

TO BE RESCINDED

3701-8-08.1 **Early intervention payor of last resort eligibility and procedures.**

(A) For the purposes of this rule, the following:

- (1) "Ability to pay" means that the family unit's ability to pay for early intervention services as defined in paragraph (A)(5) of this rule is greater than or equal to two thousand dollars.
- (2) "Family income" means the current year's projected adjusted gross earnings based on year-to-date gross earnings as reported on pay stubs or the sum of the annual adjusted gross incomes, as reported to the United States internal revenue service for federal income tax purposes for the previous year, of each member of the family unit. For purposes of this rule, family income does not include educational scholarships, loans, and grants; amounts spent by the family unit for childcare expenses; amounts spent by the family unit for respite care; or lump sum death benefits.
- (3) "Family unit" means the group consisting of the following persons:
 - (a) Infant or toddler;
 - (b) Parents of the infant or toddler, and
 - (c) Other persons, who, for federal income tax purposes, are considered dependents of the parents.
- (4) "Income guidelines" means the guidelines, as established by the director on April first of each year, for use in determining financial eligibility for payment for early intervention services. The income guidelines shall be equal to one hundred eighty-five per cent of the poverty income for each size family, as reported in the Federal Register by the United States department of health and human services, rounded up to the nearest five hundred dollars.
- (5) "Maximum ability to pay for early intervention services" means the difference between the amount the family unit spends, including payroll deductions, for health-related insurance coverage and the sum of the following amounts:
 - (a) Ten per cent of the first fifteen thousand dollars by which the family income exceeds the applicable income guideline, as defined in paragraph (A)(4) of this rule;

- (b) Twenty-five per cent of the next twenty-five thousand dollars by which the family income exceeds the applicable income guideline, as defined in paragraph (A)(4) of this rule; and
 - (c) Thirty-seven and one half per cent of the remaining amount by which the family income exceeds the applicable income guideline, as defined in paragraph (A)(4) of this rule.
- (6) "Service level credit" means a credit of two thousand dollars against the maximum ability to pay for early intervention services.
- (B) Parents of infants or toddlers who are participating in the help me grow (HMG) early intervention system may apply to access the early intervention payor of last resort (POLR) by submitting a completed application on form HEA 7123 (effective July 1, 2012) to the department. The department shall determine a parent's ability to pay for services within thirty calendar days of receiving the completed application. At no time will a parent's ability to pay or not pay for early intervention services result in a delay or denial of early intervention services.
- (1) Determination that the parent is unable to pay for early intervention services shall be specified in writing to the parent and shall include an effective period of time for the determination, which shall be no more than twelve calendar months.
- (2) Parents in the following categories shall be determined unable to pay for early intervention services and therefore eligible for POLR:
 - (a) Applicants or recipients who are receiving services from the special supplemental food program for women, infants, and children "WIC," authorized by section 17 of the "Child Nutrition Act of 1966, 42 U.S.C 1786, as amended, and in effect July 1, 2012.
 - (b) Applicants or recipients who are receiving supplemental security income "SSI" benefits.
 - (c) Applicants or recipients who are receiving medicaid benefits, except for delayed medicaid spend down.
 - (d) The family unit's income is less than or equal to one hundred eighty-five percent of the federal poverty level for each size family.
 - (e) The family unit's maximum ability to pay for early intervention services as defined in this rule is less than the two thousand dollar service level credit.

- (3) Parents in the following categories shall be determined able to pay for early intervention services and therefore potentially eligible for cost share option:
- (a) The family unit's income is greater than one hundred eighty-five percent of the federal poverty level for each size family.
 - (b) The family unit's income is greater than or equal to the two thousand dollar service level credit, at which time the family shall be subject to the family cost-share option.
- (4) Parents determined able to pay for early intervention services may participate in the family cost-share option, by submitting proof of paid non-reimbursable medical expenses incurred by the family unit as follows:
- (a) Once the family unit spends an amount equal to their maximum ability to pay, minus the two thousand dollar service level credit, for unreimbursed medical, vision, dental, and early intervention services, the department will pay for early intervention services within the remaining effective period of time in accordance with this rule.
 - (b) During the twelve-month period before the date of written allegation of inability to pay the family unit paid for unreimbursed medical, vision, dental, or early intervention services that were provided to any member of the family unit or the family unit has contracted in writing to pay for any such services during the twelve months after the written allegation of inability to pay.
 - (c) The total dollar amount that the family unit spent or is contracted to pay equals or exceeds the difference between the maximum ability to pay for early intervention services and the service level credit.
- (5) The hierarchy for payment of early intervention services is as follows:
- (a) When consent is provided, private insurance;
 - (b) When consent is provided, public insurance including medicaid;
 - (c) Local county funds;
 - (d) Bureau for children with medical handicaps diagnostic and/or treatment programs; and
 - (e) When no other payor is available, the family may apply for the payor of last resort.

