which would have been required during the month of initial court action;

(2) The ~~child's placement and care has been designated by the~~ court ~~to be~~ has placed the care of the child under the charge of the department or any public agency with which the department has an effective contract; and

(3) All other eligibility requirements pursuant to chapters 67:12:01, 67:12:04, and 67:12:05~~, and 67:12:09~~ related to need, deprivation, age, work incentive status, residency,

submission of social security number, and notification and referral to ~~OCSE~~ the office of child support enforcement must be met.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 10, effective August 28, 1977; 4 SDR 60, effective March 26, 1978; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-1, 28-7-17~~ 28-6-1.

Cross-Reference: ~~AFDC foster care~~ Foster care maintenance and adoption assistance, 45 C.F.R. § 233.110.

67:12:12:01.01. Department to develop plan for alternative care and services. When a child has been removed from the home of a specified relative as a result of court action, the department or the public agency under contract with the department shall develop a plan for alternative care and services ~~as follows~~ to include:

(1) Making available emergency care;

(2) Improving conditions in the home from which the child was removed;

(3) Providing for the placement and care of the child in another ~~departmentally approved~~ home approved by the department; or

(4) Proceeding with plans for the adoption of the child.

Source: 4 SDR 60, effective March 26, 1978; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-14, 28-7-17~~ 28-6-1.

Cross-References:

Foster care maintenance and adoption assistance, 45 C.F.R. § 233.110(a).

Specific degree of relationship between child and parent or relative, § 67:12:01:27~~;~~ ~~AFDC foster care, 45 C.F.R. § 233.110(a)~~.

67:12:12:01.02. Termination of parental rights not deprivation. A court order terminating parental rights ~~shall not qualify as~~ is not considered a deprivation factor as defined in chapter 67:12:01 for the purpose of establishing initial eligibility for ~~AFDC~~ Aid to Families With Dependent Children foster care benefits.

Source: 4 SDR 60, effective March 26, 1978; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-1~~ 28-6-1.

67:12:12:02. Redetermination of deprivation for continued eligibility. In making a redetermination of deprivation of parental care or support for the purpose of determining continued eligibility for ~~AFDC~~ Aid to Families With Dependent Children (AFDC) foster care, a recipient ~~shall meet either of the following requirements:~~

~~(1) The recipient~~ must meet eligibility criteria as established in chapter 67:12:01~~;~~ or

~~(2) A court order has terminated parental rights during the period the recipient was~~ be receiving AFDC foster care benefits when a court order terminates parental rights.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 60, effective March 25, 1978; 7 SDR 66, 7 SDR 89, effective July1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-18~~ 28-6-1.

Cross-Reference: Application, determination of eligibility and furnishing of assistance, 45 C.F.R. § 206.10(a)(9).

67:12:12:04. Periodic review of eligibility. Eligibility for ~~AFDC~~ Aid to Families With Dependent Children foster care ~~shall~~ must be reviewed ~~as often as~~ if there is a change in circumstances ~~dictate but not less than~~ and at least every six months.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-18~~ 28-6-1.

67:12:12:05. Foster care rates. The department shall determine the standard rates of payment for family foster care ~~shall be determined by OCYFS in cooperation with the office of assistance payments,~~ pursuant to articles 67:12 and 67:14. The payments ~~shall~~ must cover cost of maintenance~~, such as food and its preparation, housing, clothing, personal needs, allowances, and routine supervision~~. For short-term group home care and family foster care, which may be less than a month, reimbursement ~~shall~~ must be prorated according to days in placement. Group care rates ~~shall~~ must be determined by the department~~. Such group rates shall~~ and include maintenance and service costs.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 10, effective August 28, 1977; 4 SDR 60, effective March 26, 1978; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL ~~28-7-2~~ 28-6-1.

Law Implemented: SDCL ~~28-7-9~~ 28-6-1.

Cross-Reference:

Reimbursement for family foster care, group care, residential treatment, and intensive residential ~~care~~ treatment, § 67:14:31:26.

