

## DEPARTMENT OF HUMAN SERVICES

### Income Maintenance (Volume 3)

#### ADULT FINANCIAL PROGRAMS

##### 9 CCR 2503-5

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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**3.500 Adult Financial Programs- Adult Financial Programs consist of the Old Age Pension (OAP) program, Aid to the Needy Disabled (AND) program consisting of AND-State Only (AND-SO) and AND-Colorado Supplement (AND-CS), Home Care Allowance (HCA), and Burial Assistance**

##### **3.510 DEFINITIONS**

“Actual value” means the value of real property, as reported by the county assessor.

“Adequate” (related to notice) means a written notice sent to the client which details any determination of eligibility, as well as a change or discontinuation of grant payments and the reason for that change.

“Administrative disqualification hearing” (ADH) means a disqualification hearing against an individual accused of wrongfully obtaining or attempting to obtain assistance.

“Administrative error claim” means a grant payment was over-paid and a claim validated based on an error on the part of the county department of human services.

“Administrative Law Judge” (ALJ) means an Administrative Law Judge appointed pursuant to Section 24-30-1003, C.R.S.

“Adult Financial approved setting” means a facility with this specific designation by the State Department.

“Anticipated income” means income which can be anticipated with reasonable certainty concerning the amount and month in which it is to be received.

“Applicant” means any individual or family who individually or through a designated representative or someone acting responsibly for him or her has applied for benefits under the programs of public assistance administered or supervised by the State Department pursuant to Title 26, Article 2, C.R.S., as defined at Section 26-2-103(1), C.R.S.

“Application” means an initial or redetermination request on State approved forms (paper or electronic) for a grant payment and/or services.

“Approval” means assistance is authorized by the county department.

“Authorized representative” means someone acting reasonably for the client with the authority to make decisions on behalf of the client and who has taken responsibility for the case including but not limited to signing documents and speaking with county departments. The authorization must be in writing and signed by the client.

“Available” (related to funds or assets) means accessible or could be accessible, when the client has a legal interest in a sum (includes cash or equity value of a resource), and has the legal ability to make such sum available for support and maintenance.

“Bona fide loan” means a borrower receives money (from relatives, friends or others) which creates a loan if there is an understanding between the parties that the money borrowed is to be repaid and it is recognized as an enforceable contract under Colorado law. The transaction which creates a loan can be in the form of a written or verbal agreement if enforceable under Colorado law. Absent a negotiable instrument, a bona fide loan must still be convertible to cash in order to be considered a resource. The obligation to repay cannot be contingent on future income that might be received by the borrower. The written or verbal agreement must be in effect at the time of the transaction and there must be a reasonable plan for repayment.

“Cash surrender value” means the dollar value at which a resource could be sold or cashed in.

“Certification period” means the time period for which an Adult Financial client is approved to receive grant payments before a redetermination is required.

“Claim” means an overpayment of a grant payment that needs to be researched and validated by the county department.

“Clear and convincing” means evidence is stronger than “a preponderance of evidence” and is unmistakable and free from serious or substantial doubt.

“Client” means a current or past applicant or a current or past recipient of an Adult Financial grant payment.

“Client error claim” means a grant payment was over-paid and a claim was validated based on unintentional or willful withholding of information on the part of the client.

“Collateral contact” means a person outside the client’s household (excluding sponsor(s) and landlord who also live in the home) who has first-hand knowledge of the client’s circumstance and provides a verbal or written confirmation thereof. This confirmation may be made either in person, in writing, electronically submitted, or by telephone. Acceptable collateral contacts include but are not limited to: employers, landlords, social/migrant service agencies, and medical providers who can be expected to provide accurate third party verification. The name/title of the collateral contact as well as the information obtained must be documented in the statewide automated system.

“Countable income” means income considered available to the client, spouse of the client, or sponsor(s) of the client after the application of valid exemptions, disregards, and deductions.

“Countable resource” means resources considered available to the client, spouse of the client, or sponsor(s) of the client after the application of valid exemptions, disregards, and deductions.

“County department” means the county department of human/social services.

“Creditor” means a person or company, aside from the Colorado Department of Human Services, to whom money is owed.

“Date of entry” or “date of admission” means the date established by the United States Citizenship and Immigration Services (USCIS), formerly known as the Immigration and Naturalization Service (INS), as the date the sponsored noncitizen was admitted for permanent residence.

“Denial” means that the client was not eligible for a grant payment upon application.

“Demonstrable evidence” means evidence that a Colorado Works case is closed due to refusal to comply with the Workforce program.

“Disabling condition” means a medical impairment which prevents an individual from engaging in work.

“Discontinuation” means that the client who is currently receiving a grant payment is no longer eligible and his or her grant payment will be stopped.

“Earned Income” means payment in cash or in-kind received by a client, spouse of a client, or sponsor(s) of the client for services performed as an employee or as a result of the client, spouse of the client, or sponsor(s) of the client being engaged in self-employment.

“Effective date of eligibility” means the first date a client is eligible for the public assistance program.

“Eligibility requirements” means State Department criteria used to determine client eligibility or ineligibility to receive assistance and/or services.

“Eligible client” means a client whose countable resources are below the resource limit, whose countable income is below the grant standard, and who meets all non-financial eligibility criteria.

“Encumbrance” means the valid and legal outstanding payments, loans, or liens on a given resource.

“Estate” means the property of the decedent, trust, or other person whose affairs are subject to the Colorado Probate Code, Title 15, Article 10, of the Colorado Revised Statutes, as originally constituted and as it exists from time to time during administration, as defined in Section 15-10-201(17), C.R.S.

“Equity value” means actual value less encumbrances.

“Exempt income” means any income that is not countable income for the purpose of eligibility.

“Exempt resource” means any property whose value is not a countable resource for the purpose of determining eligibility.

“Face value” means the value predominantly stamped or printed on the resource verification (insurance policy, bonds, stocks, etc.) which represents the future potential worth of the resource, but does not usually represent the true value of the item due to activities that can reduce or increase the value (loans, dividends, etc.).

“Facility” means the residence of a client where the intent is either to care for or provide treatment to the client. Facilities include general medical and surgical hospitals, nursing homes, regional centers, group and host homes, and mental health institutions. Facilities do not include penal institutions, such as Federal and State prisons or county, local, municipal jails, and community corrections residential programs.

“Fair Market Value” means the median resale market value of a resource.

“Federal Poverty Guidelines” also called Federal Poverty Level (FPL) means the income level for a household as set forth in the Federal Register 8 FR 1167, as of January 15, 2020. This rule does not contain any later amendments or editions. These guidelines are available for no cost at <https://www.federalregister.gov/>. These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

“Fleeing felon” means a person fleeing to avoid prosecution or custody or confinement after conviction for a felony.

“Fraud” means any person who obtains or any person who willfully aids or abets another to obtain public assistance as defined in Title 26 of the C.R.S. to which the person is not entitled or in an amount greater than that to which the person is justly entitled or payment of any forfeited installment grants or benefits to which the person is not entitled or in a greater amount than that to which the person is entitled, by means of a willfully false statement or representation, or by impersonation, or by any other fraudulent device, as described in Section 26-1-127(1), C.R.S.

“Good cause” means circumstances beyond the control of the client. Good cause includes, but is not limited to, documented and verifiable medical emergencies or hospitalization, a client who has a disability or other medical condition(s) requiring additional time and/or assistance, a delayed appointment with the Social Security Administration beyond the client's control, or other good cause determined reasonable by the county department using the prudent person principle. The following circumstances do not constitute good cause: an excessive workload of a party or his or her representative or attorney; when a party obtains legal representation in an untimely manner; a party's failure to either receive or timely receive, a timely mailed initial decision, or other timely mailed correspondence from the Office of Administrative Courts and/or the Office of Appeals, or from the county department, when a party has failed to advise the Office of Administrative Courts, the county department, or the Office of Appeals of a change of address or failed to provide a correct address; or any other circumstance which was foreseeable or preventable.

“Grant payment” means the Adult Financial program payment and may also be referred to as the benefit.

“Grant standard” means the maximum Adult Financial grant payment that can be provided to a client based on each specific Adult Financial program.

“Health Care Policy and Financing” (HCPF) means the Colorado Department of Health Care Policy and Financing.

“Homeless” means a person with no permanent living arrangement, i.e., no regular nighttime or fixed place of residence. He or she is neither a member of a household nor a resident of an institution. This can mean someone who sleeps in a doorway; supervised shelter designed for temporary accommodations; a halfway house or similar facility that provides temporary residence; a place not designed for or ordinarily used as regular sleeping accommodations for human beings, such as parks, bus stations, etc.; or a person who stays with a succession of friends or relatives and has no permanent living arrangement.

“IM-14” means the Authorization for Reimbursement of Interim Assistance available at the county department or found within the statewide automated system.

“IM-19” means the Apportionment Notice available at the county department or found within the statewide automated system.

“Immediate family” means people with the following relationships to the client: spouse, minor and adult children, stepchildren, adopted children, parents, adoptive parents, and the spouses of those persons.

“Income” means any financial gain by means of money payment or in-kind payment.

“In-kind” means something of value received for the benefit of a client, spouse of a client, or sponsor(s) of a client and is considered either earned or unearned income. Examples of this are food or shelter that the client received for free or at fair market value or less.

“Intent” and/or “Intentionally” means a person's conscious objective is to cause the specific result, whether or not the result occurred, as described in Section 18-1-501(5), C.R.S.

“Intentional Program Violation” (IPV) occurs when an individual makes a false or misleading statement or fails to disclose by misrepresentation or concealment of facts, or acts in a way that is intended to mislead or conceal any eligibility factor on any application or other written and/or electronic communication for the purpose of establishing or maintaining eligibility to:

1. Receive a grant payment for which the client is not eligible; or,
2. Increase a grant payment for which the client is not eligible; or,
3. Prevent a denial, reduction or termination of a grant payment.

“Involuntary transfer” means the loss of a resource due to fraud, theft, financial exploitation, or legal action such as judgment, foreclosure, or tax sale, provided that the client can demonstrate that:

- A. Every reasonable effort has been made to recover the property through court action or other procedures; or,
- B. The client is unable to pursue recovery; or,
- C. Pursuit of lost resources or income would constitute a safety issue.

“Irregular” (related to income) means income which an individual cannot reasonably expect to receive on a monthly basis.

“Legal fiduciary” means a person or agency who holds the legal power to act on behalf of a client and is required to act in the best interest of the client.

“Liable individual” means a person financially responsible for an overpayment including the client, sponsor(s) of a client, a payee, parents of dependent children, and/or other persons determined to be financially liable by a court.

“Life Estate” means a legal estate planning procedure in which the client transfers real property to another individual but retains the right of occupancy and income from the property during the client's lifetime. The life estate's duration is limited to the life of the client. The client, during his or her life, retains the use and possession of the property, the rights to rents and profits, and the costs of maintaining the property. The client cannot sell or waste the property without the consent of the person(s) to whom the property was transferred.

“Local service delivery agency” means an agency operating on behalf of the county department or State Department to determine all or part of a client's eligibility for Adult Financial programs.

“Marriage” (for the purpose of these rules) means a marriage as defined in Section 14-2-104(1), C.R.S., a common law marriage as defined in Section 14-2-104(2), C.R.S., and a civil union, as defined in Section 14-15-103(1), C.R.S.

“Material fact” means information that has logical connection to the consequences and/or the decision being determined and the nature of the information or fact is such that a reasonable person under the circumstances would attach importance to it in determining his or her course of action.

“Non-recipient spouse” means the client's spouse who is not receiving an Adult Financial grant payment.

“Ownership” means lawful title to, legal right of possession of, or legal interest in a property.

“Overpayment” means a grant payment was made in excess of the amount a client was eligible for.

“Periodic payments” means payments that are irregular or a one-time payment.

“Personal Needs Allowance” (PNA) means a payment to a client who is currently in a facility to cover additional hygiene costs not usually supplied by the provider.

“Personal property” means all items of ownership that are not considered real property.

“Potential income” means a benefit or payment to which the client, spouse of a client, or sponsor(s) of a client may be entitled and could secure, such as spousal support, annuities, pensions, retirement or disability benefits, veterans compensation and pensions, workers' compensation, Social Security retirement or disability benefits, Supplemental Security Income (SSI) benefits, and unemployment compensation.

“Potential resource” means a resource to which the client, spouse of a client, or sponsor(s) of a client has the legal ability to acquire or reacquire rights of ownership, such as inheritances, real and personal property, and settlements.

“Preponderance of evidence” means that the evidence must preponderate over, or outweigh, evidence to the contrary.

“Prudent Person Principle” means that, based on experience and knowledge of the program, the county department exercises a degree of discretion, care, judiciousness, and circumspection, as would a reasonable person, in a given case.

“Qualified non-citizen” also called qualified alien means an individual who is not a citizen or national of the United States and who was lawfully admitted to the United States by the United States Citizenship and Immigration Services (USCIS) as an actual or prospective permanent resident or whose physical presence is known and allowed by the USCIS. A qualified non-citizen is defined as follows, consistent with the provisions of Federal Regulations found at 45 CFR 1626.7 as of December 30, 2016, which are herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available at no cost at <https://www.ecfr.gov/>. These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

“Questionable” means the information provided is unclear or conflicting or the county has reason to believe the facts presented are contrary to the information provided by the client.

“Real property” means houses; land, including land rights such as oil, mineral and water rights; and outbuildings and other objects affixed to land.

“Received” (for the purpose of income and resources) means the date on which the income and/or resource is actually received or legally becomes available for use, whichever occurs first, whether reported timely by the client or not.

“Received” (as it applies to receipt of verification, documentary evidence, and reported changes in circumstances) means the date the verification, documentary evidence, and reported changes were received by the county department.

“Recovery” means the collection of a valid claim to repay grant payments to which a client was not entitled.

“Redetermination” means a case review/determination of necessary information and verifications to determine ongoing eligibility.

“Resources” means real and personal property held as of the first day of a calendar month or as of the date of application if not counted as income in the same month.

“Scheduled appointment” or “scheduled interview” means an appointment or interview set using a State prescribed or State approved appointment notice provided to the client.

“Shelter costs” means mortgage payments, property insurance (if required), home owner association dues, rent, gas, electricity, heating fuel, water, sewer, garbage collection service, and real property taxes. Telephone, internet and television provider services are not allowable shelter costs.

“Signature” means handwritten signatures, electronic signature techniques, recorded telephonic signatures, or documented gestured signatures. A valid handwritten signature includes a designation of an x.

“Sponsor” means any person(s) who executed an affidavit of support (USCIS form I-864 or I-864A (March 6, 2018)) or another form deemed legally binding by the Department of Homeland Security on behalf of a non-citizen as a condition of the non-citizen's date of entry or admission into the United States as a permanent resident. These forms are herein incorporated by reference. This rule does not contain any later amendments or editions. These forms are available at no cost from <https://www.uscis.gov/forms>. These forms are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

“SSI benefit standard” means the maximum monthly Federal amount for a SSI recipient as listed in Federal Regulations found at 20 CFR 416.405-415 (2019), which are herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available for no cost at <https://www.ecfr.gov/>. These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

“State Department” or “the Department” means the Colorado Department of Human Services.

“Statewide automated system” means the electronic platform used to calculate public assistance program benefits and grant payments.

“Termination” means that the client who is currently receiving Adult Financial program grant payments is no longer eligible and his or her grant payments will be stopped.

“Timely notice” means the county shall generate a notice to the client at least eleven (11) calendar days prior to the initiation of any decrease, suspension, termination, or discontinuance in grant payments or services. This shall be sent to his or her last known address.

“Transfer Without Fair Consideration” (TWFC) means a property transaction in which the proceeds of the transfer, assignment, or sale are less than the actual value of the resource.

“Unearned income” means any income that is not earned through employment or self-employment. It includes money transfers, such as the transfer of money into one's checking account from that person's or another person's money account regardless of the type of account, including, but not limited to, savings account(s), retirement account(s), or any other type of money account.

“Unintentional” or “without intent” means an act, or something done or performed that was not voluntary or intended.

“Value (for liquid resources such as cash, savings/checking accounts, IRA accounts, etc.)” means the current redemption rate, less encumbrances.

“Value (for real and personal property)” means the actual value of the property less encumbrances.

“Verification” means confirming statements, application information, and other case information by obtaining written, audio, or other evidence or information that proves such fact or statement to be true.

“Verified upon receipt” means information that is provided directly from the primary source and is not questionable and no additional verification is required.

“Willful” means that a person is aware that his or her conduct is practically certain to cause the result as described in Section 18-1-501(6), C.R.S.

“Willful withholding of information” includes:

- A. Willful misstatement including understatement, overstatement, or omission, whether verbal or written, made by a client in response to verbal or written questions from the county department;
- B. Willful failure by a client to report changes in income or other circumstances which may affect the amount of grant payment; and/or,
- C. Willful failure by the client to report receipt of a grant payment made by the county department to the client which the client knew represented an overpayment.

“Withdraw” or “Withdrawal” means an application is not processed because the client who submitted the application withdraws his or her request for assistance prior to eligibility determination, or requests his or her grant payment be discontinued.

### **3.520 GENERAL REQUIREMENTS, CASE PROCESSING, AND CASE ACTIONS**

#### **3.520.1 GENERAL REQUIREMENTS**

- A. Information concerning public assistance programs shall be available to all persons in the community. Available information shall include:
  - 1. Benefits and programs available;
  - 2. Eligibility requirements;
  - 3. Related services;
  - 4. Rights and responsibilities of clients;
  - 5. The Property Tax/Rent/Heat Credit (PTC) rebate eligibility information available through the Colorado Department of Revenue; and,
  - 6. Earned Income Tax Credit (EITC).
- B. The county department shall:
  - 1. Receive and date all applications and assist the client to complete the application and secure documentation when needed;

2. Provide language translation via an interpreter, as needed;
3. Inform the client of his or her responsibility to accurately and fully complete the application and provide documents to substantiate eligibility factors;
4. Inform the client that he or she may use friends, relatives, or other persons to assist in the completion of the application;
5. Inform the client, in writing at the time of application, that the county department shall use the client's Social Security Number (SSN) to obtain information available through the Income and Eligibility Verification System (IEVS) to verify income and that such information may be shared with other assistance programs, other states, the Social Security Administration, the Department of Labor and Employment, and the Child Support Services program;
6. Conduct an evaluation of needs related to the client's health and well-being. Based on identified needs, the county worker will refer the client to other agencies or services available in the community, such as food banks, Area Agencies on Aging (AAA), Aging And Disability Resources for Colorado (ADRC), or the Division of Vocational Rehabilitation (DVR);
7. Refer the client to the other benefits for which he or she may be eligible;
8. Inform the client that he or she may terminate the application process at any time;  
  
A decision by the client to "withdraw" shall be treated as a denial by the county department. The client shall be notified of the county department's action by the State approved Notice of Action form within ELEVEN (11) calendar days of the action.
9. Review applications, make necessary collateral contacts or request any needed verification, and determine eligibility for assistance; and,
10. Calculate all claims, initiate recoveries, and prepare for and appear at all appeals.

- C. The county department shall require a written application, signed under penalty of perjury, using the State Department's prescribed public assistance application form. The date of application shall be the first working day the county department receives a signed application form, indicating the client's desire to receive public assistance benefits. Incomplete applications shall be denied following the policies outlined in Section 3.554. For clients who have been committed to a facility by order of the district or probate court or who have been made a ward of the State, application for an Adult Financial program shall be completed by the facility's administration or the client's guardian. The application form shall be used as the primary source of information and to be considered complete, shall contain, at a minimum the name of the applicant and signature of the applicant, parent, legal guardian, facility administration or authorized representative and an address for the applicant which can include general delivery or a county office. If an address is not provided, another means of contact such as phone number or email address shall be utilized to obtain an address.

A client who may be partially or totally illiterate can satisfy the signature requirement by:

1. Making a mark on the signature line.
2. The mark shall be witnessed by at least one other individual. The witness shall provide his or her own signature and address next to the client's mark in the signature block.