- (i) If determined able to pay, family is provided the option to participate in a cost share option.
 - (ii) If the family is determined not able to pay, family will receive services at no cost.
- (6) Every parent in early intervention shall receive a copy of the system of payments rule and parent's rights brochure from their HMG early intervention service coordinator.
- (7) Every parent shall receive a department-provided identification of costs they could incur with consenting to provide their own or their child's public or private insurance after the parent consents to the analysis, but before the parent provides written consent to use their insurance on form HEA 8042.
- (8) When a parent's application to access the POLR is denied, a parent may request reconsideration of the denial by filing a written request with the director within forty-five calendar days of the date on the written notice of denial. The request for reconsideration shall contain a statement of the reasons the parent believes the decision is incorrect or inappropriate and may include any written documentation, argument, or other materials they wish to submit. The request is filed with the director when it is received by the department.
 - (a) For the purposes of reconsideration, the director may request additional, relevant records or documentation within forty-five calendar days of receipt of the request for reconsideration. The parent shall file any requested information with the director no later than forty-five calendar days after the date on the director's request for additional information.
 - (b) Within forty-five calendar days after receipt of a request for reconsideration from the parent and all necessary additional information filed pursuant to the director's request for information, the director shall issue a written notification of the decision to the parent who requested the reconsideration. If the director upholds the denial, the notice shall include the reasons for the denial including citations of statutes, or rules directly involved, notice that the individual may request an administrative hearing, and the method for requesting a hearing.
 - (c) Following receipt of the notice of denial, a parent may request an administrative hearing concerning the decision to deny payment for services by filing a written request with the director within thirty calendar days after the date of the written notice. If the request for hearing is within these required time lines, a hearing will be scheduled within seventy-

five calendar days from the date the written request is received by the director. The director shall notify the parent of the date, time and location of the hearing no less than seven calendar days before the date set for the hearing. The hearing may be continued at the request of either party.

- (d) The director shall appoint a hearing officer to preside over the hearing. At the hearing, the rules of evidence shall be liberally construed and the parent has the burden to show why the decision of the director is not in accordance with these rules. A stenographic record may be made upon the request of any party at the expense of the party requesting the record. The parent may appear in person at the hearing and may have in attendance legal counsel or such other representative of their choice and at their expense. The parent may present testimony, evidence and question witnesses present at the hearing. In lieu of appearing at the hearing, the parent may submit written materials to be examined by the hearing officer.
- (e) The hearing officer shall submit to the director within thirty calendar days of the date of the conclusion of the hearing a written report setting forth the findings of fact, conclusions of law and a recommendation of action to be taken. The director shall send by certified mail a copy of the hearing officer's report and recommendation to the individual within seven days of receipt of the written report. The individual or the department may file within ten days of receipt of the written report objections to the report, which shall be considered by the director before approving, modifying, or disapproving the recommendation.
- (f) The recommendation of the hearing officer may be approved, modified or disapproved by the order of the director and notice of this action shall be sent by certified mail to the individual. The decision of the director shall be final. There is no further administrative or judicial review of the director's decision.

Effective: 7/1/2018

Five Year Review (FYR) Dates: 11/7/2017

CERTIFIED ELECTRONICALLY

Certification

01/16/2018

Date

Promulgated Under: 119.03

Statutory Authority: 3701.61

Rule Amplifies: 5123.024, 5123.0421

Prior Effective Dates: 8/8/2005, 7/16/10, 9/3/12, 1/15/15