CHAPTER 67:12:15

DEPENDENT CARE

67:12:15:01. Definition of dependent care services. ~~Dependent care services under this chapter are limited to those care services for a child or an incapacitated adult necessitated by one of the following situations:~~

~~(1) The recipient caretaker relative is employed;~~

~~(2) The recipient caretaker relative is participating in JOBS training or a JOBS training-related activity which is expected to last less than 30 days; or~~

~~(3) The recipient caretaker relative is participating under the provisions of § 67:12:21:08 in an activity other than employment which is expected to last less than 30 days.~~

~~The 30-day limit contained in subdivisions (2) and (3) of this section does not apply when the dependent care services are for an incapacitated adult.~~

~~Dependent care services cover only those times during which the recipient caretaker relative is unavailable to care for the child or incapacitated adult because of employment, participation in JOBS training, participation in a JOBS training-related activity, or participation in an activity other than employment under § 67:12:21:08. Dependent care services include the time the child or incapacitated adult is in care while the caretaker relative travels to and from the employment, training, or service site.~~

~~A JOBS-related activity includes job search services and job interviews~~ Repealed.

Source: 9 SDR 24, effective September 2, 1982; 12 SDR 204, effective July 1, 1986; 13 SDR 141, effective April 5, 1987; 14 SDR 40, effective September 24, 1987; 17 SDR 8, effective July 23, 1990; 19 SDR 68, effective November 9, 1992; 21 SDR 172, effective April 3, 1995; dependent care limits transferred to § 67:12:15:02, 22 SDR 70, effective November 19, 1995; 22 SDR 188, effective July 8, 1996.

~~**General Authority:** SDCL 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-4.~~

~~**Cross-References:**~~

~~Dependent care disregard from earnings -- Employed caretaker relatives, § 67:12:05:21.~~

~~Dependent care limits -- Caretaker relative in certain activities, § 67:12:15:02.~~

~~Definitions, § 67:12:09:00.~~

~~Approved training -- State JOBS participant, § 67:12:09:11.04.~~

67:12:15:02. Dependent care limits -- Caretaker relative in certain activities. ~~Dependent care payments under this section are limited to recipient caretaker relatives who are participating in JOBS training, in a JOBS training-related activity, or in an activity for the purpose of meeting the requirements of § 67:12:21:08. Unless the care is for an incapacitated adult, the training or activity must be expected to last less than 30 days. A participant under the state JOBS program must be under a training program approved by either the department or DOL according to § 67:12:09:11.04. A participant under the tribal JOBS program must be under a training program approved by the tribal JOBS office.~~

~~Dependent care payments are subject to the availability of funds.~~

~~The caretaker relative must provide verification of dependent care costs on a form provided by the department. The provider and the caretaker relative must complete, sign, and return the form to the department within the same time limits established for the submission of the monthly report form. A form lacking the information needed to determine the amount of allowable dependent care or missing any of the required signatures is considered incomplete. Failure to return the form or submission of an incomplete form affects only the dependent care allowance.~~

~~The amount recognized by the department is the actual cost incurred not to exceed the lower of $1.50 an hour or $300 a month for the first child of a family and the lower of $1.10 an hour or $220 a month for each additional child.~~

~~For families with more than one child under the age of one, child care costs recognized by the department may not exceed the lower of $1.50 an hour or $300 a month for each child under the age of one.~~

~~For a dependent child who is physically or mentally incapable of self-care, as verified by a physician or licensed or certified psychologist, or for a child under court supervision, as verified by the juvenile probation officer, child care service costs recognized by the department are the actual costs incurred not to exceed the lower of $2 and hour or $400 a month for each child.~~

~~In no case may the department recognize more than 200 hours a month for each child in care.~~

~~The department considers the child requiring the most child care service hours as the first child in care.~~

~~Dependent care services recognized by the department are limited to those care services provided for the care of a dependent child under age 13 or an incapacitated adult who is living in the home and who is receiving AFDC or who would be receiving AFDC except for the receipt of benefits under SSI or foster care under chapter 67:12:12. Dependent care services may include care services for a dependent child age 13 or over if the child is physically or mentally incapable of self-care, as verified by a physician or a licensed or certified psychologist, or if the child is under court supervision, as verified by the juvenile probation officer. Dependent care services do not include those care services provided by the dependent child's parent, caretaker relative, legal guardian, or a member of the AFDC assistance unit~~ Repealed.