3. A county department staff member may act as witness if he or she is not related to the client.
- D. The client shall be required to answer all applicable questions on the application form. Any questions not answered in writing on the application shall be asked of the client during the interview and the client must provide an answer at that time. The response must be documented on the application or entered into the statewide automated system.
- E. Clients shall be provided the opportunity to register to vote during initial application and at each redetermination.
- F. The county department shall adhere to the requirements of the Colorado Address Confidentiality Program (ACP) as defined in Section 24-30-2101, C.R.S. The ACP provides survivors of domestic violence, sexual offenses, and/or stalking with a legal substitute address for creating public records and interacting with all State and local government agencies.
- G. The client has the right to decide how to use his or her grant payment. The county department shall not:
1. Impose any restriction, either direct or implied, on a client's use of his or her grant payment including, but not limited to, requesting a client to provide receipts or proof of how the money has been spent; or,
  2. Require the client to account for the use of the grant payment, except for the Electronic Benefits Transfer (EBT) card point of sale limitations listed in 26-2-104(2), C.R.S.; or,
  3. Give assistance to creditors in the collection of the client's debts.
- H. Each client of financial assistance provided under Adult Financial programs, shall receive prior written notice of any agency action affecting his or her eligibility for or receipt of grant payments.
1. The client shall be notified in writing of county department approval of:
    - a. An application for financial assistance through the Adult Financial programs;
    - b. An increase in the amount of grant payment. To the extent practicable, notice shall be in his or her primary language and shall be mailed or delivered within eleven calendar days after the determination is made. If the client needs assistance in understanding the action, the action shall be explained verbally.
    - c. If the client is dissatisfied with the effective date of eligibility, or the amount or type of assistance authorized, he or she has the right to a county conference and/or state level fair hearing.
  2. A client shall be given notice of any action by the county department, or any person or agency acting on its behalf, which adversely affects the client's eligibility for, or right to grant payments authorized under the Adult Financial programs. Failure to give notice of an adverse action shall be grounds for setting aside the action on appeal. The notice must meet the following standards:
    - a. The notice must be in writing; and,
    - b. It must describe clearly and in plain language the action to be taken and the reason(s) for the action; and,

- c. It must refer specifically by number to the Section(s) of the State Department's rules that require or permit the action being taken, or cite the specific changes in Federal or State law requiring the action; and,
  - d. It must state the effective date of the proposed action; and,
  - e. It must explain the client's right to request a county conference and state level fair hearing, the time period for requesting a conference or hearing, and the steps which must be taken to obtain a conference or hearing; and,
  - f. It must explain the client's right to continued grant payments and the obligation to repay if it is determined that the client was not eligible to receive them; and,
  - g. It must inform the client of his or her right to be represented or assisted by legal counsel, a relative, a friend or a spokesperson of his or her choosing; and,
  - h. To the extent practicable, notice shall be in his or her primary language. If he or she is illiterate, the action shall also be explained verbally.
- 3. Any negative action taken on the case shall be preceded by a timely notice period of at least eleven (11) calendar days. The 11 day timely notice period constitutes the period during which assistance is continued and no negative action is to be taken during this time unless described in Section 3.554.
- 4. When changes in either State or Federal law require grant payment adjustments for all persons receiving Adult Financial assistance, adequate notice shall include:
  - a. A statement of the intended action;
  - b. The reasons for such action;
  - c. The specific change in law requiring such action; and,
  - d. The circumstances under which a county conference and/or state level fair hearing may be obtained and financial assistance continued. A county conference or state level fair hearing need not be granted unless the reason for an individual appeal is incorrect grant computation.
- I. A client who disagrees with a proposed action has the right to:
  - 1. A county conference that must be requested no later than ninety (90) calendar days from the date the notice of action is mailed to the client;
  - 2. A state level fair hearing before an ALJ which can be requested if the client does not wish to utilize the county conference to resolve the dispute or is dissatisfied with the outcome of the county conference. The client must submit a written request for a fair hearing by mail or delivery to the OAC no later than ninety (90) calendar days from the date the notice of action is mailed to the client;
  - 3. Judicial review of the final agency decision in the appropriate State district court, after exhausting the administrative appeal rights granted under these rules; and,
  - 4. Continued grant payments as described in Section 3.554.

J. Client confidentiality must be treated as follows:

1. All information obtained by the county department concerning a client of Adult Financial programs is confidential information.
  - a. The county department shall inform county officials and other persons who have dealings with the department as to the confidential nature of personally identifiable information, which may come into their possession through transaction of department business.

When a county worker consults a bank, current/ former employer of a client, another social agency, and other similar agencies, to obtain information or eligibility verification information, the identification of the county worker as an employee of the county department can, in itself, disclose that an application for assistance has been made by a client. In this type of contact, as well as other community contacts, the department shall maintain confidentiality whenever possible.
  - b. Ensuring privacy while interviewing and the continuous confidentiality of information is essential. This involves both office facilities and county worker discretion. Office procedures and facilities should be such that information is not inadvertently revealed to persons not concerned with the affairs of a particular client. The county worker must also use discretion in mentioning department business outside the office.
2. General information not identified with any client is not confidential and may be released for any purpose.
3. Information secured by the county department for the purpose of determining eligibility and need is confidential.
4. Unless disclosure is specifically permitted by the State Department, the following types of information are the exclusive property of, and are restricted to use by, the State and county departments:
  - a. Names and addresses of Adult Financial clients, and/or the grant payment amount;
  - b. Information contained in applications, reports of medical examinations, correspondence, and other information concerning any person from whom, or about whom, information is obtained by the county department;
  - c. Records of State or county departmental evaluations of the above information.
  - d. All information obtained through the Income and Eligibility Verification System (IEVS).
5. No one outside the State or county department shall have access to records of the department except for the following individuals: those executing the Income and Eligibility Verification System (IEVS); Child Support Services officials; the SSA; Federal and State auditors and private auditors for the county; and Single Entry Points. These individuals shall have access only for purposes necessary for the administration of the program.

- a. Client records may be used as exhibits for administrative, civil and/or criminal proceedings when the proceedings relate directly to the receipt of Adult Financial programs.
  - b. Additional individuals shall have access to the client's records as long as the client is notified and his or her prior permission for release of information is obtained, unless the information is to be used to verify income or eligibility under administration of the IEVS.
  - c. If the information is needed to provide benefits to a client in an emergency situation, and the client is physically or mentally incapacitated to the extent that he or she cannot sign the release form, and time does not permit obtaining the client's consent prior to release of information, the county department must notify the client within eleven (11) calendar days after supplying the information. If the applicant or client does not have a telephone or cannot be personally contacted within eleven (11) days, the county department must send written notification containing the required information. The verbal or written notification shall include the name and address of the agency that requested the information, the reason the information was requested and a summary of the information released.
  - d. The following individuals shall have access to the records of the department, excluding IEVS information, if the previously identified consent or notice conditions are met:
    - 1. A district attorney upon presentation of a written request accompanied by evidence that fraud is the reason for the request.
    - 2. A county human services board member, as described in Section 26-1-116, C.R.S.
  - e. When a county board member or a district attorney needs information about a client that is not in the possession of the county department, the requestor, with the aid of the county department, may contact the State Department to inquire as to the appropriate methods of securing it.
  - f. The release of records is strictly conditioned upon the information being used solely for the purpose authorized and the person requesting the information must certify the use to be made of the information and that it will not be disclosed or used for any other purpose.
- 6. County departments shall not release information regarding applicants or clients to law enforcement agencies unless a valid search warrant is received by the county or State Department, except as provided in Section 3.520.1.J.5.a.
  - 7. Upon request to the State Department by the Colorado Bureau of Investigation, with the responsibility for location and apprehension of fleeing felons (i.e., a person with an outstanding felony arrest warrant), the addresses of a fleeing felon who is a client of Adult Financial programs shall be released pursuant to Section 26-1-114(3)(A)(III) C.R.S.
  - 8. The client shall have an opportunity to examine such pertinent records concerning him or her as constitutes a basis for adverse action and in the case of a county conference or a state level fair hearing. Other requests for information by the client shall be honored only when the client makes the request in person and his or her identity is verified or the request is in the form of a written and signed statement.

The client may designate an individual, firm, or agency to represent him or her at conferences and hearings. The client must put the designation of such representative in writing. The representative shall have access to all pertinent records.

9. The client may give a formal written release for disclosure of information to other agencies, such as hospitals or advocate agencies. If the client is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the client's incapacity or an emergency circumstance, the department may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the client and, if so, disclose only the minimum protected health information necessary that is directly relevant to the client's care.
10. Information provided to agencies and/or individuals must be limited to the specific information required to determine eligibility, conduct ongoing case management, or otherwise necessary for the administration of the Adult Financial program. Information obtained through IEVS will be stored and processed so that no unauthorized personnel can acquire or retrieve the information. County departments are responsible for limiting IEVS data to only those individuals requiring access to determine eligibility or otherwise administer the programs.

All persons with access to information obtained pursuant to the income and eligibility verification requirements will be advised of the circumstances under which access is permitted, how data will be utilized, confidentiality of data, and the sanctions imposed for illegal use or disclosure of the information.

- K. County departments and contractors are to administer Adult Financial programs in such a manner that no person will, on the basis of race, color, religion, creed, national origin, ancestry, sex/gender (including transgender status), pregnancy, age, sexual orientation, gender identity, political affiliation, or physical or mental disability, or any other protected groups as described in the State Department's anti-discrimination policy, be excluded from participation, be denied any aid, care, or services, or other benefits of, or be otherwise subjected to discrimination in his or her interactions with Adult Financial programs.

1. The references to "aid" includes all forms of assistance, including information and referral services.
2. The county department shall not, directly or through contractual or other arrangements, on the basis of race, color, religion, creed, national origin, ancestry, sex/gender (including transgender status), pregnancy, age, sexual orientation, gender identity, political affiliation, or physical or mental disability, or any other protected status:
  - a. Provide any aid to an individual that is different, or is provided in a different manner, from that provided to others;
  - b. Subject an individual to segregation barriers or separate treatment in any manner related to access to or receipt of assistance, care, services, or other benefits;
  - c. Restrict an individual in any way in the enjoyment or any advantage or privilege enjoyed by others receiving aid provided under Adult Financial programs;
  - d. Treat an individual differently from others in determining whether he or she satisfies any eligibility or other requirements or conditions which individuals must meet in order to receive aid, services, care, or other benefits provided under Adult Financial programs;

- e. Deny an individual an opportunity to participate in assistance programs through the provision of services or otherwise, or afford him or her an opportunity to do so which is different from that afforded to others under programs of assistance.
  - f. Deny an individual the opportunity to participate as a member of a planning or advisory body that is an integral part of the program.
- 3. No distinction is permitted in relation to the use of physical facilities, intake and application procedures, caseload assignments, determination of eligibility, and the amount and type of benefits extended by the county department to clients.
- 4. The county department shall ensure that other non-federal agencies, persons, contractors and other entities with which it contracts business are in compliance with the above prohibition against discrimination requirements on a continuing basis. The county department staff is responsible for being alert to any discriminatory activity of other agencies and for notifying the State Department concerning the situation.
- 5. The State Department, through its various contacts with agencies, persons, and referral sources, will be continuously alert to discriminatory activity and will take appropriate action to ensure compliance with these prohibitions against discrimination. The county department, on notification by the State Department, will also terminate payments to the offender or association with any agency, person, or resource being used that has been found by the State Department or the Colorado Civil Rights Division to continue discriminatory activity in regard to applicants or clients.
- 6. An individual who believes he or she is being discriminated against may file a complaint with the county department, the State Department, the Colorado Civil Rights Division, or directly with the Federal government.

When a complaint is filed with the county department, the county director is responsible for initiating an immediate investigation of the matter and taking necessary corrective action to eliminate any discriminatory activities found. If such activities are not found, the individual is given a written explanation of the outcome. If the person is not satisfied, he or she is requested to direct his or her complaint, in writing, to the State Department, Communications Section, which will be responsible for further investigation and other necessary action.

### **3.520.2 DOCUMENTATION**

- A. The county department shall create a case record upon initial application and maintain the record while the case is open for assistance. The major purposes of a case record shall be:
  - 1. To assist the county department in reaching a valid decision concerning eligibility and for the amount of grant payment a client is eligible to receive;
  - 2. To ensure eligibility is based on factual information;
  - 3. To provide for continuity of assistance when a worker is absent, when a case is reopened, and when a case is transferred from one county department to another; and,
  - 4. To provide accountability for the county department's actions.
- B. The county department shall document all income, resources, and non-financial eligibility information into the statewide automated system.

1. The county department shall not omit case information from the statewide automated system based on the assumption that the information is unnecessary for eligibility determination.
  2. All case information used to determine eligibility and changes in basic biographical information shall be updated at the time of redetermination.
- C. The county department shall document all case actions in case comments. This information shall include actions taken by the county department, the basis of such actions, and the result or outcome of the action taken on the case and must also include:
1. All case decisions related to prudent person principle;
  2. All decisions related to the disposition of claims;
  3. Any atypical interactions with the client;
  4. Actions related to a county conference and/or state level fair hearing;
  5. Cause of untimely processing of the application or redetermination;
  6. Other information that would be critical to document county department actions and/or would be necessary to justify case decisions during a case review, audit, appeal, or lawsuit; and,
  7. Information pertaining to eligibility, verifications, and collateral contacts.
- D. Unless otherwise specified in rule, all forms, packets, notices, and applications, shall be State-prescribed or State approved.
- E. The county department shall be responsible for securely storing paper and/or electronic case records and other confidential material to prevent accidental or intentional disclosure or access by unauthorized persons. If a county department shares building space with other county offices, case materials shall be stored in locked files.
- F. Case records are the property of and shall be restricted to use by the State Department and county department.
- G. Case files shall be kept for a minimum of three (3) years beyond the year of the case closure date unless there has been a claim, audit, negotiation, litigation or other action started before the expiration of the three-year period. In such cases, the retention period shall initiate at the conclusion of the claim, audit, negotiation, litigation, or other action.

### **3.520.3 PROGRAM REVIEW AND OVERSIGHT**

- A. The county department shall be subject to the provisions outlined in Section 26-1-111, C.R.S., requiring the State Department to ensure that the county department complies with requirements provided by statute, State Board of Human Services and Executive Director rules, Federal laws and regulations, and contract and grant terms.
- B. The county department shall be subject to routine quality control and program monitoring by the State Department, to minimally include:
1. Targeted review of the statewide automated system documentation;

2. Review and analysis of data reports generated from the statewide automated system;
  3. Case file review;
  4. Targeted program review conducted via phone, email, or survey; and,
  5. Onsite program review.
- C. The focus of State Department monitoring shall be to identify:
1. Compliance with program statutes and rules;
    - a. The county department shall provide written responses to the State regarding action taken to correct areas of non-compliance. The State Department must approve the action(s) taken.
    - b. The county department shall provide to the State a written plan, including steps and measures, to mitigate the error(s) from recurring. This plan must be approved by the State Department.
  2. Best practices that can be shared with other county offices;
  3. Training needs; and,
  4. Performance outcomes.
- D. The county department shall be subject to a performance improvement plan to correct areas of identified non-compliance.
- E. The county department shall be subject to corrective action and sanction as outlined in Section 1.100, et seq. (9 C.C.R. 2501-1), General Policies and Administration, in case of failure to make improvements required under the performance improvement plan.
- F. County department supervisory personnel and/or quality assurance staff shall review eligibility determinations (certifications, denials, and/or pending cases) monthly for the purposes set forth in 3.520.3.C. Supervisory personnel and/or quality assurance staff shall:
1. Review a minimum number of cases, including specific programs and/or actions, per month as outlined annually by the State Department based on the county department's Adult Financial caseload size. The State Department will notify the county of the minimum number of cases to be reviewed via memorandum. The county may elect to:
    - a. Create a plan to pull a random sample that includes at least the minimum number of Adult Financial cases set forth by the State Department in its memorandum and submit that plan to the State for approval.
    - b. Use the State prescribed random sample.
  2. Determine the correctness of eligibility determinations;
  3. Ensure correction of any errors within ten (10) business days or the time frame specified within the approved review plan; and,

4. Maintain a record of the cases reviewed for audit purposes, including audit results and any required actions taken by the county. County departments must keep case file reviews for a minimum of three (3) years.
5. Report these results and actions to the State on a monthly basis via the State prescribed process.

#### **3.520.4 APPLICATION PROCESSING**

The county department shall process applications as expeditiously as possible but no later than forty-five (45) calendar days following the date the application was filed. Applications meeting the criteria identified in Section 3.520.1.C, shall be processed as follows:

- A. Record the date the signed application was received by the county department.
- B. Review the application for completeness for all programs applied for and/or any programs not applied for but that the client is potentially eligible for.
- C. Schedule an interview with the client if the interview is not taking place immediately.
  1. The client shall be offered an in-person interview. If the client does not elect an in-person interview, the county shall schedule and conduct a phone interview.
  2. The client shall be provided written notice of the interview at least four (4) calendar days of the scheduled interview. The client may provide a written or verbal waiver that written notice of the scheduled interview is not necessary when the county department is able to conduct the interview during application processing. Notice shall include:
    - a. The date and time for the interview;
    - b. Identification of any documentation that may be needed;
    - c. The opportunity to reschedule the appointment or make other arrangements in the event of good cause.
  3. When the client does not keep the interview appointment and does not request an alternate time or arrangement, as described in this section, grant payments will be denied.
  4. The interview must be documented and shall include:
    - a. An explanation of the various assistance programs available to the applicant, even if not specifically applied for, and an opportunity to apply for those additional programs not in the client's original application;
    - b. An explanation of the eligibility process and the eligibility requirements;
    - c. A review of the application with the client to:
      - 1) Confirm all information on the application;
      - 2) Answer questions not completed on the application; and,
      - 3) Provide the client an opportunity to clarify unclear, inconsistent, inaccurate, or questionable statements.

- 4) For Aid to the Needy Disabled State Only (AND-SO), provide the client with a medical disability certification form. Provide, explain and obtain necessary signatures on the Authorization for Reimbursement of Interim Assistance form (IM-14), as defined in Section 3.510, and explain the requirement to apply for Supplemental Security Income (SSI).
- d. A request for verification of application declarations.
  - 1) The client has the primary responsibility to provide information necessary to establish eligibility.
  - 2) The county department shall assist the client to obtain verification through collateral contacts, interfaces, or a home visit.
- e. Discussion of the client's rights and responsibilities that must include:
  - 1) The client's responsibility to notify and provide verification to the county department in writing by the 10th of the month following the month in which the change occurred of any change in resources or income or other change in circumstances which affects eligibility or grant payment amount.
  - 2) The client's right to confidentiality of records and information.
  - 3) The client's right to non-discrimination provisions, including the process in Section 3.520.1.K.6, for filing discrimination complaints.
  - 4) The client's right to a county conference or state level fair hearing.
  - 5) The client's right to review and copy his or her case file.
- f. An explanation provided regarding the process of utilizing the EBT card. This explanation shall include:
  - 1) Identification of the following establishments in which clients shall not be allowed to access cash grant payments through the EBT service from Automated Teller Machines (ATM) and Point of Sale (POS) devices:
    - a) Licensed gaming establishments;
    - b) In-State simulcast facilities;
    - c) Tracks for racing;
    - d) Commercial bingo facilities;
    - e) Stores or establishments in which the principal business is the sale of firearms;
    - f) Retail establishments licensed to sell malt, vinous, or spirituous liquors;
    - g) Establishments licensed to sell medical marijuana or medical marijuana-infused products, or retail marijuana or retail marijuana products, effective June 30, 2015;

- h) Establishments that provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, effective June 30, 2015.
    - 2) An explanation that the cash grant payment portion issued on the EBT card may be suspended with identified misuse as outlined in Section 3.520.4.F.1.
  - g. An assessment of other needs the client may have and appropriate referrals to community resources, including food banks, Area Agencies on Aging (AAA), Aging and Disability Resources for Colorado (ADRC), Centers For Independent Living, the Division of Vocational Rehabilitation (DVR), Low Income Energy Assistance Program (LEAP), phone assistance, and the Property Tax/Rent/Heat Credit (PTC) Rebate eligibility information.
  - h. An opportunity to register to vote.
- 5. County departments shall require no more than one interview per application.
  - a. The county department shall secure signed copies of any other forms necessary to determine eligibility. If the client refuses to sign any required forms, the case shall be denied or discontinued following the policies outlined in Section 3.554.
  - b. If the client wishes to apply for Adult Financial benefits while applying for or already receiving benefits under a different program, such as food assistance, the county department may accept the client's verbal or written request for Adult Financial benefits and use the client's existing application or redetermination for the other program's benefits if received within sixty (60) calendar days of the request; otherwise a new application will be required. The county department must verify and document any changes that occurred between the initial application submission or redetermination and the request for Adult Financial grant payments. A verbal request to apply for an Adult Financial program shall be documented in the statewide automated system and the date of the request will secure the application date for the client.
- 6. When the client does not keep a scheduled interview appointment and has not contacted the county department to reschedule, as specified in this section, the county department shall deny the application following the policies outlined in Section 3.554.
  - a. If the client makes a request for Adult Financial grant payments following the county department's denial of his or her application based on the client failing to attend the interview appointment, the following shall occur:
    - 1) If the client has good cause as outlined in Section 3.510 and notifies the county department that he or she wishes to continue his or her application for Adult Financial grant payments within thirty (30) calendar days of the denial, the county department shall reschedule the interview and the initial application date shall be used. During the interview, the county department must verify and document any changes that occurred between the initial application submission and the client's request to continue the application process. If the continued application results in a denial for any reason and the client makes a subsequent request for Adult Financial grant payments, a new application shall be required.

- 2) If the client does not have good cause and notifies the county department that he or she wishes to continue his or her application for Adult Financial grant payments within thirty (30) calendar days of the denial, the current application may be used and the date of application shall be the most recent date the client requested to continue his or her application for Adult Financial grant payments. The county department shall reschedule the interview and must verify and document any changes that occurred between the initial application submission and the request to continue that application. If the request to continue the application results in a denial for any reason and the client makes a subsequent request for Adult Financial grant payments, a new application shall be required.
    - 3) If the client requests grant payments after thirty (30) calendar days from the date of the initial denial, he or she must submit a new application.
- D. Verify statements made by the client on the application and during the interview using the statewide automated system interfaces described in Section 3.520.5, gathered from other collateral contacts or requested from the client.
  1. If the client is missing any verification, the county department shall request additional and/or required verifications from the client. The request shall include:
    - a. A specific list of verifications necessary to determine eligibility;
    - b. The due date for when the verifications must be returned, which shall be eleven (11) calendar days from the date the verification was requested in writing unless otherwise specified in Section 3.540; and,
    - c. Notification that if the client fails to return the verifications by the due date, the county department shall process the application without those verifications, which may lead to a denial of grant payments.
  2. The client shall be advised that a collateral contact or home visit may be used to confirm questionable evidence, to investigate potential fraud, or when documentary evidence is insufficient to make a determination of eligibility or grant payment amount or cannot otherwise be obtained. If a collateral contact is needed, the county department shall:
    - a. Request the name of an appropriate collateral contact from the client; or,
    - b. Independently determine an appropriate collateral contact; or,
    - c. Substitute a home visit when an appropriate collateral contact cannot be identified; or,
    - d. Deny an application following the policies outlined in Section 3.554 if a collateral contact refuses to provide documentation of essential verifications and the applicant is unwilling to cooperate in obtaining such documentation.
    - 1) The client's authorization for the collateral contact to release such information or documentation alone does not constitute cooperation if the county department requests further assistance from the client. Documentation of lack of cooperation must be entered in the case record.

- 2) However, if the client is willing to cooperate, but unable to obtain the information or documentation from the collateral contact, the county shall assist him or her in gaining the information or documentation required to make a determination of eligibility. If the county is also unable to obtain the information or documentation, eligibility will be determined based on the information provided.
  - e. Maintain client confidentiality to the greatest extent possible when using a collateral contact for verification.
3. Record the date each verification document was received by the county department office.
4. Upon receipt of the required verifications, the county department shall enter verifications into the statewide automated system. Once all verifications have been entered, the county department shall review the results, verify accuracy, and determine eligibility. If a client fails to timely return verifications, the case may be denied following the policies outlined in Section 3.554.
  - a. If the client provides new information regarding a change in circumstances after he or she was determined ineligible, the change in circumstances shall be treated as follows:
    - 1) If the change in circumstances occurred within thirty (30) calendar days of the denial, the client's original application may be used and the date of the application shall be the date all verifications were received supporting the new circumstance. The county department shall verify and document any changes that occurred between the original application submission and the new request to continue his or her application. The county department shall enter the verifications into the statewide automated system, review the results, verify accuracy, and determine eligibility. If the client's request to continue his or her application results in a denial for any reason and the client makes a subsequent request for Adult Financial grant payments, a new application shall be required.
    - 2) If the client identifies a change in circumstance more than thirty (30) calendar days from the date of the denial, he or she must submit a new application.
5. When the client does not submit the required verifications, and the case is denied or discontinued:
  - a. If a client returns the required verifications within thirty (30) calendar days of the denial or discontinuation and good cause is provided for the delayed submission, the county department shall utilize the current application date and shall enter the verifications into the statewide automated system. When all verifications have been entered, the county department shall review the results, verify accuracy, and determine eligibility. If that request to continue the application results in a denial for any reason and the client makes a subsequent request for Adult Financial grant payments, a new application shall be required.

- b. If the client does not have good cause and returns the required verifications within thirty (30) calendar days of the denial, that application may be used and the date of the application shall be the date all verifications were received. The county department shall enter the verifications into the statewide automated system. When all verifications have been entered, the county department shall review the results, verify accuracy, and determine eligibility. If that request to continue the application results in a denial for any reason and the client makes a subsequent request for Adult Financial grant payments, a new application shall be required.
    - c. If the client provides the verifications more than thirty (30) calendar days from the date of the denial, he or she must submit a new application.
  - 6. If a client believes that the value used by the county department for income or resource calculation was incorrect, the client may request verbally or in writing to have his or her case reevaluated by the county within thirty (30) calendar days of the denial. The county department shall evaluate and request additional documentation if needed. If an incorrect determination was made, the county department shall correct the case and grant payments shall be recalculated and issued based on the original application date.
  - 7. Delay in processing the application shall not be allowed for any of the following:
    - a. When the client has applied for a Social Security Number and is awaiting action by the SSA; or,
    - b. When the county department is awaiting receipt of information from the State Verification Exchange System (SVES).
- E. Provide a notice of action to the client by mail, electronic notification, or in person using the State Department's prescribed form explaining the eligibility determination results and the client's appeal rights as outlined in Section 3.586, et seq.

### **3.520.5 INTERFACE VERIFICATIONS**

Interfaces are acceptable verification sources for the Adult Financial programs. Appropriate interfaces for verification purposes are described below.

- A. The Income and Eligibility Verification System (IEVS) provides for the exchange of information on clients with the SSA and the Colorado Department of Labor and Employment (DOLE). The county department shall query IEVS, using the client's, client's spouse's, and client's sponsors' SSNs. Source agency records shall be matched on a regular basis to identify potential earned and unearned income, resources, and assets:
  - 1. The following data shall be considered verified upon receipt:
    - a. SSA (Beneficiary and Earnings Data Exchange (Bendex) and State Data Exchange (SDX)) Social Security benefits, SSI, pensions, self-employment earnings, federal employee earnings; and,
    - b. Unemployment benefits (UIB).
  - 2. DOLE wage data shall not be considered verified upon receipt.

- a. Additional verification must be obtained to verify wage information. The county department shall request this information be provided by the client and/or his or her employer in writing. This information must be provided within eleven (11) days following the date of the county's request or the case will be discontinued or denied following the policies outlined in Section 3.554.
  - b. The county department shall query DOLE at initial application and at redetermination.
- 3. Prior to approval of grant payments, the county department shall, at a minimum, verify potential earnings or unemployment benefits for the client, client's spouse, and sponsor(s).
- 4. The county department shall act on all information received through IEVS within forty five (45) calendar days of receipt.
- 5. The county department shall not delay processing of IEVS beyond forty-five (45) calendar days on more than twenty (20) percent of the information targeted for follow-up, if:
  - a. The reason that the action cannot be completed within forty-five (45) calendar days is the nonreceipt of requested third party verification; and,
  - b. Action is completed promptly, when third party verification is received or at the next time eligibility is redetermined, whichever is earlier. If action is completed when eligibility is redetermined and third party verification has not been received, the county department shall make its decision based on information provided by the client and any other information in its possession.
- 6. At initial application and at redetermination, a client shall be notified through a written statement provided on or with the application form that (1) the information available through IEVS will be requested, and that such information will be used for determination of eligibility; (2) the information in IEVS must be verified through sources, such as collateral contacts with the client, when discrepancies are found by the county department; and, (3) that the verified information may affect the client's eligibility and grant payment amount.
  - a. All verification types obtained by a collateral contact to validate or invalidate any IEVS discrepancy shall be documented;
  - b. Case documentation shall be available in the case file or statewide automated system documenting the action taken on the case within forty-five (45) calendar days of initial receipt. Case documentation must include the purpose of the review of the IEVS, the action taken on the case, and how the county department made the determination and whether that determination supports the county's action on the case.
- B. The State Verification Exchange System (SVES) may be used to verify social security number, SSA income, and Supplemental Security Income application status. SVES may also be used to identify potential marital status, potential resources, and other potential sources of income; additional verification may be necessary.

- C. The county department shall query the Public Assistance Reporting Information System (PARIS) at initial application and at redetermination to determine whether the client is receiving benefits in another state, veterans' benefits, or military wages or allotments. This information is not considered verified upon receipt and additional verification must be obtained to verify the information provided in PARIS. The county department shall request this information be provided by the client and/or the other state, veteran's agency, or military branch in writing.
- D. The county department shall query the Systematic Alien Verification for Entitlements (SAVE) at initial application and at redetermination. Information obtained through SAVE is considered verified upon receipt. The purpose of the save query is to:
  - 1. Determine whether a qualified non-citizen has a sponsor(s); and,
  - 2. Verify the non-citizen registration number provided by the client and, if the number and name submitted do not match, refer the client to resolve the discrepancy, and if unable to resolve, take prompt action to terminate assistance to the client following the policies outlined in Section 3.554; and,
  - 3. Determine the non-citizen's immigration status.
- E. The Colorado Department of Revenue, Division of Motor Vehicles (DMV), may be used by the county department to verify lawful presence and identity.

### **3.520.6 NON-FINANCIAL ELIGIBILITY REQUIREMENTS**

#### **3.520.61 NON-FINANCIAL ELIGIBILITY REQUIREMENTS**

To be eligible for Adult Financial programs, a client shall:

- A. Be eighteen (18) through fifty-nine (59) years of age for AND-SO (unless diagnosed with blindness, then age zero (0) through 59 years of age); age 0 through 59 years of age for AND-CS; and age sixty (60) years of age or older for OAP; and,
- B. Be a resident of Colorado, except that inmates of a city, municipal, county, State, or Federal correctional institution, and fleeing felons, shall not be eligible for Adult Financial programs; and,
- C. Be a citizen of the United States or be a qualified non-citizen or legal immigrant as outlined in Sections 3.520.66 who is lawfully present in the United States; and,
- D. Have a valid SSN, as outlined in Section 3.520.65; and,
- E. For AND only, have a disability, as outlined in Section 3.541; and,
- F. Not be currently receiving or eligible for financial assistance from Colorado Works, as outlined in Section 3.520.71.F; and,
- G. Apply for and accept all retirement and public assistance benefits for which they may be eligible, unless good cause is provided as to why such benefits were not applied for or accepted; and,
- H. Pursue and accept all other potential income and resources that may be available, as outlined in Section 3.520.71; and,
- I. Meet all other program eligibility requirements, including income and resource limits.

**3.520.62          AGE REQUIREMENTS**

The county department shall verify the client's age by viewing the statewide automated system interface information or any of the following documents:

- A.      Birth certificate;
- B.      Valid Colorado State identification or driver's license;
- C.      Valid out of state identification or driver's license;
- D.      Naturalization, immigration, or passport papers;
- E.      Legal documents from vital statistics;
- F.      Social Security information (SOLQ, SVES, SDX, and BENDEX);
- G.      School records;
- H.      Baptismal certificates or other well documented church records;
- I.      Genealogy records or other well documented family records of birth;
- J.      Voting records; or,
- K.      United States census records.

**3.520.63          MARITAL STATUS**

- A.      The county department shall determine and verify if questionable the client's marital status as one of the following:
  - 1.      Single, never married;
  - 2.      Married;
  - 3.      Widowed; or,
  - 4.      Divorced or legally separated.
- B.      If married, both spouses may apply for and/or receive Adult Financial programs. Each spouse shall have a separate case.
- C.      If the client is divorced, legally separated or widowed, and this status is questionable, the client shall provide verification in the form of:
  - 1.      Legal court documents or alternate verification from a vital statistic source substantiating divorce or legal separation; or,
  - 2.      Death certificate or obituary of the client's spouse.
- D.      Clients who are not legally separated or divorced are considered married.

**3.520.64 RESIDENCY REQUIREMENTS**

- A. To be eligible for Adult Financial programs, a client shall be a resident of Colorado.
- B. Residency is established on the first day the client declares him/herself to be a resident of Colorado.
  - 1. A person shall not acquire residence while the person has established his or her permanent place of residence in another state or country.
  - 2. A person receiving financial assistance from another state shall not be eligible for Adult Financial programs in Colorado during any month in which a payment is made by the other state.
- C. The client shall live in the county in which the application is made.
  - 1. A client who resides in a county but who is homeless or does not have a fixed mailing address shall be considered eligible for assistance, provided all other eligibility requirements are met.
  - 2. Clients who do not have a fixed address may provide a postal box within their county as their mailing address, or may use the county department as their mailing address. It shall be the client's responsibility to go to the postal box or the county department to check for and pick up their mail. Failure to regularly check for and pick up mail shall not be grounds for appealing timely notice.
- D. A client who moves out of Colorado or is shown to be a resident of another state shall not be considered a resident of Colorado. A move or residence in another state may be established by actions such as:
  - 1. Purchasing or obtaining a lease of a dwelling unit in another state;
  - 2. Household effects, equipment, and personal belongings being removed to another state;
  - 3. Obtaining a driver's license or state-issued identification card in another state;
  - 4. Registering to vote in another state;
  - 5. Applying for or receiving local, state, or Federal assistance in another state;
  - 6. Registering vehicles of any type in another state;
  - 7. Securing a resident hunting or fishing license in another state;
  - 8. Using an address in another state; or,
  - 9. Statements or other positive acts indicating that the client has taken up residence in another state.
- E. A client who is out of State temporarily shall be considered a resident, with the following exceptions:

1. A client who leaves the country for a period of thirty (30) or more consecutive days creates a rebuttable presumption (unless the client comes forward with enough information to prove otherwise) that the client shall no longer be considered a resident and shall be ineligible for Adult Financial programs.
  2. A client who leaves the State for a period of ninety (90) or more consecutive days creates a rebuttable presumption (unless the client comes forward with enough information to prove otherwise) that the client shall no longer be considered a resident and shall be ineligible for Adult Financial programs. An exception to this is for individuals temporarily out of the State to receive documented medical treatment.
  3. A client who leaves the State for a period of more than one hundred eighty (180) days in any calendar year, even if that time has not been consecutive time away, creates a rebuttable presumption (unless the client comes forward with enough information to prove otherwise) that the client shall no longer be considered a resident and shall be ineligible for Adult Financial programs.
  4. A client who leaves the State to care for an immediate family member injured in the line of military duty for a period of one hundred eighty (180) or more consecutive days creates a rebuttable presumption (unless the client comes forward with enough information to prove otherwise) that the client shall no longer be considered a resident and shall be ineligible for Adult Financial programs.
- F. When a determination of principal place of residence is difficult to secure due to conflicting documentation, other sources shall be used to gather verification and make a decision, such as addresses obtained from voter registrations, tax returns, Social Security and Medicare, a driver's license, car registrations, or other statements or documents. The county department shall use the prudent person principle to weigh the documentation and/or verification and make a decision regarding residency.
- G. The burden to prove residency shall be on the client. If a client refuses to provide requested or necessary documentation or information to verify residency, Adult Financial grant payments shall be denied following the policies outlined in Section 3.554.

**3.520.65 SOCIAL SECURITY NUMBERS (SSN)**

- A. Each Adult Financial program client shall provide his or her SSN to the county department.
1. If a client has multiple numbers, all numbers shall be required.
  2. If a client is unable to provide their SSN, the client shall be required to apply for an SSN at the local Social Security office and provide the county department with verification of application for an SSN.
  3. Refusal or failure to apply for or provide their SSN shall result in denial for Adult Financial programs.
  4. Upon proof of application for an SSN, the time required for issuance of the number or to secure verification of the number shall not be used as a basis for delaying action on the Adult Financial program application.
- B. The county department shall verify the client's SSN with the SSA in accordance with procedures established by the State Department for the SVES.

1. The county department shall accept as verified a SSN that has been confirmed by the SVES.
2. When the county department receives notification that an SSN cannot be verified or is otherwise discrepant (e.g., name or number do not match SSA records), the county department shall:
  - a. Conduct a case record review to confirm that the SSN in the case record matches the SSN submitted to the SSA for verification.
    - 1) If an error occurred in the original submittal (e.g., digits transposed, incorrect name submitted) the county department shall correct the error and resubmit the SSN through SVES for verification.
    - 2) If no error is identified, the county department shall advise the client in writing that the SSN could not be verified, and instruct the client to contact the local Social Security office to resolve the discrepancy.
  - b. Make every effort to assist the client to obtain available documents required by the SSA.
3. If the client is unable to provide his or her valid SSN, the application shall be denied or the case terminated following the policies outlined in Section 3.554.

**3.520.66      LAWFUL PRESENCE**

- A. Pursuant to Section 24-76.5-103, C.R.S., Adult Financial program clients are required to produce verification of lawful presence in the United States prior to receiving grant payments. For purposes of this section:
  1. "Affidavit" means a State prescribed form wherein a client attests, subject to the penalties of perjury, that he or she is lawfully present in the United States. An affidavit need not be notarized.
  2. "Produce" means to provide for inspection either: 1) an original, or 2) a true and complete copy of the original document. A document may be produced either in person or by mail.
- B. In order to verify his or her lawful presence in the United States, the client shall:
  1. Execute an affidavit saying that:
    - a. He or she is a United States citizen or legal permanent resident; or,
    - b. He or she is otherwise lawfully present in the United States pursuant to Federal law; and,
  2. Produce and provide to the county department:
    - a. A valid Colorado driver's license or a Colorado identification card issued pursuant to Article 2 of Title 42, C.R.S.; or,
    - b. A United States military card or military dependent's identification card; or,
    - c. A United States Coast Guard Merchant Mariner Card; or,

- d. A Native American tribal document; or,
- e. Any other document authorized by rules adopted by the Colorado Department of Revenue pertaining to lawful presence found at 1 C.C.R. 204-30:5 as of April 14, 2019. These Department of Revenue rules are herein incorporated by reference and do not include any later amendments or editions of these rules. These rules are available for public inspection at the Colorado Department of Revenue, 1375 Sherman St., Denver, CO 80261 or for no cost at [www.sos.state.co.us](http://www.sos.state.co.us). Copies of these rules are available for reasonable cost during normal business hours at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman St., Denver, CO 80203 or the Colorado Department of Revenue, 1375 Sherman St., Denver, CO 80203; or,
- f. Adult Financial program clients who cannot produce one of the required documents may demonstrate lawful presence by both executing the affidavit and by requesting and obtaining a waiver from the Colorado Department of Revenue. The request for waiver must be provided to the Colorado Department of Revenue in person, by mail, or online, and must be accompanied by all documents the client can produce to prove lawful presence. An approved waiver must be issued by the Colorado Department of Revenue in accordance with 1 C.C.R. 204-30:5. The county department is responsible for verifying that the client is the same individual indicated as being lawfully present through the approved waiver.

**3.520.67 CITIZENSHIP AND QUALIFIED NON-CITIZENS**

- A. The following are citizens of the United States and are eligible to apply for Adult Financial programs:
  - 1. Persons born in the United States, Puerto Rico, Guam, Virgin Islands (U.S.), American Samoa, or Swain's Island;
  - 2. Persons who have become citizens through the naturalization process;
  - 3. Persons born to U.S. citizens outside the United States with appropriate documentation.
- B. The county department shall verify citizenship when:
  - 1. The claim of citizenship is inconsistent with statements made by the client or with other information on the current or previous applications; or,
  - 2. The claim of citizenship is inconsistent with information received from another source.
- C. Citizenship may be verified by a birth certificate, possession of a U.S. passport, a certificate of U.S. citizenship (issued by USCIS), a certificate of naturalization (issued by USCIS), a certificate of birth abroad of a citizen of the United States (issued by the Department of State), or Identification Cards for U.S. citizens (issued by USCIS). Documents that are acceptable as verification of citizenship can be found in the Federal Regulations at 45 CFR 1626.6 as of May 19, 2014, which are herein incorporated by reference. This rule does not contain later amendments or additions. These regulations are available at no cost at <https://www.ecfr.gov/>. These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

- D. Verification of citizenship by the county department shall not result in discrimination based on race, religion, ethnic background or national origin, and groups such as migrant farm workers or Native Americans shall not be targeted for special verification. The county department shall not rely on a surname, accent, or appearance that seems foreign to find a claim to citizenship questionable. Nor shall the county department rely on a lack of English speaking, reading, or writing ability as grounds to question a claim to citizenship.
- E. Qualified non-citizens who are considered legal immigrants by USCIS are eligible to apply for Adult Financial programs and shall provide verification of lawful presence according to 1 C.C.R. 204-30:5 as of April 14, 2019, which is herein incorporated by reference. This rule does not contain any later amendments or additions. These regulations are available in person at the Colorado Department of Revenue, 1375 Sherman St., Denver, CO 80261. These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.
- F. Qualified non-citizens applying for Adult Financial programs shall present documentation from USCIS showing the client's non-citizen status. All documents shall be verified through SAVE (Systematic Alien Verification for Entitlements) to determine the validity of the document.
- G. The following non-citizens and temporary residents shall not be eligible for Adult Financial programs:
  - 1. A non-citizen with no status verification (undocumented) from the USCIS;
  - 2. A non-citizen granted a specific voluntary departure date;
  - 3. A non-citizen without a current qualified status, regardless of application status; or,
  - 4. A citizen of foreign nations residing temporarily in the United States on the basis of a visa issued to permit employment, education, or a visit.