Source: 9 SDR 24, effective September 2, 1982; 9 SDR 42, effective October 10, 1982; 13 SDR 141, effective April 5, 1987; training requirements transferred from § 67:12:15:06, 14 SDR 40, effective September 24, 1987; 14 SDR 140, effective May 1, 1988; 15 SDR 67, effective November 6, 1988; 16 SDR 99, effective December 7, 1989; 17 SDR 8, effective July 23, 1990; 21 SDR 172, effective April 3, 1995; dependent care limits transferred from § 67:12:15:01, 22 SDR 70, effective November 19, 1995; 22 SDR 188, effective July 8, 1996.

~~**General Authority:** SDCL 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-4.~~

~~**Cross-Reference:** Completed monthly report form required, § 67:12:06:34.~~

67:12:15:04. Required verification of dependent care costs -- Disregard from earnings. ~~The actual dependent care costs of an employed caretaker relative must be verified. Verification must be on a form provided by the department. The form must be completed and signed by the provider. The form must be signed by the caretaker relative and returned to the department within the same time limits established for the submission of the monthly report form.~~

~~A form lacking the information needed to determine the amount of the dependent care disregard or missing any of the required signatures is considered incomplete. Failure to return the form or submission of an incomplete form affects only the dependent care disregard~~ Repealed.

Source: 9 SDR 24, effective September 2, 1982; 9 SDR 148, effective May 26, 1983; 14 SDR 40, effective September 24, 1987.

~~**General Authority:** SDCL 28-7-.~~

~~**Law Implemented:** SDCL 28-7-4.~~

~~**Cross-References:** Completed monthly report form required, § 67:12:06:34; Dependent care disregard from earnings -- Employed caretaker relatives § 67:12:05:21~~.

67:12:15:05. Computing disregarded dependent care cost. ~~For a recipient caretaker relative who is employed full time throughout the budget month, the disregarded dependent care cost is the amount actually paid by the caretaker, not to exceed $175 a month for each dependent age two or over or $200 a month for each dependent under age two.~~

~~For a recipient caretaker relative who is employed part time throughout the budget month, the disregarded dependent care cost is the amount actually paid by the caretaker, not to exceed $174 a month for each dependent age two or over or $199 a month for each dependent under age two.~~

~~Charges for dependent care must include all costs associated with the care, such as transportation, meals, and snacks furnished by the provider.~~

~~Dependent care services are limited to those care services provided for the care of a dependent child or an incapacitated adult who is living in the home and who is receiving AFDC.~~

~~Dependent care services do not include those care services provided by the dependent child's parent or caretaker relative~~ Repealed.

Source: 9 SDR 24, effective September 2, 1982; 9 SDR 46, effective October 1, 1982; 13 SDR 141, effective April 5, 1987; 14 SDR 40, effective September 24, 1987; 15 SDR 67, effective November 6, 1988; 16 SDR 99, effective December 7, 1989; 17 SDR 8, effective July 23, 1990; 19 SDR 68, effective November 9, 1992; 22 SDR 70, effective November 19, 1995.

~~**General Authority:** SDCL 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-4.~~

~~**Cross-Reference:** Dependent care disregard from earnings -- Employed caretaker relatives, § 67:12:05:21.~~

67:12:15:08. Supplemental amount. ~~If the charges and actual amount paid for dependent care services necessitated by the recipient caretaker relative's employment is greater than the maximum dependent care disregard allowed in § 67:12:15:05, the department shall pay a supplemental amount to the caretaker relative. To determine the supplemental amount payable, calculate the dependent care payment using the written verification method contained in § 67:12:15:02 and subtract the disregard allowed according to § 67:12:15:05. The difference is the supplemental amount payable~~ Repealed.

Source: 22 SDR 70, effective November 19, 1995.