**3.520.68 FIVE YEAR BAR FROM ELIGIBILITY**

- A. Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are generally barred from receiving Adult Financial programs for five years beginning on the qualified non-citizen's date of admission into the United States for legal permanent residence, as verified through SAVE, unless they meet one of the exceptions consistent with the provisions of Federal Regulations found at 45 CFR 286.5 as of February 18, 2000, herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available for no cost at <https://www.ecfr.gov/>. Copies of these regulations are available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library.
- B. For OAP only, a client that has a documented hardship, as follows, shall not be subject to a five-year bar from benefits:
  - 1. Abuse or mistreatment by the sponsor(s). Suspension of five-year bar from benefits is permitted if there is credible evidence that the qualified non-citizen client has been physically abused, battered, or subjected to extreme cruelty by his or her sponsor(s) in the United States, and meets the following requirements:
    - a. The qualified non-citizen client subject to such physical abuse, battery, or extreme cruelty does not live in the same household with the individual responsible for the physical abuse, battery, or extreme cruelty; and,

- b. There is a substantial connection between the physical abuse, battery, or extreme cruelty and the need for benefits; and,
  - c. There is documented credible evidence of physical abuse, battery, or extreme cruelty, including, but not limited to:
    - 1) A copy of the protection order issued against the abuser or batterer of the qualified non-citizen client; or,
    - 2) A copy of the verdict and the judgment or sentence against the abuser or batterer committing the act of violence against the qualified non-citizen client; or,
    - 3) Reports or affidavits from police, judges, or other court officials; or,
    - 4) Written statements from medical/health professionals treating the client; or,
    - 5) Verification from the USCIS or the Executive Office for Immigration Review (EOIR) that a petition to qualify under this category has been approved.
- 2. Indigence: Suspension of the five-year bar from benefits is permitted if the qualified non-citizen's income and resources, and income and resources of the qualified non-citizen's sponsor(s) are inadequate. If the qualified non-citizen does not have a sponsor, then their own income and resources would be considered.
  - a. It is the responsibility of the qualified non-citizen to obtain all required information and documentation from the sponsor(s).
  - b. The county department shall determine if the total household income available exceeds 125% of the Federal poverty guidelines as defined in 3.510 for the household size.
    - 1) For purposes of this section, the household includes the qualified non-citizen, the qualified non-citizen's spouse, the qualified non-citizen's dependent children, the sponsor(s), the spouse of the sponsor(s), and the sponsor(s)' dependent children, i.e., the children the sponsor(s) claim on his or her income tax.
    - 2) The county department shall total the countable income of the household by adding together income of the non-citizen, and that of his or her spouse, and the sponsor(s) and the sponsor(s) spouse(s).
    - 3) If the total household income available exceeds the monthly amount of 125% of the Federal poverty guidelines, as defined in 3.510, for the household size, the indigence exception does not apply. If the total household income is less than 125% of the monthly Federal poverty guidelines as defined in 3.510 for the household size, then,
      - a) Determine the sponsor(s) countable resources. Resources are attributed to the sponsor in the same manner as the non-citizen, as outlined throughout 3.520.72.

- b) All countable resources over the sponsor(s) resource limit, as outlined in Section 3.520.72, are then applied to the non-citizen.
    - c) This is added to the non-citizen's countable resources and compared to the non-citizen's resource limit, as outlined in Section 3.520.72.
    - d) If the non-citizen is under the resource limit, the indigence hardship exception applies.
  - c. The county department shall determine if the non-citizen is receiving free room and board from another source, such as a family member, friend, or a non-profit agency. If yes, the indigence exception does not apply.
- 3. Abandonment by the sponsor(s): suspension of the five-year bar from benefits may be applicable when the qualified non-citizen is abandoned by his or her sponsor(s) and the qualified non-citizen's income and resources are so inadequate that the qualified non-citizen is unable to obtain food and shelter.
  - a. The county department shall contact the sponsor to confirm the non-citizen's allegations regarding amounts of income and resources the sponsor provides or makes available to the non-citizen. If the non-citizen does not know the sponsor's whereabouts, the county department shall obtain this information if available through SAVE.
  - b. If the county cannot locate the sponsor of the sponsored non-citizen, or no support is being provided, a signed allegation from the non-citizen (if the allegation is credible and does not conflict with other information in the file) shall be utilized to determine abandonment. If the allegations are not credible or conflict with other information in file, the county department shall weigh all information and use the prudent person principle to make a decision regarding the applicability of the abandonment hardship based on all the information obtained. If support is being provided, the abandonment hardship exception shall not apply.
  - c. When a determination of abandonment is made, the county department shall notify the United States Department of Homeland Security.
- C. For OAP only, if approved for a hardship exception to the five-year bar, the county department shall process the application or redetermination to determine whether the qualified non-citizen meets the eligibility criteria for OAP. Requirements for the hardship exception shall be reassessed at each redetermination or when circumstances change.
- D. For OAP only, the county department shall pursue recovery of OAP grant payments from the sponsor(s).
  - 1. The qualified non-citizen shall be notified of the recovery requirement at the time of request for a hardship exception from the five year bar from benefits; and,
  - 2. If granted a hardship, the client shall be notified during the interview of each redetermination of the requirement to recover funds from the sponsor(s).

**3.520.69 SPONSORSHIP OF QUALIFIED NON-CITIZENS**

This section shall apply to qualified non-citizens who entered the country on or after August 22, 1996.

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- A. As a condition of eligibility for financial assistance, any legal non-citizen applying for or receiving financial assistance shall agree that, during the time period the client is receiving financial assistance, the client shall not sign an affidavit of support for the purpose of sponsoring a non-citizen seeking permission from USCIS to enter or remain in the United States. A legal non-citizen's eligibility for financial assistance shall not be affected by the fact that the legal non-citizen has signed an affidavit of support for a non-citizen prior to his or her application for benefits.
- B. If a client is a sponsored qualified non-citizen, he or she shall be responsible for the provision of any information and documentation related to the sponsor(s) and shall obtain cooperation from the sponsor(s) necessary to determine:
1. The identity and current address and contact information of the sponsor(s);
  2. The relationship of the sponsor(s) to the qualified non-citizen;
  3. Income and resources of the sponsor(s), which may be deemed available to the qualified non-citizen or recovered for repayment of grant payments paid to or on behalf of the qualified non-citizen.
- C. It shall be presumed that an affidavit of support demonstrates the sponsor's ability to make income and resources available to a non-citizen whom he or she sponsors at a minimum of one hundred twenty-five percent (125%) of the Federal Poverty Guidelines, as defined in 3.510. Sponsors are expected to meet their financial commitments to the qualified non-citizen whom they sponsor and for whom they signed an affidavit of support until such time as the:
1. Qualified non-citizen has obtained U.S. citizenship; or,
  2. Qualified non-citizen has worked, or can be credited with forty (40) qualifying quarters of coverage under Title II of the Federal Social Security Act, 42 U.S.C. Section 413 (2018); or
  3. Qualified non-citizen leaves the United States and gives up lawful permanent resident status; or,
  4. Qualified non-citizen dies; or,
  5. Sponsor of the qualified non-citizen dies. The death of one sponsor does not terminate the support obligation of a joint sponsor. The sponsor's estate shall be required to repay public benefits; or,
  6. Qualified non-citizen becomes subject to removal proceedings, but he or she applies for and obtains a new grant of admission status in those proceedings based on a new affidavit of support, if one is required.
- D. Income and resources of the sponsor(s) shall be deemed to the client, as follows:
1. Sponsor deeming shall not apply to qualified non-citizens admitted as refugees or as political asylees. A non-citizen whose status as a political asylee or refugee has not yet been determined or finalized because his or her application to become a qualified non-citizen is in a pending status or for some other reason shall not be considered a qualified non-citizen admitted as a political asylee or refugee, and therefore, such non-citizen is not eligible to receive grant payments.

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2. Sponsors who signed sponsorship agreements prior to December 19, 1997, shall not be subject to resource and income deeming.
  3. Effective December 19, 1997 through December 31, 2013, sponsor deeming shall apply only to the qualified non-citizen's spouse and/or non-relative sponsor(s) identified in sponsorship agreements signed on or after December 19, 1997.
    - a. A relative is defined as any relation by blood, adoption, or marriage.
    - b. Kinship relations by marriage continue to exist even if the marriage is terminated by death or divorce.
  4. Effective January 1, 2014, sponsor deeming shall apply to all of the qualified non-citizen's sponsors identified in sponsorship agreements signed on or after December 19, 1997, no matter the sponsor's relationship to the client.
  5. For OAP only, the hardship exceptions as described in Section 3.520.68.B-D, shall also be evaluated in relation to sponsor deeming. If it is determined that hardship has been established, sponsor deeming shall not be applied to the non-citizen.
    - a. Upon determination that a non-citizen is granted a hardship exception, the county department will notify the sponsor of its determination and requirement of repayment of the full amount of the grant payments made to the non-citizen. This requirement may be waived by the county department in cases utilizing the hardship exceptions. Such waiver must be documented in the case record.
    - b. If the sponsor fails to comply with the repayment terms established by the county department, the county department will pursue other remedies for repayment, which shall include but are not limited to:
      - 1) Income assignments;
      - 2) State income tax refund offset;
      - 3) State lottery winnings offset; and,
      - 4) Administrative lien and attachment.
  6. Because the sponsor, not the non-citizen, is solely liable for repayment, the sponsor cannot use the sponsored non-citizen's grant payments to repay the payments.
- E. If the qualified non-citizen fails to provide information related to the sponsor(s), as outlined in Section 3.520.69.B, assistance shall be denied or discontinued following the policies outlined in Section 3.554.
- If it is determined that the client received Adult Financial program grant payments because the client failed to provide necessary information related to the sponsor(s) or the sponsor(s) failed to cooperate with the county department in determining income and resources that are required to be deemed to the client, the county department shall recover such funds, as outlined in Section 3.520.69.D.
- F. Income and resources shall be deemed as outlined in Sections 3.534, C, and 3.520.72.

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**3.520.7 FINANCIAL ELIGIBILITY REQUIREMENTS**

**3.520.71 FINANCIAL ELIGIBILITY REQUIREMENTS**

- A. To receive Adult Financial program assistance, the client shall meet all financial requirements in addition to all other program eligibility requirements. The client shall:

1. Have countable resources below the resource limit as outlined in Section 3.520.72; and,
2. Have income below the income limit, as outlined in Section 3.520.78; and,
3. Make reasonable attempts to pursue all available potential income and resources at the client's disposal.

- B. The AND-SO client shall apply for Supplemental Security Income (SSI) benefits. If the client has work hours during his or her lifetime, the client shall also apply for Social Security Disability Insurance (SSDI). The client shall report any denial for SSI benefits. The client shall appeal all negative decisions regarding their SSI eligibility. Failure to appeal all negative decisions within thirty (30) calendar days of such decision, unless additional time is given for good cause, shall result in denial or discontinuation of and grant payments.

If the client is approved for SSI and SSDI benefits at the same time and is given the choice between the two (2) benefit options, he or she must contact the county department to determine if any interim assistance he or she received from the county is required to be repaid. If repayment is required, the client shall be advised that he or she must accept the SSI benefits and that if he or she voluntarily withdraws his or her SSI application, withdrawal would violate the Authorization for Reimbursement of Interim Assistance, as outlined in Section 3.545.

For OAP, the client shall apply for and accept Social Security and/or SSI benefits if determined eligible, as follows:

1. Clients sixty (60) years of age and older who report a disability may be eligible for SSI or SSDI.
  2. Clients sixty (60) years of age and older may be eligible for Social Security survivor benefits.
  3. Clients sixty-two (62) years of age and older may be eligible for early Social Security retirement benefits; otherwise the client shall provide documentation from the SSA that he or she is ineligible due to insufficient work hours.
  4. Clients sixty-five (65) years of age and older may be eligible for SSI benefits when the client's income from any source is less than the SSI benefit standard, as defined in Section 3.510, plus \$20.00.
- C. For all Adult Financial programs other than AND-SO, clients referred to the SSA to apply for any SSA related benefit shall be required to provide verification of application for such benefits within eleven (11) calendar days of his or her application for SSA benefits.

For AND-SO, clients referred to the SSA to apply for any SSA related benefit shall be required to provide verification of application for such benefits within sixty (60) calendar days from the initial interview date with the county department. The client will have up to sixty days of conditional approval from the date of the initial interview with the county department for AND-SO. Subsequent applications for AND-SO submitted by the client shall not be approved prior to receipt of proof of application for SSA benefits. Subsequent applications for AND-SO require verification of application for SSA benefits within thirty (30) calendar days.

- D. For OAP, the client shall apply for SSI, and shall timely schedule and complete any and all scheduled interviews with the SSA, and in the event of a denial by SSA, the OAP client shall continue to appeal all negative decisions from the SSA until a final resolution is reached and no further right to appeal exists. However, the requirement to continue to appeal all negative decisions may be excused if any of the following apply:
1. The client's and the client's spouse's gross income exceeds the maximum allowed for SSI for an individual or a couple; or,
  2. The client's and the client's spouse's total resources exceed that allowed for SSI for an individual or a couple; or,
  3. The client is not disabled as defined in Section 3.541; or,
  4. As otherwise directed by the SSA; or,
  5. Good cause exists as defined in Section 3.510.
- E. Clients newly approved for SSI benefits who have been charged an in-kind support and maintenance (ISM) deduction by the SSA shall apply to SSA to remove the ISM as soon as the client begins paying his or her fair share for shelter costs. The county department shall deduct an identical ISM amount for Adult Financial programs until the SSA ISM is removed.
- F. The client shall apply for and accept TANF/Colorado Works when he or she might be eligible, as follows:
1. An Adult Financial program client with a dependent child is required to apply for and accept, if eligible, TANF/Colorado Works financial benefits.
    - a. A grandparent or any other specified caretaker who is not a parent is not required to be a member of the TANF/Colorado Works case when they are not requesting assistance for himself or herself.
    - b. A TANF/Colorado Works client is not required to apply for an extension to be potentially eligible for Adult Financial program grant payments.
    - c. The TANF/Colorado Works funds received for the support of a child are not used in determining the specified caretaker's eligibility for Adult Financial program grant payments.
  2. The client shall be ineligible for Adult Financial program grant payments if his or her TANF/Colorado Works case was denied or discontinued:
    - a. Due to a sanction, demonstrable evidence, or disqualification; or,
    - b. Because the client withdrew from the program prior to exhausting all benefits.

3. After becoming ineligible due to the reasons outlined in Section 3.520.71.f.2, above, the ineligibility period shall continue until the sanction, demonstrable evidence, or disqualification is removed; or until the client is found otherwise ineligible for TANF/Colorado Works benefits.
- G. The client or legal fiduciary shall take reasonable steps to apply for and accept any other income for which the client is eligible. Clients referred to pursue other income shall be required to provide verification of application for or pursuit of such income. Grant payments shall not be approved prior to receipt of proof of application or pursuit of other income, unless it is demonstrated that good cause exists.
1. If the client or legal fiduciary refuses or fails to make a reasonable effort to secure potential income, such income shall be considered as if available to the client, and timely notice shall be given regarding a proposed action to deny, reduce, or terminate assistance.
  2. If the client or legal fiduciary secures the potential income prior to the effective action date identified in the notice, the proposed action to deny, reduce, or terminate assistance shall be withdrawn by the county, and the case shall be updated. Grant payments may still be denied, reduced, or discontinued due to a change in income.
- H. The client or legal fiduciary shall take reasonable steps to obtain and accept any other potential resources for which the client is eligible. Clients referred to pursue other resources shall be required to provide verification of the pursuit of such resource. Grant payments shall not be approved prior to verification of the attempt to sell, liquidate, or legally acquire a resource, unless the client demonstrates that good cause exists.
1. If the client or legal fiduciary refuses or fails to make a reasonable effort to secure potential resource(s), such resource(s) shall be considered as if available to the client, and timely notice shall be given regarding a proposed action to deny, reduce, or terminate assistance.
  2. If the client or legal fiduciary secures the potential resource(s) prior to the effective action date identified in the notice, the proposed action to deny, reduce, or terminate assistance shall be withdrawn by the county, and the case shall be updated. Grant payments may still be denied, reduced, or discontinued due to a change in resource(s).

### **3.520.72 RESOURCES**

- A. Unless otherwise specified, a resource is countable, and together with all other countable resources of the client, spouse, and sponsor(s) shall be considered against the resource limit. The resource limit is:
1. \$2,000 for:
    - a. An unmarried client;
    - b. An unmarried sponsor; and,
    - c. A married sponsor whose spouse is a co-sponsor. Each sponsor shall receive the \$2,000 resource limit for a combined resource limit of \$4,000.
  2. \$3,000 for:
    - a. A married client; or,

- b. A married sponsor whose spouse is not a co-sponsor.
- B. Countable assets include, but are not limited to:
  - 1. Cash on hand, a savings or checking account, or other accessible electronic currency and/or cryptocurrency.
  - 2. Equity value of real property that is not used as the primary home or not exempt as income producing.
  - 3. Proceeds from the sale of the primary home that are in excess of the cost of expenses incurred to purchase or build a replacement home.
  - 4. Personal property or the proceeds from the sale of personal property, such as mobile homes or recreational vehicles not used as the primary home and not exempt as income producing.
  - 5. Personal property or the proceeds from the sale of personal property, such as motor vehicles, recreational off road vehicles, boats, trailers, or similar that are not exempt per Section 3.520.77 or exempt as income producing.
  - 6. Stocks, bonds, mutual fund shares, 401Ks, 457Ks, IRAs, Certificates of Deposit (CDs), and other retirement or investment accounts and investment vehicles.
  - 7. Mortgages, promissory notes, and similar properties that can be converted to cash.
  - 8. Cash surrender value of all life insurance policies as outlined in Section 3.520.75.
  - 9. Prepaid revocable funeral or burial expense contracts or trust deposits, as outlined in Section 3.520.77.G-H.
  - 10. The value of the burial space in excess of that required to meet the burial needs of the immediate family, as outlined in Section 3.520.77.I.
  - 11. Proceeds of fire or casualty insurance payments that were in excess of the expenses incurred to repair or replace the damaged, lost, or stolen property.
  - 12. Proceeds of a loan when those proceeds were not expended to meet the purpose of the loan or proceeds of a loan with no bona fide debt repayment schedule.
  - 13. The estate and all resources identified in the estate inventory for a client adjudicated incapacitated by a court.
  - 14. Trusts, both revocable and irrevocable, will be countable as resources or income according to the guidelines of SSA, except as prohibited by Section 15-14-412.5, C.R.S., et seq. and is consistent with the provisions of Federal Guidelines found in the SSA Programs Operations Manual System (POMS) at SI CHI01120.201 (effective as of June 29, 2009) and SI 01120.200 (effective as of June 7, 2018), which are herein incorporated by reference. This rule does not contain any later amendments or editions. These guidelines are available for no cost at <https://secure.ssa.gov/apps10/poms.nsf/home?readform>. These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

- a. When all or a portion of the corpus of a trust, cannot be paid to or for the benefit of the client, the portion that cannot be paid is considered a transfer of resources for less than fair market value and a penalty shall be assessed as outlined in Section 3.520.76.D.
  - b. Refusal of a trustee to make payments to or for the benefit of the client does not exempt the trust from being a countable asset and the full amount of the trust shall be considered available as a resource to the client.
  - c. If a client places an exempt resource in a trust the resource exemption may still apply to that resource.
- C. If it is determined that a married couple is legally separated as identified in Section 3.520.63, sole ownership of property by the non-recipient spouse does not affect the client's eligibility for assistance.
- D. The county department shall obtain verification of all resources and associated values.
  - 1. The county department shall include case notes describing verification documentation in the statewide automated system.
  - 2. Original copies of verification documents shall be returned to the client.
  - 3. The client's authorization on the application or redetermination form shall be obtained to contact a collateral contact for valuation information or verification.
- E. A sponsor(s)'s resources are only counted toward the non-citizen client they sponsor. Resources are attributed to the sponsor in the same manner as the non-citizen client, as outlined in Section 3.520.7. All countable resources over the sponsor(s) resource limit, as outlined in Section 3.520.72.A, are then deemed to the non-citizen client. The deemed amount from the client's sponsor(s) is then added to the non-citizen client's countable resources and compared to the non-citizen client's resource limit, as outlined in Section 3.520.72.A.
- F. If a client is approved for Supplemental Security Income (SSI) as verified through the SVES interface, there shall be no additional requirement to verify resources at initial application, unless the resources reported are questionable.
  - 1. If the county department has obtained or received information related to resources that is contrary to the SVES interface, the county department shall independently verify the information; and,
  - 2. The county department shall forward such contrary information to the local SSA office.

**3.520.73 LIQUID ASSETS**

- A. Checking and savings accounts or other accessible electronic deposits:
  - 1. The current amount in a savings or checking account or other accessible electronic deposits is determined by verifying ownership and the available balance:
    - a. From a copy of a current statement of the account; or,
    - b. With the financial institution online, by phone, or in writing.

2. The balance in a joint account shall be considered available to the client in proportion to the number of persons on the account.
  - a. If the co-owner of the joint account is the client's legal fiduciary, such as a guardian, conservator, or power of attorney, the account shall be considered to be 100% owned by the client and all funds in the account shall be considered available to the client.
  - b. If the client establishes by a preponderance of evidence that the intent of ownership is other than the client's equal and proportionate share of the account balance, the county department shall apply the prudent person principle to the evidence to determine the amount to be considered available to the client.
  - c. In cases where the client has no interest in the account, the county department shall request a change in the account designation removing the client's name, and submit the original and revised account records showing the change was made.
- B. A county department may selectively contact one or more financial institutions to establish whether a client has any account at the institution or has an account in addition to one declared. The client's signature on the application provides authorization to make such contacts.