~~**General Authority:** SDCL 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-4.~~

~~**Cross-Reference:** Supplemental payment, 45 C.F.R. § 255.3(f)(2).~~

CHAPTER 67:12:18

UNEMPLOYED PARENT PROGRAM

Section

67:12:18:01. Definitions. ~~Terms used in this chapter mean:~~

~~(1) "Principal wage earner" or "PWE," an AFDC household's principal wage earner determined under the provisions of § 67:12:18:03.~~

~~(2) "Unemployment insurance" or "UI," unemployment insurance benefits available through the Department of Labor; and~~

~~(3) "Unemployed parent program" or "UPP," cash and medical assistance available to certain AFDC households that have an unemployed parent~~ Repealed.

Source: 17 SDR 53, effective October 16, 1990.

~~**General Authority:** SDCL 28-7-1.1, 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-1.1, 28-7-2.~~

~~**Cross-References:** Unemployment benefits, SDCL ch 61-6; Unemployment compensation, ARSD art 47:06.~~

67:12:18:02. Unemployed parent program available to certain AFDC households. ~~A dependent child who would be eligible for AFDC except that the child is not otherwise deprived of parental support may be eligible for assistance under the unemployed parent program if the unemployed parent determined by the department to be the principal wage earner meets the requirements of this chapter~~ Repealed.

Source: 17 SDR 53, effective October 16, 1990.

~~**General Authority:** SDCL 28-7-1.1, 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-1.1, 28-7-2.~~

~~**Cross-Reference:** Definition of dependent child, SDCL 28-7-1.~~

67:12:18:03. Determination of principal wage earner. ~~The parent who earned the most gross income in the 24 months immediately preceding the month of application for UPP is the principal wage earner. This applies regardless of when the relationship between the two parents began.~~

~~If the applicant cannot secure the evidence needed by the department to determine which parent is the PWE or if the earned income of both parents is equal, the department shall designate the PWE based on the best evidence available.~~

~~The parent designated as the PWE remains the PWE throughout the period of UPP eligibility, including the period of continued medical assistance under § 67:12:18:09~~ Repealed.

Source: 17 SDR 53, effective October 16, 1990.

~~**General Authority:** SDCL 28-7-1.1, 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-1.1, 28-7-2.~~

67:12:18:04. Criteria used to establish unemployment. ~~The PWE is considered unemployed if one of the following exists:~~

~~(1) The PWE will be employed less than 100 hours in the payment month; or~~

~~(2) The PWE will be employed more than 100 hours in the payment month but was employed for less than 100 hours in the two months immediately preceding the payment month and will be employed for less than 100 hours in the month following the payment month~~ Repealed.

Source: 17 SDR 53, effective October 16, 1990.

~~**General Authority:** SDCL 28-7-1.1, 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-1.1, 28-7-2.~~

67:12:18:05. Circumstances under which a PWE is not considered unemployed. ~~A PWE is not considered unemployed in any of the following situations:~~

~~(1) The PWE is participating in a labor dispute;~~

~~(2) The PWE's conduct has resulted or would result in disqualification for UI benefits under the provisions of article 47:06 and SDCL chapters 61-6 and 61-7; or~~

~~(3) The PWE has been or would be disqualified for UI benefits because of the existence of other circumstances determined under the provisions of article 47:06 and SDCL chapters 61-6 and 61-7~~ Repealed.

Source: 17 SDR 53, effective October 16, 1990.

~~**General Authority:** SDCL 28-7-1.1, 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-1.1, 28-7-2.~~

67:12:18:06. Initial eligibility. ~~For initial eligibility for UPP, the unit must meet the other AFDC requirements in this article except for the deprivation factor and the PWE must meet the following criteria:~~

~~(1) The PWE must have been unemployed for at least 30 days preceding receipt of UPP benefits. The first day of the 30-day period begins with the first day of the calendar month in which the PWE was employed less than 100 hours;~~

~~(2) The PWE has not, without good cause, refused an offer of employment within the 30 days preceding receipt of UPP benefits;~~

~~(3) The PWE applied for and has accepted UI benefits;~~

~~(4) The PWE received or was qualified to receive UI benefits in the year preceding application for UPP, or the PWE has 6 or more quarters of work in a period of 13 calendar quarters which ended in the year preceding application; and~~

~~(5) The PWE is available for employment.~~

~~Unemployment benefit determinations are made by the Department of Labor under the provisions of article 47:06 and SDCL chapters 61-6 and 61-7.~~

~~For purposes of this rule, a calendar quarter of work is a period of three consecutive calendar months in which an individual either received earned income of not less than $50 or participated in JOBS. The calendar quarters are January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31~~ Repealed.