**3.520.74 REAL PROPERTY AND PERSONAL PROPERTY**

**3.520.741 REAL PROPERTY**

- A. In order for real property to be considered a resource, the following shall be determined:
  1. The actual value less encumbrances of the ownership interest:
    - a. Actual value of real property may be obtained by using the actual value reported by a county assessor or from the most recent property assessment notice.
    - b. The assessed value shall be verified from a copy of the most recent property assessment notice or with the county assessor's office on the Internet, by phone, personal contact, or in writing.
    - c. Encumbrances include mortgages, liens, judgments, delinquent taxes, loan agreements, and other forms of indebtedness. Encumbrances shall be verified by such methods as collateral contact, county recorder records, bank records, and other credible sources. Only direct and documented encumbrances against a specific item or property shall be considered in determining its equity value. Verbal agreements of indebtedness shall not be accepted.
  2. The negotiability of the ownership interest (that is, there are no legal restrictions from selling the client's property interest); and,
  3. The ability to sell the property interest (that is, that the ownership interest can, in fact, be sold on the open market at any price).
- B. The degree of the ownership interest is determined by the type of ownership. Generally, the types of ownership are:

1. Sole ownership, in which the client, the client's spouse, or sponsor(s) is the only owner. If the client, spouse, or sponsor(s) has the right to dispose of the property, the actual value less encumbrances of the property is determined and counted as a resource;
  2. Shared ownership, in which the property is owned by the client, spouse, or sponsor(s) and one or more individuals. The actual value less encumbrances is determined and charged in proportion to the client, client's spouse, or sponsor(s)'s share of ownership. There are two kinds of shared ownership:
    - a. Joint ownership or ownership in common, in which the property's actual value less encumbrances is divided equally among the owners; and,
    - b. Tenancy in common, in which the property's actual value less encumbrances is divided by the number of owners in proportion to their stated interest (which may not necessarily be equal).
- C. Negotiability and, if applicable, the ability to sell the property interest at a reasonable price must be determined. Negotiability refers to the client, client's spouse, or sponsor(s)'s legal right to dispose of an ownership interest; ability to sell refers to the client, client's spouse, or sponsor(s) legal ability to sell. Reasonable price is determined to be two-thirds of the actual value.
1. Negotiability - there may be legal reasons why a client, client's spouse, or sponsor(s) may not be able to sell the property interest, such as when the estate is in probate or there is a lawsuit pending against the property. The refusal of co-owners to consent to the sale of a property interest is not a legal restriction of the client, client's spouse, or sponsor(s)'s right to sell.
  2. If the co-owner of the property uses the property as the principal place of residence and sale of the property would cause undue hardship, the client, client's spouse, or sponsor(s)'s equity in the property shall be exempted, unless the co-owner is the spouse or sponsor(s). Undue hardship for this purpose is defined as:
    - a. The co-owner uses the property as his or her primary residence; and,
    - b. The co-owner would have to move as a result of the sale of the property; and,
    - c. The co-owner has no other available housing, including relatives or income to rent at fair market value; and,
    - d. The co-owner documents, in writing, his or her undue hardship allegations; and,
    - e. Using prudent person principle, the county department determines the undue hardship allegations to be reasonable.
  3. If the client, client's spouse or sponsor(s) cannot sell the property for two-thirds of the actual value, the property shall be exempted provided there continues to be reasonable efforts to sell the property such as listing the property with an agency or by advertising in the local media.
    - a. The county department shall verify on a quarterly basis that a reasonable effort is being made to sell the property.
    - b. The property shall not be exempted if the county department, using prudent person principle, determines the client, client's spouse, or sponsor(s) is not making a reasonable effort to sell.

- c. If the client, client's spouse, or sponsor(s) rejects an offer to purchase the property that is at least two-thirds the actual value of the property, the entire equity value of the property shall be considered a countable resource.
- 4. If the property interest cannot be disposed of because of legal technicalities, the client, client's spouse, or sponsor(s)'s equity value is not a countable resource. The county department shall verify any limitations that prevent the disposition of the property and document those limitations in the statewide automated system case comments.

**3.520.742 PERSONAL PROPERTY**

- A. The actual value of any personal property which is assessed for taxation, such as a mobile home, house trailer, or property used in a trade or business, is determined by using the actual value reported by a county assessor or by obtaining a copy of the most recent property assessment notice. If the actual value is not on the assessment notice, the value may be determined by:
  - 1. Verifying the actual valuation from a copy of the most recent property assessment notice or with the county assessor's office on the Internet, by phone, BY other personal contact, or in writing; or,
  - 2. When personal property valuation is necessary, and the usual means of valuation is not possible, the county department shall use available local resources or the classified ad section of the local or other State newspaper or the Internet to determine and verify the actual value.
  - 3. To determine the equity value of personal property, first determine the actual value; then subtract encumbrances.
- B. The actual value of any personal property which is not assessed for taxation is determined by obtaining the appraised value less liabilities, i.e., vehicles, farm equipment and livestock or inventories of merchandise and materials, such as art, jewelry or valuable collections, as appraised by a verifiable, industry recognized source.
  - 1. The actual value of automobiles and trucks is determined by using the trade-in fair condition value as provided by an auto valuation company, such as Kelly Blue Book or NADA guides. Unless questionable, it shall be presumed that the value of the vehicle is four hundred dollars (\$400) when the information is not found in Kelly Blue Book or Nada guides.
  - 2. For personal property which has not been assessed for taxation, the client shall submit verification of the appraised value based on written statements received from the following:
    - a. Assessment standards obtained from the State or county assessor's office; or,
    - b. Valuation obtained from a local merchant, the Internet or other reliable source.
- C. The fair market value of stocks, mutual fund shares, municipal, corporate or government bonds, and other securities is based on the price as of the opening of the market on the date their value is determined by the county department. The market price is obtained from the published quotations on the Internet or by contacting a local securities firm.
  - 1. The value of stocks traded over-the-counter is expressed on a "bid" and "asked" basis. In such cases, the bid price is used to determine the market value.

2. When stocks or other securities have no locally determinable value, the market value is requested from the issuing company. The Office of the Secretary of State in each state will supply the address of the issuing company and information as to whether the stock is still on the market.
- D. The current cash value of U.S. Savings Bonds, Treasury Notes, and similar investment vehicles is determined from the value tables appearing on the bonds themselves, through the online Treasury Direct System, or by contacting a financial institution.
- E. Personal property may be exempted if the client, client's spouse, or sponsor(s) has made an attempt to sell and has been unable to do so.
  1. Failure to sell personal property at the asking price or for a reasonable value shall not exempt the resource from the client's countable resources. Under such circumstances, the county department shall determine whether the property could be sold for two-thirds of the actual value.
  2. If the client, client's spouse, or sponsor(s) receives an offer for at least two-thirds of the actual value and refuses to sell the property, the property shall not be exempted.
  3. If the client, client's spouse, or sponsor(s) cannot sell the property for two-thirds of the actual value, the property shall be exempted provided there continues to be reasonable efforts to sell the property, such as by listing the property with an agency or by advertising in the local media.
    - a. The county department shall verify on a quarterly basis that a reasonable effort is being made to sell the property.
    - b. The property shall not be exempted if the county department, using prudent person principle, determines the client, client's spouse, or sponsor(s) is not making a reasonable effort to sell.
    - c. If the client, client's spouse, or sponsor(s) rejects an offer to purchase the property that is at least two-thirds the actual value of the property, the entire equity value of the property shall be considered a countable resource.
- F. The equity value of mining claims and oil, mineral or water rights, if assessed separately from land, is determined by using the equity value established by the current market value.
- G. The client, client's spouse, or sponsor(s) shall have the right to submit evidence establishing a lesser property value. Such value may be established as zero. The county department shall evaluate the evidence and determine the property value.

**3.520.75 LIFE INSURANCE**

- A. Life insurance policies owned by the client, client's spouse, or sponsor(s) that have a cash surrender value available (CSV) must be evaluated for THE original face value at the time of purchase and for the current CSV.
- B. Term life insurance policies should be reviewed to determine if a CSV exists.
- C. The county department shall obtain the most recent documentation related to the policies, to include active status, liens or encumbrances, current CSV, and annual dividend statements.

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- D. If the total face value of all life insurance policies owned by a client and his or her spouse is equal to \$1,500 or less, the full CSV of all policies is exempt. Sponsor(s) are allowed the same exemption.
- E. For OAP only, if the total face value of all life insurance policies owned by a client and his or her spouse is equal to more than \$1,500 and the CSV of all policies combined is \$250,000 or less, then the following applies:
1. If all policies were purchased more than forty-eight (48) months prior to the eligibility determination date, and no further contributions or payments to the policies have been made in the past 48 months, all CSV is exempt; or,
  2. If there have been additional monies contributed or payments made to any of the policies within 48 months of the eligibility determination date, those additional monies contributed are counted toward the resource limit; the original cash value amount prior to the 48 month period remains exempt; or,
  3. If any of the policies were purchased within the 48 months prior to eligibility determination date, the total CSV is a countable resource; and,
  4. Sponsor(s) are allowed the same exemptions.
- F. For OAP only, if the total face value of all life insurance policies owned by a client and his or her spouse is equal to more than \$1,500 and CSV of all policies combined is more than \$250,000, then the following applies:
1. If all policies were purchased more than 48 months prior to eligibility determination date, and no further contributions or payments to the policies have been made in the past 48 months, the CSV over \$250,000 is countable; the first \$250,000 is exempt; or,
  2. If there have been additional monies contributed or payments made to any of the policies within 48 months of eligibility determination date, those additional monies contributed are counted toward the resource limit and the CSV over \$250,000 is countable; the original cash value amount prior to the 48 month period remains exempt; or,
  3. If any of the policies were purchased within the 48 months prior to eligibility determination date, the total CSV is a countable resource; and,
  4. Sponsor(s) are allowed the same exemptions.
- G. The original face value of a policy may be increased because of dividends and reinvestment of dividends. This increased face value shall not be used to determine eligibility. The original face value of the policy shall be used to determine whether the CSV of the policy is exempt.

- H. Use the following chart to estimate a life insurance policy's CSV if not available from the client, client's spouse, or sponsor(s):

<b>YEARS LIFE INSURANCE POLICY HAS BEEN IN EFFECT</b>	<b>ESTIMATED CSV IS THIS PERCENTAGE OF FACE VALUE:</b>
20 OR MORE	60%
15-19	50%
11-14	45%
6-10	30%
4-5	20%
3	10%
2	5%
1	0%

**3.520.76 TRANSFERS WITHOUT FAIR CONSIDERATION (TWFC)**

- A. Transfers of resource ownership may occur through transactions such as sale of property; trade or exchange of one property for another; spend-down of cash; giving away cash; transferring any financial instrument (e.g., stocks, bonds); or, giving away property (including adding another person's name as an owner of the property). A transfer of a resource shall be considered a TWFC if the transfer was:
1. Voluntary; and,
  2. Without fair and valuable consideration, and,
  3. Made within thirty-six (36) months prior to the application date or while receiving Adult Financial program grant payments; and,
  4. For the purpose of rendering the client eligible for assistance. The county will evaluate evidence provided by the client to determine if the transfer of resources was exclusively for a purpose other than to qualify for benefits.
    - a. The county department shall make a rebuttable presumption that the transaction was made for the purpose of becoming or remaining eligible for Adult Financial program benefits when the transfer was made any time during the thirty-six (36) month period immediately prior to the filing of application for assistance or during such time that assistance was being received.
    - b. A client shall be given the opportunity to disprove the presumption. The presumption shall be nullified if the client can demonstrate with evidence to the county department that the transfer was for another purpose.
      - 1) The client's primary purpose cannot be to acquire money or profit from the transaction; and,

- 2) The client shall provide written documentation of any agreement made in relation to the transfer of property, that was created at the time of the agreement to transfer property; and,
  - 3) The county department shall weigh the evidence and use the prudent person principle to determine whether there is sufficient evidence to disprove the presumption.
- B. Circumstances at the time of the transaction may indicate a reasonable rationale for a client's willingness to accept a sum which is less than a fair consideration based on a hardship just prior to the transaction. Hardships include:
  1. A period of unemployment resulting in an inability to meet monthly bills, and costs of subsistence; or,
  2. An accident or severe illness resulting in a need of funds to meet large expenditures for medical care and services; or,
  3. Other hardship deemed reasonable by the county department using the prudent person principle.
- C. A documented involuntary transfer of a resource shall not affect eligibility. Transfers that would be considered involuntary are:
  1. Loss of property through fraud, provided that the client can demonstrate that every reasonable effort has been made to recover the property by court action or other procedures as indicated; or,
  2. Loss of property through legal action such as judgment, foreclosure, delinquent tax sale; or,
  3. Other involuntary transfer identified and determined reasonable by the county department using the prudent person principle.
- D. The county department shall determine the eligibility penalty as a result of a TWFC as follows:
  1. Determine the actual value of the resource less encumbrances and subtract the amount the client received for the resource from the determined actual value. This is the uncompensated value.
  2. Determine the current Adult Financial Program grant standard. This is the TWFC monthly penalty value.
  3. Divide the uncompensated value by the TWFC monthly penalty value and round down to the nearest whole number.
  4. This equals the number of months of ineligibility for Adult Financial Program grant payments.
  5. The penalty period begins the month following the date of transfer. If there are multiple transfers, the period of ineligibility would begin the month following the end date of the first transfer's period of ineligibility.
  6. If the client transfers a resource and the entire resource is returned in the same month, the period of ineligibility does not apply.

- a. If the client transfers a resource and the entire resource is returned in a subsequent month, the period of ineligibility continues through the month the resource is returned (even if the resource is returned on the first day of the month). The period of ineligibility due to the transfer ends as of the month following the month the resource is returned. In that month, the returned resource is counted towards the client's resource limit.
  - b. If the entire resource is not returned, the period of ineligibility does not end. Instead, recompute the uncompensated value based on how much of the resource was not returned. Then, recompute the period of ineligibility based on the adjusted uncompensated value. If additional funds are subsequently returned, it will be necessary to recompute the uncompensated value again.
- E. A period of ineligibility can be from 1 month up to a maximum of 36 months depending on the amount of the uncompensated value for each resource transferred. A period of ineligibility cannot exceed 36 months regardless of the uncompensated value of the transfer. Months in the period of ineligibility can coincide with months of ineligibility for other reasons.

### **3.520.77 EXEMPT RESOURCES**

Resources that shall be exempt and not counted toward the resource limit for an individual or married couple include:

- A. One vehicle regardless of its value, if it is used for the transportation of the client or a member of the household.
- B. Household goods and personal effects found in or on the primary residence, that the client uses on a regular basis. The client needs household goods for maintenance, use, and occupancy of the premises as a home. This also includes personal effects which are ordinarily worn or carried by the client, or items that have an intimate relation to the client. This does not include effects that the client holds because of the value or as an investment, which are countable as personal property as outlined in Section 3.520.742.
- C. A home in which a client and his or her spouse have an ownership interest and that serves as the client's principal place of residence. This property includes the shelter in which the client resides, the land on which the residence is located, and related outbuildings.
  - 1. The home is not a countable resource regardless of its value. However, when there is an income producing property located on or adjacent to the home property, the income producing resource shall not qualify under the home exemption unless assessed collectively with the principal home.
  - 2. When a client or his or her spouse requires long-term medical care that is outside the client's county of residence, the home continues to be exempt so long as there is intent for the client and/or spouse to return to the home at the conclusion of medical treatment.
  - 3. When a client requires care in a long-term care facility, the home continues to be exempt so long as there is intent for the client to return to the home.
    - a. This intent to return home applies to the home in which the client or spouse was living prior to being admitted to the facility or to the replacement home. Such intent is documented by the following:
      - 1) A written statement from the client indicating the intent to return home for any reason; or,

- 2) A written statement from the client's spouse, legal fiduciary, doctor, or authorized representative indicating the client's intent to return home.
    - b. An arrangement by the client for occupancy of the home by another person, either on a rental basis, rent free, or in exchange for home maintenance, during a period of temporary absence shall not affect the home property exemption.
  4. The home of an OAP-C client, as defined in Section 3.530.1, shall be exempt as a resource during the period of commitment.
  5. If a client's home can no longer be excluded due to a change in his or her principal place of residence, the equity value of the property shall count as a resource.
- D. Part or all of the value of property may be exempt if it is essential to the self-support of the client. To determine whether property is producing income or being used in a trade or business, the county department shall obtain a copy of the most recent tax returns from the client. If a return has not yet been filed, obtain a current estimate of income and a copy of the previous year's return. Property used for self-support activities include:
  1. Property used in self-employment.
    - a. To be considered a valid trade or business as self-employment, the activity shall be:
      - 1) Currently ongoing rather than in the stage of preparation or inactivity; and,
      - 2) Intended to make a profit.
    - b. The liquid resources (e.g., cash, funds in a checking account) considered necessary for use in the trade or business shall be excluded.
    - c. If property has been but is not currently in use, the exemption for such property shall continue for twelve (12) months if there is a reasonable expectation that the use of the property will resume within that time. The exemption is for twenty-four (24) months where non-use is due to a disabling condition.
  2. Property owned by the client that is necessary to perform a job for wages, such as tools, safety equipment, or uniforms. If property has been but is not currently in use the exemption for such property shall continue for twelve (12) months if there is a reasonable expectation that the use of the property will resume within that time. The exemption is for twenty-four (24) months where non-use is due to a disabling condition.
  3. Non-business property used to produce goods necessary for the client's daily activities.
    - a. A maximum of six thousand dollars (\$6,000) of the equity value of such property shall be exempt as a resource. Any equity value in excess of \$6,000 shall be a countable resource.
    - b. Examples of this type of property include land which is used to produce vegetables or livestock only for personal consumption in the client's household, and personal property necessary to perform that function (e.g., a garden tractor, a boat used for subsistence fishing), but do not include vehicles, boats used for leisure or recreation, or other special vehicles.

- c. If property has been but is not currently in use, the exemption for such property shall continue for twelve (12) months if there is a reasonable expectation that the use of the property will resume within that time. The exemption period shall be twenty-four (24) months where nonuse is due to a disabling condition.
  - 4. Non-business, income-producing property shall be exempt, but the income shall be countable.
    - a. If a client owns non-business, income-producing property, a maximum of six thousand dollars (\$6,000) of the equity value of such property is an exempt resource, as long as the property produces a net annual income of at least six percent (6%) of the excluded equity. If the equity value of such income-producing, non-business property exceeds \$6,000, only the equity value above \$6,000 will be counted as a resource. If there is more than one potentially exempt property, the rate-of-return requirement applies individually to each. However, the total combined exemption for all such properties shall not exceed \$6,000.
    - b. "Non-business" means that the property is not used in a trade or business as defined in Section 3.520.76. Non-business, income-producing property may include but is not limited to houses or apartments for rent and land other than home property.
    - c. If non-business, income-producing property is not producing net income of at least six percent (6%) of the excluded equity, the entire equity value is counted as a resource. However, the exemption for up to \$6,000 of the property's equity may continue if the property is earning less than 6% due to circumstances beyond the client's control (e.g., crop failure, illness, etc.), and there is a reasonable expectation that, within twenty-four (24) months, the property will again produce a 6% return.
  - 5. A permit, license, or other similar authority granted by a governmental agency to engage in an income-producing activity is not a countable resource.
- E. Proceeds from fire or casualty insurance shall be considered exempt to the extent that they are used to restore or replace an exempt resource. This exemption shall be allowed for up to three (3) months for restoration or replacement of exempt personal property and six (6) months for restoration or replacement of exempt real property from the date the client receives such sums.
  - 1. Establishing eligibility for the duration of the replacement exemption requires:
    - a. Obtaining appropriate documentation to verify the amount of proceeds and date they were received; and,
    - b. Obtaining the client's signed statement verifying that the proceeds will be used for restoration or replacement of exempt property.
  - 2. The county department must contact the client upon the expiration of the allowable time period to verify that restoration or replacement has occurred. Restoration or replacement shall be considered to occur when payment for such is made or contracted in writing to be made.

3. When the allowable time period ends, proceeds in excess of payments made or contracted to be made must be counted as a resource in the month following the month in which the time period expired, unless good cause for an extension is determined by the county department using the prudent person principle.
- F. Proceeds from sale of the home property, relocation payments, or condemnation awards from a governmental agency shall be considered exempt to the extent that they are used to purchase or build a replacement home. This exemption is allowed for up to six (6) months from the date the client receives such sums. Proceeds of a home sale are the net payments received by the seller after satisfaction of all actual encumbrances and sales expenses.
1. Establishing eligibility for and the duration of the replacement exemption requires:
    - a. Obtaining appropriate documentation to verify the amount of proceeds and date they were received; and,
    - b. Obtaining the client's signed statement verifying that the proceeds will be used for restoration or replacement of exempt property.
  2. The client must be contacted upon the expiration of the allowable time period to verify that replacement has occurred. Replacement shall be considered to occur when payment for such is made or contracted in writing to be made.
  3. When the allowable time period ends, proceeds in excess of payments made or contracted to be made must be counted as a resource in the month following the month in which the time period expired, unless good cause for an extension is determined by the county department using the prudent person principle.
- G. Burial trusts are considered as follows:
1. For all trusts, the agreement does not have to be preexisting and need not have been purchased in Colorado.
  2. An irrevocable burial trust cannot be terminated, sold, or transferred. An irrevocable burial trust plus any accrued interest is exempt if all of the following criteria are met:
    - a. The trust is made with a Federally insured bank or savings and loan association, or with a trust company under supervision of the State banking commissioner;
    - b. The trust is irrevocable during the lifetime of the client and is to be paid by the trustee only upon death of the client for the purpose of burial expense;
    - c. The trust provides for payment of the trust funds without limitation as to place of burial or provider of related services. In any case, however, the client is not precluded from indicating a preference as to place of burial or provider of related services; and
    - d. The trustor and the beneficiary of the trust cannot be one and the same. If he or she is both the trustor and the beneficiary, the value exceeding \$1500 is a countable resource.
  3. A revocable burial trust can be terminated, sold, or transferred. A revocable burial trust is exempt if the value of the trust does not exceed one thousand five hundred dollars (\$1,500). Any interest on the exempt \$1,500 is also exempt. Any amount over \$1,500 is a countable resource.

- H. Prepaid burial contracts are exempt if any of the following conditions are met:
1. The prepaid burial contract is irrevocable.
  2. The prepaid burial contract is revocable and does not exceed one thousand five hundred dollars (\$1,500). Any amount in excess of \$1,500 shall be a countable resource.
    - a. Only the paid-up amount of the contract, not the face value, is taken into consideration;
    - b. Any interest on the exempt \$1500 is also exempt.
- I. The value of burial spaces required to meet the burial needs of the immediate family as well as brothers, sisters, and spouses of those persons, even if not living in the home. A burial space includes:
1. Burial plot;
  2. Gravesite;
  3. Crypt;
  4. Mausoleum;
  5. Casket;
  6. Urn;
  7. Niche;
  8. Other repository customarily and traditionally used for the decedent's bodily remains;
  9. Vaults;
  10. Headstones, markers, or plaques;
  11. Arrangements for the opening and closing of the gravesite; and,
  12. Contracts for care and maintenance of the gravesite.
- J. Any retroactive SSI or Social Security retirement or disability benefits still remaining after the month of receipt shall be exempt as a resource for nine months following the month they are received.
- K. An income tax refund, including the Property Tax/Rent/Heat Credit (PTC) rebate, shall be exempt in the month received. Any remaining balance shall be counted as a resource after twelve (12) months.
- L. Monies from a bona fide loan are exempt in the month received. Any remaining balance shall be counted as a resource in the following month(s).
- M. Monies specifically placed in an Achieving a Better Life Experience (ABLE) Account, as described in the Achieving a Better Life Experience Act of 2014, 26 U.S.C. Section 529a (2018).

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**3.520.78        TYPES OF INCOME**

**3.520.781        INCOME**

- A.     If a client's total countable income equals or exceeds the Adult Financial program grant standard, the client shall not be eligible for that specific Adult Financial program.
- B.     Income eligibility determination utilizes four types of income:
  - 1.     Earned income;
  - 2.     In-kind earned income;
  - 3.     Unearned income; and,
  - 4.     In-kind unearned income.
- C.     Certain income shall be exempt and shall not be considered as countable income, in part or in whole, as outlined in Section 3.520.786.
- D.     Certain income shall have deductions, herein termed as income "disregards," applied before determining total countable income as outlined in Sections 3.533, 3.544, or 3.549.
- E.     Certain income shall be deemed from the client's spouse, parent, and/or sponsor to determine the client's total countable income as outlined in Sections 3.534, 3.544 or 3.549.
- F.     The total countable income of the client shall be deducted from the AND or OAP grant standard to determine the grant payment amount.
- G.     All income shall be countable in the month it is actually received or legally becomes available, whichever comes first, with the following exceptions:
  - 1.     Income that can be anticipated with reasonable certainty concerning the amount and the month it is expected to be received shall be counted in the month anticipated.
  - 2.     The anticipated monthly income shall be based on the income received in the previous month, except when the previous month does not provide an accurate indication of anticipated income, or under other circumstances as specified below:
    - a.     For new or changed income, a period shorter than a month may be used to project a monthly amount;
    - b.     For contract employment, such as in some school systems, where the employees derive their annual income in a period shorter than a year, the income shall be prorated over the term of the contract, provided that the income from the contract is not earned on an hourly or piecework basis;
    - c.     For regularly received self-employment income, net earnings will usually be prorated and counted as received in a three (3) month period, except for farm income. For further information see Section 3.520.783.
    - d.     For all other cases where receipt of income is reasonably certain but the monthly amount is expected to fluctuate, a period of twelve (12) months shall be used to arrive at an average monthly amount;

- e. Income from rental property shall be considered self-employment income provided the client actively manages the property at least an average of twenty (20) hours per week.
  - 1) Income from rental property shall be considered unearned income if the client is not actively managing the property an average of at least 20 hours per week.
  - 2) Rental income, as self-employment or as unearned income, shall be averaged over a twelve month period to determine monthly income.
  - 3) Income from jointly owned property must be considered as a percentage at least equal to the percentage of ownership or, if receiving more than percentage of ownership, the actual amount received.
- f. For cases where a change in the monthly income amount can be anticipated with reasonable certainty, such as with Social Security cost of living adjustments (COLA), or other similar benefit increases, the expected amount shall be considered in determining a countable monthly income for the month received.

**3.520.782 EARNED INCOME**

- A. Earned income is gross monetary wages received for services performed as an employee or as profit from self-employment.
- B. In-kind earned income is non-monetary benefits received for services performed as an employee or as self-employment profit, such as shelter as payment for building maintenance or babysitting or other barter goods in exchange for services.
  - 1. In-kind income received in exchange for employment is employment income and shall have the appropriate earned income disregards applied to the total value of the income.
  - 2. The amount considered as earned income when the client, client's spouse, or sponsor(s) is paid in-kind shall be the value of the item supplied. The current market value of the item is used if the value of the item is not provided.

**3.520.783 SELF-EMPLOYMENT INCOME**

- A. An individual involved in a profit making activity shall be classified as self-employed.
- B. To determine the net profit of a self-employed client, client's spouse, or sponsor(s), deduct the cost of doing business from the gross income.
  - 1. Cost of doing business expenses include, but are not limited to, the rent of business premises, wholesale cost of merchandise, utilities, interest, taxes, labor, and upkeep of necessary equipment.
  - 2. Depreciation of equipment shall not be considered as a business expense.
  - 3. The cost of and payments on the principal of loans for capital assets or durable goods shall not be considered as a business expense.
  - 4. Personal expenses such as personal income tax payments, meals, and transportation to and from work are not business expenses.

- C. Some types of self-employment income shall be calculated using a method specific to the type of self-employment, as follows:
1. Farm income shall be considered on a yearly basis. Net income for the prior year shall be determined and averaged for the succeeding year and counted as earned income. When a client, client's spouse, or sponsor(s) ceases to farm, the income is no longer deducted from the grant standard.
  2. Rental income shall be considered as follows:
    - a. When the client, client's spouse, or sponsor(s) actively manages a self-owned rental property at least twenty (20) hours a week, treat rental income as self-employment income. Average the rental income over a twelve (12) month period to determine monthly earned income.
    - b. Board (to provide a person with regular meals only) payments to the client, client's spouse, or sponsor(s) shall be considered earned income in the month received. For each boarder, calculate documentable expenses directly related to provision of board. Subtract the result from the board payment to determine the countable earned income.
    - c. Room (to provide a person with lodging only) payments to the client, client's spouse, or sponsor(s) shall be considered earned income in the month received. For each boarder calculate the documentable expenses directly related to the provision of the room. Subtract the result from the room payment to determine the countable earned income.
    - d. Room and board (to provide a person regular meals and lodging) payments shall be considered earned income in the month received. For each boarder, calculate the documentable expenses directly related to the provision of room and board. Subtract the result from the room and board payment to determine the countable earned income.
  3. Appropriate allowances for cost of doing business for a client, client's spouse, or sponsor(s) who is/are a licensed child care provider are:
    - a. For the first child for whom day care is provided, deduct \$55; and,
    - b. For each additional child deduct \$22.
    - c. Subtract the total allowances from the documented expenses to determine the earned income.
    - d. If the client, client's spouse, or sponsor(s) can document a cost of doing business that is greater than the amounts above, the procedure, described in Section 3.520.783.B, shall be used to calculate earned income.
- D. The net profit amount, secured after the appropriate deductions, is earned income.

- E. Self-employment verification may consist of tax documents, self-employment ledgers, receipts, or other documents used for verifying and documenting the self-employment income and expenses. If, at the time of the county department's eligibility determination, a client is recently self-employed or does not have adequate documentation of the self-employment income and expenses, the county department shall use the best information available to determine the monthly income. The client shall be encouraged to keep records of income and expenses for subsequent certifications. No specific verification shall be required and the documentation provided by the client shall be accepted unless questionable.
- F. All self-employment income shall be considered income in the month received. If receipt of self-employment income is irregular, it shall be averaged over a twelve-month period. The twelve-month period can either be the previous tax year (January to December) or the most recent twelve-months prior to the application date.

**3.520.784 DONATED WORK HOURS AND VOLUNTEERISM**

- A. Work hours or personal services, for which monetary compensation is not realized, provided to a business, to a person who is self-employed, or to any other person or business in need of a regular, temporary, or non-traditional employee, such as a seasonal worker, shall be considered countable earned income when the work:
  - 1. Is regular and scheduled; and,
  - 2. Is a necessary service; and,
  - 3. If not performed by the client, client's spouse, or sponsor(s) someone would have to be hired to perform the work; and,
  - 4. Is greater than five (5) hours per week.
- B. If donated work hours or personal services meet these requirements, the value of these hours is determined by:
  - 1. The going rate in the community for similar work; or,
  - 2. The current minimum wage standard, whichever is greater.
- C. Volunteerism for the betterment of the community less than an average of thirty (30) hours per week shall not be considered income. Volunteerism for the betterment of the community includes but is not limited to:
  - 1. Visiting persons in nursing homes, hospitals, etc.;
  - 2. Delivering meals to homebound persons;
  - 3. Providing limited transportation to medical appointments for disabled or aging persons; or,
  - 4. Other opportunities deemed volunteerism for the betterment of the community by the county department using the prudent person principle.

**3.520.785 UNEARNED INCOME**

- A. Unearned income is monetary benefits not earned through employment or self-employment, such as Social Security or other retirement benefits, interest, or investment income.

- B. Countable unearned income includes the following and any other payments that could be construed to be a gain or benefit to the client, client's spouse, or sponsor(s) and which are not earned income.
1. Benefits issued by the SSA.
    - a. Lump sum payments shall be counted as income in the month received. Any unspent amount will be treated as a resource after nine (9) months.
    - b. If the SSA is recovering any portion of the payment from the client, client's spouse, or sponsor(s) due to an overpayment of benefits, Adult Financial program grant payments shall be calculated based on the gross payment, not the received amount.
  2. Pension or retirement payments made by a former employer or from any insurance or other public or private fund.
  3. Disability or survivor's benefits made by an employer or from any insurance or other public or private fund.
  4. Veteran compensation and pension based on service in the armed forces. Such payments may be made by the U.S. Veterans Administration (VA), another country, a state or local government, or other organization. Any portion of a VA pension paid to a veteran for support of a dependent shall be considered countable unearned income to the dependent rather than to the veteran.
  5. Railroad retirement payments, such as sick pay, annuities, pensions, and unemployment insurance benefits, which are paid by the Railroad Retirement Board (RRB) to a client, client's spouse, or sponsor(s) who is or was a railroad worker, or to such worker's dependents or survivors.
  6. Unemployment Compensation.
  7. Union strike benefits.
  8. Amounts withheld from unearned income because of a garnishment.
  9. Workers' Compensation payments awarded under Federal and State law to an injured employee. Payments for medical, legal, or related expenses incurred by the client, client's spouse, or sponsor(s) in connection with such claim are deducted prior to determining the amount of countable unearned income.
  10. Dividends and interest received on financial accounts, savings bonds, leases, etc.
  11. Annuity payments. Payments should be accepted as frequently as possible, e.g. monthly, quarterly, or annually. A lump sum should only be accepted if the previously identified increments are unavailable.
  12. Inheritance.
  13. Gifts and prizes.
  14. Proceeds of a life insurance policy to the extent that they exceed the amount expended by the beneficiary for the purpose of the insured recipient's last illness and burial which are not covered by other benefits.

15. Proceeds of a health insurance policy or personal injury lawsuit to the extent that they exceed the amount to be expended or are required to be expended for medical care.
16. VA educational assistance (G.I. Bill) payments or other military or veterans benefits, which are conditional upon school attendance, are income to the extent that they exceed expenses necessary for school attendance.
17. Income from jointly owned property in a percentage at least equal to the percentage of ownership or, if receiving more than percentage of ownership, the actual amount received.
18. Lease bonuses (oil or mineral) received by the lessor as an inducement to lease land for exploration are income in the month received.
19. Oil or mineral royalties verified through tax documents such as the 1099 from the prior year shall be considered averagable income.
20. Income from rental property is considered as unearned income when the client is not actively managing the property on an average of at least twenty (20) hours a week. Rental income is countable to the extent it exceeds allowable expenses. Allowable expenses are maintenance, taxes, management fees, interest on mortgage, and utilities paid, and do not include the purchase of the rental property and payments on the principal of loans for the rental property.
21. Income derived from monies (or other property acquired with such monies) received pursuant to the "Civil Liberties Act of 1988" (by eligible persons of Japanese ancestry or certain specified survivors, and certain eligible Aleuts), P.L. 100-383, as of August 10, 1988 and are herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available in person at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC 20002 during regular business hours or by mail at the Office of Federal Register, The National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001 or at <https://www.ecfr.gov/>. These regulations are available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library.
22. Payments received from trusts. Such payments can be on behalf of, or to or for the benefit of the client, client's spouse, or sponsor(s), excluding medical or personal attendant care.
23. Alimony and spousal support.
24. Minimum monthly maintenance needs allowance (MMMNA) retained from an institutionalized spouse's income.

**3.520.786 EXEMPT INCOME**

Certain earned and unearned income that is not countable to the client, client's spouse, or sponsor(s) in whole or in part is exempt. Such exempt income is limited to the following:

- A. Income tax refunds, including the Property Tax/Rent/Heat Credit (PTC) rebate, in the month received. Any remaining funds shall be a countable resource after twelve (12) months.

- B. The value of any third party payment for medical care paid on behalf of the client. This exemption also applies to room and board furnished during medical confinement and paid for by a third party.
- C. Home energy assistance granted to the client by a private non-profit organization or home energy supplier, whether in-kind or by voucher or vendor payment.
- D. Emergency or general assistance, other than home energy assistance, received on a one time basis in-cash or in-kind from the county department or other agencies.
- E. Personal care or home care allowance grants paid to the client from a Federal, State or local government program to purchase in-home supportive services shall be exempt as income. However, if the non-recipient spouse is the provider and receives the payment from the client for in-home services it shall be classified as employment income and is subject to deeming.
- F. VA Aid and Attendance is exempt income to the client if used for medical supplies and medical or attendant care not covered by Medicare, Medicaid, or other health insurance programs. The remainder is countable and deducted from the assistance grant.
- G. Educational loans and grants.
- H. Work study income.
- I. Income and resources set aside as part of a Plan to Achieve Self Support (PASS) approved by the SSA.
- J. Compensation received by the client pursuant to the Colorado Crime Victim Compensation Act in Article 4.1 of Title 24, C.R.S.
- K. Unearned income as defined in the Social Security Program Operations Manual System (POMS), Section SI 00830.099 Guide to Unearned Income Exclusions (effective January 20, 2011) and consistent with the provisions of Federal Regulations found at 20 CFR 416.1124 (effective September 7, 2010), which are herein incorporated by reference. This rule does not contain any later amendments or editions. These guidelines are available for no cost at <https://secure.ssa.gov/apps10/poms.nsf/home?readform> (POMS); while the regulations are available for no cost at <https://www.ecfr.gov/>. These guidelines and regulations are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.
- L. Reverse mortgage loan payments.
- M. Payments received for providing foster care. Any amount paid to a provider of foster care in excess of the foster care payment not intended for the care of the child is countable income to the provider.
- N. Child support payments made to the client, client's spouse, or sponsor(s). These payments can either be current or arrearage payments.
- O. Infrequent or irregular income of less than \$60 in a calendar quarter.

**3.520.79 IN-KIND SUPPORT AND MAINTENANCE (ISM) FOR OAP AND AND-CS ONLY**

- A. For certain clients who are not paying their fair share of shelter costs, an ISM amount shall be determined and counted as unearned income.

- B. The ISM calculation does not apply to a client:
1. Who is residing in and owning his or her primary residence; or,
  2. Who is receiving subsidized housing; or,
  3. Who is homeless; or,
  4. Who is paying his or her fair share of shelter costs when shelter costs are market value or greater, even if the fair share is less than the current ISM amount.
    - a. Fair share is calculated by totaling shelter costs and dividing by the number of people living in the household.
    - b. Market value is the amount a landlord or property manager would charge if the dwelling were rented on the open market. Rent may include heating fuel, gas, electricity, water, sewage and garbage collection; or,
  5. Who is paying shelter costs in an amount equal to or greater than the current maximum ISM amount, whether or not the costs are the client's fair share or market value; unless,
  6. A client is receiving SSI and being charged an ISM by the SSA. The client shall be charged a matching ISM for Adult Financial programs, unless good cause is provided due to SSA backlog.
    - a. The client shall be instructed to work with the SSA to remove or reduce the ISM once the client is paying his or her fair share of shelter costs.
    - b. Once the SSA removes or reduces the ISM, the client shall report the change in order to have the Adult Financial ISM removed or reduced.
- C. If the client's declared monthly shelter costs are less than the current maximum ISM amount established for the shelter component and the client is not paying his or her fair share, the county department shall determine the ISM amount to be applied, as follows:
1. If the client's shelter costs are less than the current market value, then the amount the client is actually paying is subtracted from the current maximum ISM amount. The result is counted as in-kind unearned income to the client.
  2. If the shelter costs are market value but the client is paying less than his or her fair share, then the amount the client is actually paying is subtracted from the client's fair share amount or the current maximum ISM amount, whichever is less. The result is counted as in-kind unearned income to the client.
  3. If the client is paying no shelter costs, and all shelter costs are supplied in full, then the current maximum ISM amount is counted as in-kind unearned income to the client.
- D. If the client has an established life estate and the client's shelter costs are being provided in full, an ISM shall be calculated.
- E. The Adult Financial programs maximum ISM shall be determined as follows:
1. The ISM includes shelter costs.

2. The ISM is calculated by multiplying the current SSI benefit standard, as defined in Section 3.510, by 33.33%, then adding a \$20.00 disregard and rounding to the nearest whole dollar.

### **3.530 OLD AGE PENSION (OAP) PROGRAM**

The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet all financial and non-financial eligibility requirements.

- A. The total monthly OAP grant standard, as set by the State Board of Human Services, is \$832.00, effective January 1, 2021.
- B. Effective January 1, 2021, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter costs is \$284.00.

#### **3.530.1 DEFINITIONS**

“OAP” is a program for a client sixty (60) years of age or older.

“OAP-C” is a program for a client age sixty (60) or older who has been committed to the Colorado Mental Health Institute or to a Regional Center by order of the district or probate court.

#### **3.531 DETERMINATION**

- A. The county department shall enter all client, resource, and income information into the statewide automated system.
- B. The client shall have the right to decide how to spend his or her OAP grant payment.
- C. The grant standard for OAP, as listed in Section 3.530.A, shall be adjusted to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations.
- D. In addition to the regular monthly OAP grant payments, supplemental payments necessary to comply with the Federal Maintenance Of Effort (MOE) requirements may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments. The Federal MOE is located in Federal Regulations found at 45 CFR 1321.49 (effective as of 1988 and current through November 7, 2019), which are herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available at no cost at <https://www.ecfr.gov/>. These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

#### **3.532 GRANT PAYMENT DETERMINATION**

- A. OAP grant PAYMENTS shall be calculated on an individual basis, with just one client per case.
- B. When a client has been found eligible based upon eligibility rules as outlined in Sections 3.520.6 and 3.520.7, the amount of the client's authorized OAP grant payment shall be determined by deducting the client's total countable income from the OAP grant standard listed in Section 3.530.A.

1. If determined eligible on the first of the month, the client shall receive his or her authorized grant payment in the initial and subsequent months.
  2. If determined eligible on any other day of the month, the client's first month grant payment shall be prorated according to the number of days remaining in the month; the client shall receive their authorized grant payments in subsequent months.
  3. If a client is receiving services in another Adult Financial (AF) program in the month he or she turns sixty (60) years of age and is otherwise eligible for OAP, the client shall transition from the other AF program to OAP effective the first day of the client's birth month, and receive his or her authorized grant payment for the birthday month and subsequent months.
- C. The OAP grant payment shall be made via Electronic Benefits Transfer, direct deposit, or warrant to the client, to a facility designated by the client, or to a legally designated person, such as a representative payee, fiduciary, or conservator.
- For OAP-C clients, the financial officer of the facility or the client's guardian shall establish a reserve for the client in the amount of the current Personal Needs Allowance (PNA) grant standard for the client's personal needs.
- D. The client shall be eligible only for a monthly PNA when program requirements are met and the client is a resident for at least thirty (30) consecutive days, in one of the following facilities:
1. In a general medical and surgical hospital;
  2. In a nursing home, assisted living residence, or, intermediate care facility, group home, host home, other long-term care facility, or Adult Financial approved setting; or
  3. In a psychiatric facility when sixty-five (65) years of age or older.
- E. The following persons are not eligible for a PNA or OAP grant payments:
1. Inmates in a penal institution; or,
  2. Residents in an unlicensed private or uncertified public facility.
- F. For every full calendar month that the client is a resident in a facility listed in Section 3.532.D, the OAP PNA maximum shall be seventy-nine dollars (\$79), effective October 1, 2016.