Source: 17 SDR 53, effective October 16, 1990; 17 SDR 153, effective April 16, 1991.

~~**General Authority:** SDCL 28-7-1.1, 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-1.1, 28-7-2.~~

~~**Cross-References:**~~

~~Deprivation of parental support or care by reason of continued absence from the home, § 67:12:01:29.~~

~~Deprivation of parental support or care by reason of physical or mental incapacity of a parent, § 67:12:01:39.~~

~~Incapacity based on blindness or visual impairment -- Medical findings required, § 67:12:01:62.~~

~~Dependent children of unemployed parents, 45 C.F.R. § 233.101.~~

~~Criteria used to establish unemployment, § 67:12:18:04.~~

67:12:18:07. Continuing eligibility. ~~For continuing eligibility for UPP, the unit must meet the following conditions:~~

~~(1) The unit must continue to meet the requirements of this chapter;~~

~~(2) The unit must continue to meet the other AFDC eligibility requirements in this article;~~

~~(3) The PWE must apply for UI benefits at any time the benefits are available;~~

~~(4) The PWE must continue to be available for employment and, except for JOBS participation, may not be involved in any other activity that would restrict the PWE's availability to accept employment; and~~

~~(5) The PWE has not, without good cause, refused an offer of employment within the 30 days preceding receipt of UPP benefits~~ Repealed.

Source: 17 SDR 53, effective October 16, 1990; 17 SDR 153, effective April 16, 1991.

~~**General Authority:** SDCL 28-7-1.1, 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-1.1, 28-7-2.~~

~~**Cross-References:**~~

~~Assistance applicants and eligibility, ch 67:12:01.~~

~~Limitations on real property, ch 67:12:04.~~

~~Limitations on personal property, ch 67:12:05.~~

~~Budgeting, ch 67:12:06.~~

~~Protective, vendor, or two-party payments, ch 67:12:08.~~

~~Job opportunities and basic skills, ch 67:12:09.~~

~~Dependent care, ch 67:12:15.~~

~~Dependent children of unemployed parents, 45 C.F.R. § 233.101.~~

67:12:18:08. Cash assistance limited -- Family continues to be eligible for medical assistance. ~~A family may not receive UPP cash assistance for more than 6 out of 12 months, including the current payment month. A family continues to be eligible for medical assistance when the time limit for receiving UPP cash assistance expires as long as the conditions of this chapter continue to be met~~ Repealed.

Source: 17 SDR 53, effective October 16, 1990.

~~**General Authority:** SDCL 28-7-1.1, 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-1.1, 28-7-2.~~

67:12:18:09. JOBS participation required before payment made. ~~Before cash assistance is mailed to the family, each parent must have met the JOBS participation requirements. If either has not met the JOBS participation requirements, the department shall apply the sanctions contained in § 67:12:18:10 before payment is made. Payment made by the department to eligible family members shall be mailed on the last working day of the month~~ Repealed.

Source: 17 SDR 53, effective October 16, 1990.

~~**General Authority:** SDCL 28-7-1.1, 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-1.1, 28-7-2.~~

~~**Cross-Reference:** JOBS participation requirements, ch 67:12:09.~~

67:12:18:10. Sanctions for parents not cooperating with JOBS. ~~Sanctions applied for refusing to participate in JOBS or refusing to accept employment shall be applied for the UPP payment month. If one parent is sanctioned for not cooperating with JOBS, the second parent is also sanctioned even if the second parent is exempt from JOBS participation. If the second parent is participating in JOBS, the sanction is applied only against the parent who is not cooperating~~ Repealed.

Source: 17 SDR 53, effective October 16, 1990.

~~**General Authority:** SDCL 28-7-1.1, 28-7-2.~~

~~**Law Implemented:** SDCL 28-7-1.1, 28-7-2.~~

~~**Cross-References:** Refusal to participate in JOBS or accept employment, § 67:12:09:10; Subsequent eligibility, § 67:12:09:11.~~