### **3.533 INCOME DISREGARDS**

Disregards shall be applied before determining a client's total countable income. If a client's total countable income equals or exceeds the OAP grant standard after the disregards are applied, he or she shall be denied or discontinued following the policies outlined in Section 3.554.

- A. If the client has income, apply the following income disregards:
1. To determine countable earned income:
    - a. Deduct \$65 from the gross earned income; and,
    - b. Divide the remainder by two (2).
    - c. The result is the countable earned income.

2. To determine countable unearned income:
  - a. Determine the client's gross unearned income from all sources.
  - b. Subtract any amount received from SSI.
  - c. Deduct \$20.00 from the remainder.
    - 1) If the client is married, the \$20.00 disregard shall be split equally between the client and the client's spouse so that no more than a \$20.00 disregard is applied for the married couple.
    - 2) A client who receives SSI only, and does not receive any other unearned income, does not receive an unearned income disregard.
  - d. Add the full SSI income back to the remainder.
  - e. The remainder is countable unearned income.
  - f. If the client's gross unearned income is less than \$20.00, the difference between the gross unearned income and the \$20.00 deduction shall be applied to the earned income calculation, if applicable.
- B. Subtract the countable earned and countable unearned income from the OAP grant standard to determine the grant payment amount.

### **3.534 DEEMING INCOME**

- A. To determine the amount of income to deem to a client from a the client's spouse who does not meet the criteria described below in 'C', calculate the countable earned income of the spouse as follows:
  1. Deduct \$65 from the client's spouse's gross earned income; and,
  2. Divide the remainder by two (2); and,
  3. The result is the amount of earned income deemed to the client.
  4. The deemed earned income shall be considered income to the client and shall be deducted, together with any other income, from the grant of the client.
  5. Wages being garnished by the court are countable earned income.
- B. To determine the amount of unearned income to deem to a client from the client's spouse who does not meet the criteria as described below in 'C', calculate the countable unearned income of the spouse as follows:
  1. Calculate the total amount of unearned income of the spouse;
  2. Deduct the OAP grant standard from the total unearned income of the spouse;
  3. Deduct an amount to meet the needs of each dependent child living in the household of the spouse equal to half the maximum SSI grant benefit standard, as defined in Section 3.510, less the dependent child's own income;

4. Deduct any medical care payments by the spouse for his or her dependents who are not covered by Medicare, Medicaid, or other health programs;
  5. Deduct any amount of obligation of the spouse due to orders of judgment or for support by a court, unless there is a garnishment. Income garnished by the court is countable as unearned income.
  6. The remainder is the amount of unearned income deemed to the client.
  7. The deemed unearned income shall be considered income to the client and shall be deducted, together with any other income, from the grant of the client.
- C. If a client's spouse is receiving Adult Financial grant payments, SSI benefits, or Medicaid assistance and has income no greater than the OAP limit, his or her income shall not be considered as available to the client and shall not be deemed. If a client's spouse is institutionalized and the client has retained the minimum monthly maintenance needs allowance (MMMNA), the MMMNA shall be deducted from the institutionalized spouse's total income.
- D. A sponsor's income can only be deemed to the non-citizen client he or she sponsors. The amount of earned and unearned income to deem from a sponsor(s) to a non-citizen client is calculated as follows:
1. The total gross earned and unearned income of the sponsor are added together.
  2. The following deductions are subtracted from the total gross income of the sponsor:
    - A. A deduction for the sponsor equal to the current SSI benefit standard, as defined in Section 3.510, for an individual for the month in which eligibility is being determined; plus,
    - B. A deduction for the sponsor's spouse living in the same household with the sponsor, equal to one-half the current SSI benefit standard. As defined in Section 3.510, for an individual; or a deduction for the sponsor's spouse, who is also a co-sponsor of the non-citizen, equal to the current SSI benefit standard for an individual; plus,
    - C. A deduction equal to one-half the SSI benefit standard, as defined in Section 3.510, for an individual for each person who is a dependent of the sponsor (other than the non-citizen client and the non-citizen client's spouse), as defined in Section 3.520.68.B.2.b.1.
  3. The difference between the total income and the total deductions is deemed as unearned income to the non-citizen client. This deemed income is added to the non-citizen client's own income to determine the total countable income.
  4. The non-citizen client's countable income is compared to the income standard of the Adult Financial program for which the non-citizen client is applying to determine eligibility and/or the grant payment amount.
  5. If more than one non-citizen client has the same sponsor, all of the sponsor's income is deemed to each non-citizen client. Do not divide the sponsor's income among the non-citizen clients.

### **3.540 AID TO THE NEEDY DISABLED STATE ONLY (AND-SO) PROGRAM**

The Aid to the Needy Disabled State Only (AND-SO) program provides interim assistance to clients age eighteen (18) through fifty-nine (59) years of age (unless diagnosed with blindness, then age zero (0) through 59 years of age); who are disabled or blind but have not been approved for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Individuals are required to meet the total disability requirements identified in this section, in addition to the non-financial and financial eligibility requirements. Individuals who are partially disabled or have a short-term disability are not eligible.

- A. The total AND-SO grant standard is \$217.00, effective September 1, 2018.
- B. The grant standard for AND-SO shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations.

#### **3.540.1 DEFINITIONS**

"Blind or blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which has a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less.

"Employment which exists in the community" means there are jobs for which the client has competence located within an area where the client might reasonably be expected to commute (see definition of "reasonable commute"). It does not mean that there are actual job vacancies that the client could fill or that the client would be hired to fill a job vacancy.

"Improvement" related to the client's medical condition means that in comparison to the most recent medical certification, the physical or mental impairment(s) which prevented the client from engaging in SGA has decreased to the point that the client is able to engage in SGA or the client's residual functional capacity has increased to the point that the client is able to engage in SGA.

"Medical provider" means a Colorado licensed physician, psychiatrist, licensed psychologist, licensed clinical social worker, licensed professional counselor, physician's assistant, advanced practice nurse, or registered nurse. The physician may be a general practitioner or a specialist. A medical provider determining blindness shall be an ophthalmologist licensed in Colorado. A medical provider may be licensed in a bordering state when the nearest Colorado provider is more than one hour from the client's home and the provider in the bordering state is closer.

"Reasonable commute" means a commute no further than one hour one way.

"Residual functional capacity" means the client's maximum remaining ability to perform work of any type on a regular and continuing basis despite some disabling limitations.

"Substantial gainful activity (SGA)" means the performance of significant physical and/or mental activities in work for pay or profit, or in work of a type generally performed for pay or profit, regardless of the legality of the work. "Significant activities" are useful in the accomplishment of a job or the operation of a business, and have economic value. Work may be substantial even if it is performed on a part-time basis, or even if the individual does less, is paid less, or has less responsibility than in previous work. Work activity is gainful if it is the kind of work usually done for pay, whether in cash or in kind, or for profit, whether or not a profit is realized. Activities involving self-care, household tasks, unpaid training, hobbies, therapy, school attendance, clubs, social programs, etc., are not generally considered to be SGA.

“Total disability” means a physical or mental impairment which is disabling and which, because of other factors such as age, training, experience, and social setting, substantially precludes the person having such disability from engaging in a useful occupation as a homemaker or as a wage earner in any employment which exists in the community for which he or she has competence, as defined in Section 26-2-103(14)(a), C.R.S.

**3.540.2 AID TO THE NEEDY DISABLED-STATE ONLY (AND-SO) DISABILITY NAVIGATION SERVICES**

- A. AND-SO disability navigation services are available in counties that choose to participate in the program. Counties choosing to participate in the program must enter into an agreement with the state department. The agreement will outline:
1. Data tracking and evaluation requirements.
  2. Ongoing training requirements for staff offering navigation.
  3. The amount of funds allocated to the county.
- B. Annually, funds to operate AND-SO disability navigation services are made available via the following allocation:
1. The department will allocate appropriated funds based on the most recent annual average AND-SO caseload.
  2. Counties will indicate if they will operate the program or regionalize and which county will serve as the fiscal agent.
  3. Any allocated and unspent funds will be pooled and redistributed to counties through the close out process.
  4. The state, with input from counties and stakeholders, will review the allocation formula following each evaluation, but no greater than every five (5) years.
- C. In counties which operate AND-SO disability navigation services, the following services are made available to any AND-SO client residing in the county or service area with a pending AND-SO application or approved AND-SO program. Services may be provided individually or in a group setting, when appropriate.
1. For AND-SO clients who do not have a current pending SSI application, services provided shall include:
    - a. Assistance securing a protected filing date for the SSI application date as soon as possible, but no later than fifteen (15) calendar days from the date of referral to navigation services.
    - b. Assistance developing a thorough, quality application for SSI benefits.
    - c. Assistance submitting the application for SSI benefits when requested by the client and/or serving as the client’s appointed representative with the Social Security Administration (SSA), when requested by the client.
  2. For AND-SO clients who have a pending SSI application, are denied SSI, or who are appealing a denial through SSA, services provided shall include:

- a. Provide prompt response to the SSA and Disability Determination Services (DDS) inquiries, within ten (10) calendar days of the inquiry.
  - b. Outreach to the client as needed to stay connected throughout the determination process.
  - c. Assistance filing reconsiderations and/or appeals of federal disability benefits when requested by the client.
- 3. Additionally, services to all AND-SO clients may include:
  - a. Serving as the client's appointed representative for interactions with the SSA, when requested by the client.
  - b. Communicating as needed with the SSA and DDS regarding the status of clients' claims.
  - c. Writing a comprehensive function report and gathering supporting medical opinions when available.
  - d. Participating in the SSA interview process.
  - e. Making referrals to appropriate medical providers and other professionals whose assessments are required as part of an application for federal disability benefits.
  - f. Collecting medical records, assessments, case management notes and collateral contact information.
  - g. Appointment coordination with doctors, therapists, SSA, etc.
- D. Counties shall ensure that AND-SO disability navigation services are offered by people with an appropriate level of expertise and who are not disqualified or suspended from acting as a representative with the SSA and are not prohibited by any law from acting as a representative. Expertise can be demonstrated by at least one of the following:
  - 1. Being an attorney licensed in Colorado or licensed to appear in any U.S. federal court, in good standing;
  - 2. Obtaining or having SSI/SSDI Outreach, Access, and Recovery (SOAR) certification;
  - 3. Receiving adequate training by a licensed attorney or SOAR certified person and having submitted at least ten applications to the SSA in the past year; or
  - 4. Other certifications or experience approved by the state department in writing or electronically.

### **3.541 DISABILITY REQUIREMENTS**

- A. To qualify for AND-SO, the client must meet both the non-financial and financial eligibility requirements and have a total disability as defined in Section 3.540.1 and pursuant to Sections 26-2-103(14)(a) and 26-2-111(4)(a), C.R.S.
  - 1. To meet the total disability requirement for AND-SO, the client shall be certified by a medical professional as defined by Section 3.541.1.

2. The client must have a physical or mental impairment that is disabling as identified by the SSA in the Listing Of Impairments and consistent with Federal Regulations found at 20 CFR, Appendix 1 to Subpart p of Part 404 (September 24, 2019), which are herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available at no cost at <https://www.ecfr.gov/>. These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.
  3. The total disability must be expected to last six (6) months or longer.
- B. To determine the client's disability the county department shall review and document medical data.
1. The county department shall review State prescribed medical certification form(s) and/or any Medicaid disability determination; and,
  2. The county department shall weigh more heavily a disability determination completed through a Medicaid disability determination process than a medical certification form completed by a medical provider.
- C. The county department shall review all documentation collected to determine if the client is eligible for AND-SO.

#### **3.541.1 MEDICAL CERTIFICATION FORM**

- A. Medical certification shall be completed on the State Department's prescribed medical certification form.
1. The county department shall provide the form to the client or the medical provider at the time of application or interview and prior to the re-examination due date. The client shall arrange for the medical exam with an appropriate medical provider of his or her choosing.
    - a. It is the county department's responsibility to provide the medical form to the client or the client's provider of choice within ten (10) calendar days of application.
    - b. If the client fails to submit the required medical examination within thirty (30) calendar days following the interview, the client has failed to comply with the requirements for eligibility and the client's participation in the program will be denied or discontinued following the policies outlined in Section 3.554.
    - c. If the client requests a second opinion, the subsequent medical examination shall be at the client's expense.
    - d. If the county department requests a second opinion, the subsequent medical examination shall be at the county department's expense.
    - e. The county department shall review the medical certification form for completeness and to determine whether the information submitted is in conflict with other medical data, records, documentation, and information and/or observations received from the client, family, friends, professionals, community members, or the county department. The county department shall:

- 1) Ensure any incomplete forms are returned to the provider to be completed; and,
    - 2) Consult and verify with the provider any questionable or contradictory information.
  2. The medical certification shall be completed and signed by a medical provider as defined in Section 3.540.
    - a. The client shall be allowed to choose a medical provider licensed in a bordering state when the nearest Colorado provider is more than one hour from the client's home.
    - b. The medical certification must be dated no earlier than ninety (90) days before the application or recertification.
  3. The medical certification form shall contain the disability limitations, including the length and scope of the disability, if any; and,
  4. The medical re-examination date shall be based upon the date of the application or redetermination and the length of the disability, as documented by the medical provider, but shall not exceed twelve (12) months. However, if the client has been determined disabled by the State disability review contractor, the medical re-examination date shall be established by the review contractor.
- B. The medical examination determining the client's disability and completion of the medical certification form shall be completed by a medical provider that accepts Medicaid whenever possible when the client is receiving Medicaid. If the client's primary medical provider does not accept Medicaid or the client is not receiving Medicaid, the county department shall authorize payment for examinations for AND-SO medical certification examinations.
  1. Fees and costs shall be reimbursed to the county department using the 80% State share, 20% county share reimbursement methodology described in Section 26-1-122(3)(B), C.R.S.
  2. The county department shall set the provider fee and shall make such payments in a timely manner.
  3. Providers shall accept fees for services as negotiated as payment in full. No client shall be assessed any additional or supplementary fee.
  4. Providers may be excluded from completing medical certification examinations if there is adequate documentation that the provider:
    - a. Is not completing a thorough examination on which to base his or her decision; or,
    - b. Falsified a medical certification form.
- C. A determination of medical eligibility shall be completed by each medical re-examination date. The county department shall be allowed to request the client submit a medical re-examination at the time of financial redetermination or when the county has information that the client's medical condition may have changed.

1. Prior to the medical re-examination due date, the county department shall send a new medical certification form to the client.
2. If the client fails to submit the required medical re-examination by the redetermination due date, the county department shall terminate assistance following the policies outlined in Section 3.554.

**3.541.2 DENIAL AND DISCONTINUATION RELATED TO DISABILITY**

- A. Following the policies outlined in Section 3.554, the county department shall deny or discontinue AND-SO assistance when:
1. There was an error in the prior disability determination. The county department shall gather more information on the discrepancies before taking a negative action on the case; or,
  2. There has been improvement in the client's medical condition and the client is no longer totally disabled, as defined in Section 3.540.1. Improvement may be demonstrated by:
    - a. Observations, symptoms, or other findings which demonstrate positive changes in the client's medical condition; or,
    - b. Observations, symptoms, or other findings which demonstrate that the effect of the medical impairment(s) on the client has decreased.
    - c. New medical evidence which shows that while the client's underlying condition may not have changed, advances in medical therapy or technology have reduced or eliminated the adverse effect of the condition on the client; or,
    - d. New or improved diagnostic techniques or other medical evaluations show that the client's previously determined medical condition is not as serious as previously indicated; or,
    - e. There has been a change in prognosis; or,
    - f. The client has compensated or adjusted to the medical condition which now enables the client to engage in SGA; or,
    - g. The client's medical condition is correctable and the client refuses, without good cause, to obtain prescribed medical treatment to correct the condition. Good cause may include, but is not limited to:
      - 1) Treatment is contrary to the established teachings of the client's religion, provided the client can establish he or she observes his or her religion; or,
      - 2) Surgery has previously been performed with unsuccessful results and the same surgery is again being recommended for the same impairment; or,
      - 3) The treatment because of its magnitude (e.g., open heart surgery or organ transplant that has less than a 50% chance of improving the client's condition) or unusual nature (e.g., experimental procedures) is very risky; or,

- 4) The cost of treatment is prohibitive or cannot be obtained; or,
3. There has been improvement in the client's residual functional capacity and the client is not totally disabled, as defined in Section 3.540.1. Improvement may be demonstrated by:
  - a. Observations, symptoms, or other findings which demonstrate positive changes in the client's residual functional capacity; or,
  - b. Observations, symptoms, or other findings which demonstrate that the effect of the social factors impacting residual functional capacity on the client has decreased; or,
  - c. New evidence shows that while the client's underlying condition may not have changed, the client's vocational abilities and/or residual functional capacity has so improved that the client is able to engage in SGA; or,
  - d. Vocational opportunities for which the client has competence have become available in the community; or,
  - e. The client has compensated or adjusted to the social factors impacting residual functional capacity and the client is able to engage in SGA; or,
  - f. Residual functional capacity is not a barrier to employment in some type of employment that exists in the community.
- B. If the county department has documented evidence that a client is working and receiving earnings exceeding the AND-SO grant standard after applicable disregards as an employee, engaged in self-employment, or donating services or work hours without pay as defined in Section 3.520.784, the county department shall deny or discontinue the client from AND-SO grant payments following the policies outlined in Section 3.554.

### **3.541.3 DISABILITY DUE TO SUBSTANCE ABUSE**

For the purpose of AND-SO, when the client's primary diagnosis is alcoholism or controlled substance addiction, the following criteria shall apply pursuant to Section 26-2-111(4)(E), C.R.S.:

- A. The client shall only be eligible for twelve (12) cumulative months in a lifetime when substance abuse is identified on the medical certification form.
- B. The client shall agree to treatment for addiction to be eligible for AND-SO. Upon consent, the county department shall refer the client to an assessment/treatment agency licensed by the State Department's Office of Behavioral Health.
- C. The client shall agree to a defined treatment program by the licensed agency.
- D. If the client fails to comply with treatment, the following steps shall be followed:
  1. The treatment center shall contact the county department within twenty-four (24) hours of the client's termination from treatment; and,
  2. The county department shall discontinue the client's AND-SO assistance immediately upon termination from treatment effective the following month with timely notice provided.

- E. The client shall submit to random testing by the licensed agency to ensure the client remains free of alcohol or controlled substance(s).
- F. Any time a client tests positive for alcohol or controlled substance(s), the client shall be warned by the treatment center in writing. A copy of the written warnings shall be placed in the client's file and noted as either mailed or hand delivered. If a client tests positive for alcohol or controlled substance(s) twice in any three-month period, the county department shall be notified and the client shall be terminated from AND-SO immediately effective the following month with timely notice provided.
- G. The initial partial month is not counted toward the twelve-month maximum allowed. However, if a client is discontinued and subsequently reapplies and is approved, partial months after re-approval will count as a full month toward the twelve-month maximum allowed.

**3.542 DETERMINATION OF ELIGIBILITY**

- A. The county department shall enter all client, resource, and income information into the statewide automated system.
- B. Eligibility shall begin with the date of application or the date the client meets all eligibility requirements, whichever is later.

**3.543 GRANT PAYMENT DETERMINATION**

- A. AND-SO grant payments shall be calculated on an individual basis with just one client per case.
- B. When a client has been found eligible, the amount of the client's authorized AND-SO grant payment shall be determined by deducting the client's total countable income from the AND-SO grant standard.
  - 1. If determined eligible on the first of the month, the client shall receive his or her authorized grant payment in the initial and subsequent months.
  - 2. If determined eligible on any other day of the month, the client's first month grant payment shall be prorated according to the number of days remaining in the month; the client shall receive their full authorized grant payment in subsequent months.
- C. The AND-SO grant payment shall be made via Electronic Benefits Transfer, direct deposit, or warrant to the client, to a facility, or to a legally designated person, such as a representative payee, fiduciary, or conservator.
- D. The client shall be eligible only for a monthly PNA when program requirements are met and the client is a resident of a facility at least thirty (30) consecutive days, as follows:
  - 1. In a general medical and surgical hospital;
  - 2. In a nursing home, assisted living residence, or, intermediate care facility, group home, host home, other long-term care facility, or Adult Financial approved setting.
- E. The following persons are not eligible for a PNA or AND-SO grant payments:
  - 1. Inmates in a penal institution; or,
  - 2. Residents in an unlicensed private or uncertified public facility.

- F. For every full calendar month that the client is a resident in an approved facility, the AND-SO Personal Needs Allowance maximum shall be seventy nine dollars (\$79) effective October 1, 2016.

**3.544 AND-SO INCOME DISREGARDS AND DEEMED INCOME**

Disregards shall be applied before calculating a client's total countable income. If a client's total countable income equals or exceeds the AND-SO grant standard after the disregards are applied, he or she shall be denied following the policies outlined in Section 3.554.

- A. If the client has earned income, apply the following income disregards:
1. Deduct \$65 from the gross earned income; and,
  2. Divide the remainder by two (2).
  3. The result is the countable earned income.
- B. If the client has unearned income, apply the following income disregards:
1. Determine the client's gross unearned income from all sources.
  2. Deduct \$20.00. If the client is married, the \$20.00 disregard shall be split between the client and the spouse so that no more than a \$20.00 disregard is applied.
  3. The result is countable unearned income.
- C. Subtract the countable earned and countable unearned income from the AND-SO grant standard to determine the grant payment amount.
- D. A portion of the earned income of the AND-SO client's spouse shall be deemed to the client, as follows:
1. Deduct sixty five dollars (\$65) from the spouse's gross earned income; and,
  2. Divide the remainder by two (2); and,
  3. The result is the amount of earned income deemed to the client.
  4. The deemed earned income shall be considered income to the client and shall be deducted, together with any other income, from the grant of the client.
  5. Wages being garnished by the court are countable earned income.
- E. A portion of the unearned income of the AND-SO client's spouse shall be deemed to the client, as follows:
1. Determine the spouse's unearned monthly gross income.
  2. Deduct \$20.00 unless the client also has unearned income. The \$20.00 disregard shall be split between the client and the client's spouse so that no more than a \$20.00 disregard is applied.
  3. The result is deemed to the client.

- F. If a client's spouse is receiving Adult Financial grant payments, SSI benefits, or Medicaid assistance and has income no greater than the SSI limit, their income shall not be considered as available to the client and shall not be deemed. If a client's spouse is institutionalized and the client has retained the minimum monthly maintenance needs allowance (MMMNA), the MMMNA shall be deducted from the institutionalized spouse's total income.
- G. A sponsor's income can only be deemed to the non-citizen client he or she sponsors. The amount of earned and unearned income to deem from a sponsor(s) to a non-citizen client is calculated as follows:
1. The total gross earned and unearned income of the sponsor are added together.
  2. The following deductions are subtracted from the total income of the sponsor:
    - a. A deduction for the sponsor equal to the current SSI benefit standard for an individual, as defined in Section 3.510; plus
    - b. A deduction for the sponsor's spouse living in the same household with the sponsor, equal to one-half the current SSI benefit standard for an individual, as defined in Section 3.510; or a deduction for the sponsor's spouse, who is also a co-sponsor of the non-citizen, equal to the current SSI benefit standard for an individual; plus
    - c. A deduction equal to one-half the SSI benefit standard for an individual, as defined in Section 3.510, for each person who is a dependent of the sponsor (other than the non-citizen client and the non-citizen client's spouse).
  3. The difference between the total income and the total deductions is deemed as unearned income to the non-citizen client. This deemed income is added to the non-citizen client's own income to determine the total countable income.
  4. The non-citizen client's countable income is compared to the income standard of the Adult Financial program for which the non-citizen client is applying to determine eligibility and/or the grant payment amount.
  5. If more than one non-citizen client has the same sponsor, all of the sponsor's income is deemed to each non-citizen client. Do not divide the sponsor's income among the non-citizen clients.
- H. The county department shall determine all countable earned and unearned income available from the client, the spouse, and the sponsor(s). The total shall be deducted from the AND-SO grant to determine the client's grant payment amount.

**3.545 INTERIM ASSISTANCE REIMBURSEMENT (IAR)**

- A. AND-SO payments made while an SSI claim is pending, in suspense, terminated, or in appeal shall be classified as interim assistance. At the time of application, the SSI payment procedure shall be explained to the client.
1. All AND-SO payments made to the client are recoverable upon approval for SSI benefits. If the first retroactive SSI payment is sent to the client, rather than the county department, he or she is required to repay any AND-SO grant payments from such lump sum for months he or she was determined eligible for SSI.

2. As a condition of eligibility for AND-SO the client shall be required to sign the IM-14, as defined in Section 3.510, at application and at least annually allowing recovery of the funds from the first retroactive SSI payment. This form must also be completed at every redetermination and whenever the client's case is transferred to another county. The form must include the selection of one payment designation; client's signature and date; a county representative's signature and date, which shall not predate the client's signature and date; and all requirements for the interim assistance agreement including the applicable county Social Security Grant Reimbursement (GR) Code as described in the SSA Interim Assistance Reimbursement State Handbook, Section 4 (November 30, 2018) which is herein incorporated by reference. This rule does not contain any later amendments or editions. This handbook is available for no cost at [https://www.ssa.gov/gso/eiar/eiar\\_internethandbook.pdf](https://www.ssa.gov/gso/eiar/eiar_internethandbook.pdf). This handbook is also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.
  - a. The county shall notify the SSA within 30 calendar days of obtaining a valid IM-14, as defined in Section 3.510, if the notification exceeds 30 calendar days, the county department shall be required to obtain a new valid IM-14 from the client.
  - b. The county department shall be required to review the "IAR Transactions Rejected By SSA Report" in the statewide automated system, Cognos report platform, and shall take all necessary actions to resolve any discrepancies within thirty (30) calendar days of the original transmission date.
- B. Within ten (10) working days of receipt of the reimbursement from SSA, the county department shall complete and send to the client the Apportionment Notice (IM-19), as defined in Section 3.510, to include the amount of the interim assistance payments made, by month, for all counties that provided AND-SO payments to the client. If the county department recovers excess IAR funds from the initial SSI retroactive payment, the county must reimburse the Social Security Administration utilizing the State prescribed form, within three (3) business days of the mailing of the IM-19.
- C. The accounting of payments made shall be entered in the Federal SSA eIAR data system. The Federal SSA eIAR data system records the accounting of payments made. After processing this information, it issues payments to the county department and distributes the remainder, if any. Recoveries directly from a retroactive SSI payment can only be made from the first such payment.
- D. When the SSI payment is received by the client, the county department shall consider the payment as income in the month received.
- E. In the event that a client receives the initial retroactive SSI payment directly, the county department shall establish a recovery from the client.
  1. The county department may agree to recover interim payments by periodic payments or through a lump sum recovery.
  2. Any such recovery(ies) made shall be coded as IAR Recovery(ies).
  3. Any amount recovered in the same month as the month in which the retroactive payment was received shall not be counted as income.

- F. The county department shall not pay any portion of its share of the Federal SSI lump sum payment to the client or to any third party for legal, professional, or other fees incurred by the client in securing SSI benefits. All of the IAR payment shall be used to reimburse the AND-SO program for grant payments paid to the client as interim assistance in accordance with the agreement between the Colorado Department of Human Services and the Social Security Administration. The client is not required to obtain legal or other third party representation in order to apply for and/or obtain SSI benefits, and the client is solely responsible for any fees incurred in this process.
- G. If an SSI client's SSI payment is suspended or terminated, the client may apply for AND-SO and complete the IM-14, as defined in Section 3.510.
- H. The county department that filed the original IM-14, as defined in Section 3.510, for an AND-SO client shall be the County of Record. The County of Record acting as an agent of the State shall:
  - 1. Collect and apportion all AND-SO grant payments for all county departments that have provided AND-SO grant payments; and,
  - 2. Account for all AND-SO payments to the Social Security Administration (SSA) timely; and,
  - 3. Make an accounting in the statewide automated system for any reimbursement received. Non-system determined claims (NSDC) shall not be entered for IARs without State Department approval.
- I. The county department shall maintain records of the IAR case for four (4) years from the end of the Federal fiscal year in which the IAR was processed.
- J. The county department shall comply with other regulations that the State Department finds necessary to administer the interim assistance provisions.

### **3.546 AID TO THE NEEDY DISABLED-COLORADO SUPPLEMENT (AND-CS) PROGRAM**

The Aid to the Needy Disabled-Colorado Supplement (AND-CS) program provides a supplemental payment for client's age zero (0) to fifty-nine (59) who are receiving SSI due to a disability or blindness, but are not receiving the full SSI benefit standard, as defined in Section 3.510.

- A. The total AND-CS grant standard is \$794.00, effective January 1, 2021.
- B. The grant standard for AND-CS shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations.
- C. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the Federal MOE requirements, as incorporated by reference in Section 3.531.D, may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.
- D. Effective January 1, 2021, the maximum ISM amount for shelter costs is \$284.00.

**3.547 DETERMINATION**

- A. To meet the disability eligibility requirement for AND-CS, the client must be approved for SSI due to a disability or blindness. The county department shall verify SSI eligibility through SVES or SDX and document in the statewide automated system case comments.
- B. The county department shall enter all client, resource, and income information into the statewide automated system.
- C. The client shall have the right to decide how to spend his or her AND-CS grant payment.
- D. If a client is terminated from SSI, the client shall lose eligibility for the AND-CS program.

**3.548 GRANT DETERMINATION**

- A. AND-CS grants shall be calculated on an individual basis with just one client per case.
- B. When a client has been found eligible the amount of the client's authorized AND-CS grant payment shall be determined by deducting the client's total countable income from the AND-CS grant standard.
  - 1. If determined eligible on the first of the month, the client shall receive his or her authorized grant payment in the initial and subsequent months.
  - 2. If determined eligible on any other day of the month, the client's first month grant payment shall be prorated according to the number of days remaining in the month; the client shall receive their authorized grant payment in subsequent months.
- C. The AND-CS grant payment shall be made via Electronic Benefits Transfer, direct deposit, or warrant to the client, to a facility, or to a legally designated person, such as a representative payee, fiduciary, or conservator.
- D. The client shall only be eligible for a monthly Personal Needs Allowance (PNA) when program requirements are met and the client is a resident of a facility for at least thirty (30) consecutive days, as follows:
  - 1. In a general medical and surgical hospital;
  - 2. In a nursing home, assisted living residence, or, intermediate care facility, group home, host home, other long-term care facility, or Adult Financial approved setting.
- E. The following persons are not eligible for a PNA or AND-CS grant payments:
  - 1. Inmates in a penal institution; or,
  - 2. Residents in an unlicensed private or uncertified public facility.
- F. The AND-CS Personal Needs Allowance maximum shall be seventy-nine dollars (\$79) effective October 1, 2016. The AND-CS grant shall not be reduced until the month following the first full calendar month that the client is a resident in an approved facility.
- G. If the Social Security Administration (SSA) is recovering any portion of the client's SSI payment due to an overpayment of benefits, AND-CS shall be calculated based on the gross SSI payment and not the received amount.

**3.549 AND-CS INCOME DISREGARDS AND DEEMED INCOME**

- A. If the client has income, apply the following income disregards:
1. To determine countable earned income:
    - a. Deduct \$65 from the monthly gross income; and,
    - b. Divide the remainder by two (2).
    - c. The result is the countable earned income.
  2. To determine countable unearned income:
    - a. Determine the client's unearned income from all sources.
    - b. Subtract any amount received from SSI.
    - c. Deduct \$20 from the remainder.
      - 1) If the client is married, the \$20 disregard shall be split between the client and the spouse so that no more than a \$20.00 disregard is applied for the married couple.
      - 2) A client who receives SSI only, and does not receive any other unearned income, does not receive an unearned income disregard.
    - d. Add the full SSI income back to the remainder.
    - e. The result is the countable unearned income.
    - f. If the client's unearned income is less than \$20.00, the difference between the gross unearned income and the \$20.00 deduction shall be applied to the earned income calculation, if applicable.
- B. Subtract the countable earned and countable unearned income from the AND-CS grant standard to determine the grant payment amount.
- C. A portion of the earned income of an AND-CS client's spouse shall be deemed to the client, as follows:
1. Determine the spouse's monthly gross income.
  2. Deduct \$65.00 from the monthly gross income; and,
  3. Divide the remainder by two (2).
  4. The result is the amount deemed to the client.
- D. A portion of the unearned income for the AND-CS client's spouse shall be deemed to the client, as follows:
1. Determine the spouse's monthly gross unearned income.

2. Deduct any remaining unearned income disregard remaining from the client or \$20.00, whichever is less. A couple shall be allowed a combined \$20.00 disregard, which is split between the client and the spouse.
  3. The result is countable unearned income and is deemed to the client.
- E. When the AND-CS client is an unemancipated child under eighteen (18) years of age, the earned and unearned income of the child and the child's parents shall be subject to disregards and deeming, as outlined above. The parents' income shall be deemed using the same calculations as a spouse.
- F. If a spouse or parent is receiving Adult Financial grant payments, SSI benefits, or Medicaid assistance and has income no greater than the SSI limit, their income shall not be considered as available to the AND-CS client and shall not be deemed. If a spouse is institutionalized and the client has retained the MMMNA, the MMMNA shall be deducted from the institutionalized spouse's total income.
- G. A sponsor's income can only be deemed towards the non-citizen client he or she sponsors. The amount of earned and unearned income to deem from a sponsor(s) to a client is calculated as follows:
1. The total gross earned and unearned income of the sponsor are added together.
  2. The following deductions are subtracted from the total income of the sponsor:
    - a. A deduction for the sponsor equal to the current SSI benefit standard, as defined in Section 3.510, for an individual for the month in which eligibility is being determined; plus
    - b. A deduction for the sponsor's spouse living in the same household with the sponsor, equal to one-half the current SSI benefit standard, as defined in Section 3.510, for an individual; or a deduction for the sponsor's spouse, who is also a co-sponsor of the non-citizen client, equal to the current SSI benefit standard for an individual; plus
    - c. A deduction equal to one-half the SSI benefit standard, as defined in Section 3.510, for an individual for each person who is a dependent of the sponsor (other than the non-citizen client and the non-citizen client's spouse).
  3. The difference between the total income and the total deductions is deemed as unearned income to the non-citizen client. This deemed income is added to the non-citizen client's own income to determine the total countable income.
  4. Compare the non-citizen client's countable income to the income standard of the Adult Financial program for which the non-citizen client is applying to determine eligibility and/or the grant payment amount.
  5. If more than one non-citizen client has the same sponsor, all of the sponsor's income is deemed to each non-citizen client. Do not divide the sponsor's income among the non-citizen clients.
- H. The county department shall determine all countable earned and unearned income available from the client, the spouse/parents, and the sponsor(s). The total shall be deducted from the AND-CS grant standard to determine the client's grant payment amount.

**3.550 FINANCIAL REDETERMINATION**

- A. A redetermination of eligibility shall mean a case review/determination of necessary information and verifications to determine ongoing eligibility every twelve (12) to twenty-four (24) months for OAP and at least every twelve (12) months for AND. The eligibility period for OAP shall be determined by the statewide automated system based on the following factors:
1. OAP cases shall be redetermined, at a minimum, every twenty-four (24) months when:
    - a. There is no earned income; and,
    - b. The value of the client's countable resources are at least two hundred dollars (\$200) under the client's resource limit, as defined in Section 3.520.72.A.
  2. All other OAP cases shall be redetermined every twelve (12) months, at a minimum.
- B. Clients shall file their redetermination with the county department by the fifteenth (15th) of the month as specified in the redetermination packet.
1. A client's failure to file a redetermination timely may delay the determination of benefits and grant payments.
  2. The county department must make an eligibility decision on complete, timely-received forms on or before the last day of the month in which the forms were due.
  3. Complete forms received between the 16th and the last day of the month the redetermination is due must be approved or denied as soon as possible. The county department will have ten (10) days to act on such redeterminations, to include scheduling and conducting the interview and requesting any necessary verification. The county must make an eligibility decision on redetermination forms received between the 16th and last day of the month within thirty (30) days from receipt of such redetermination.
- C. The county department shall schedule and conduct an interview with the client at each redetermination.
1. The client shall be offered an in-person interview.
  2. If the client does not elect an in-person interview, the county shall schedule a phone interview.
  3. The client shall be provided written notice at least four (4) days in advance of the scheduled interview. The client may provide a written or verbal waiver that written notice of the scheduled interview is not necessary when the county department is able to conduct the interview during redetermination processing. Written notice shall include:
    - a. The date and time for the interview;
    - b. Identification of any documentation that may be needed; and
    - c. The opportunity to reschedule the appointment or make other arrangements in the event of good cause.
  4. When the client does not keep the interview appointment and does not request an alternate time or arrangement, as described in Section 3.520.4.C, grant payments will be discontinued following the policies outlined in Section 3.554.

- D. To redetermine eligibility a case review must be conducted and necessary verification must be received to determine ongoing eligibility.
1. If the client is approved and is receiving SSI benefits and has no other earned or unearned income, the income and resources received through the Federal State Data Exchange (SDX) or the Federal State Verification Eligibility System (SVES) interface shall be considered verified upon receipt.
    - a. The county department shall review non-financial eligibility and verify any changes; and,
    - b. If the county department has obtained or received information related to income, resources, or non-financial eligibility requirements that is contrary to the SDX or SVES interfaces, the county department shall independently verify the information; and,
    - c. The county department shall forward such contrary information to the local Social Security Administration office.
  2. During the redetermination process and prior to eligibility determination, the county worker shall:
    - a. Conduct an interview;
    - b. Explain the purpose of the interview and the use of the information supplied by the client on the redetermination form and any additional required forms;
    - c. Inform the client in writing that Social Security Numbers will be used to request and exchange information with other agencies as part of the eligibility process, including the Department of Labor and Employment (State wage and unemployment data), and the Social Security Administration;
    - d. Have the client complete the form(s) or provide assistance to the client in completing the form(s);
    - e. Explain the appeal rights to the client as outlined in Section 3.587;
    - f. Witness the signature of the client and sign as a person who helped complete the form(s), when applicable;
    - g. Review documents, verifications, and any other information supplied by the client with the client in order to obtain clarification if needed;
    - h. Request updated verifications for income, resources, and non-financial eligibility requirements which have changed. This may include, but is not limited to:
      - 1) Newly declared, such as a new vehicle;
      - 2) Previously declared, such as a change in marital status; and,
      - 3) Changes from the previous redetermination, such as closure of a bank account.

- E. Any time while receiving Adult Financial program grant payments, if there is questionable information regarding the circumstances of a household or the county department receives information about changes in a household's circumstances but cannot determine the effect of those changes on grant payments, the county worker can request a contact. The county department shall send a request for contact notice requesting the client attend an interview appointment. The interview should be in-person unless good cause applies which would allow for a phone interview in lieu of the in-person interview. If the client does not attend the interview appointment or request an alternate time or arrangement, as specified in Section 3.520.4.C, the case shall be discontinued. The county department shall make a request for contact when:
1. It receives information that would contradict eligibility or that is questionable; or,
  2. It suspects possible fraud; or,
  3. It receives direction to do so from the State Department; or,
  4. It is otherwise reasonable to do so under the prudent person principle.
- F. Forms that the client is required to complete shall be mailed to the client at least thirty (30) calendar days prior to the first of the month in which the eligibility redetermination is due. This is considered the prior notice period. A review of the case record will indicate the forms required based on individual case circumstances. Mail-out redeterminations shall be conducted as follows:
1. A redetermination form shall be mailed to the client;
  2. Form(s) shall be completed, signed by the client, and returned to the county department no later than redetermination due date; and,
  3. When the client is unable to complete the form(s) due to physical, mental, or emotional disabilities, and has no one to help, the county department shall assist the client to complete the form(s), unless there is another available legal or other resource that is willing and able to assist the client.
  4. When the client is unable to complete the redetermination packet in a timely manner due to good cause, the county department shall extend the due date up to thirty (30) calendar days. The assistance or referral action of the county department shall be recorded in the case record.
- G. When the county department receives the completed redetermination packet, it shall:
1. Date stamp the redetermination form(s) and corresponding verification.
  2. Thoroughly review the redetermination packet for completeness, accuracy, and consistency. All factors shall be evaluated as to their effect on eligibility and payment.
    - a. If the client failed to sign the redetermination packet, the redetermination packet shall be returned to the client for signature with instructions to return the signed packet before the end of the client's eligibility period. An unsigned redetermination packet shall be considered incomplete and shall not be processed by the county department.
    - b. If the redetermination packet is incomplete, the county department shall ask additional clarifying questions and request all necessary verification.

3. Review the Redetermination packet for changes to:
  - a. Non-financial eligibility requirements, as outlined in Section 3.520.6; and,
  - b. Resources, as outlined in Section 3.520.72; and,
  - c. Income, as outlined in Section 3.520.78.
4. Document verifications in the case file, utilizing the process described in Section 3.520.4.D. The case file shall be used as a checklist in the redetermination process, and shall be used to keep track of matters requiring further action. When additional information is needed:
  - a. Due to incomplete form(s) or lack of verification, a notice shall be mailed to the client. The notice shall specify the items that are required for a redetermination to be completed in order to determine eligibility and/or payment;
  - b. Due to inaccurate or inconsistent data, the client may be contacted by telephone or be requested to make an office visit, to secure the proper information. Collateral contacts and interfaces shall be used to gather information whenever possible.
- H. If the redetermination form is timely received but is incomplete, a correction notice shall be sent to the client advising the client that the redetermination form is incomplete and must be corrected by the last day of the month in which the forms were due to avoid termination and/or the county department shall work with the client to complete the form.
- I. When the information provided on the redetermination form, or otherwise provided by the client, is the basis for reduction in the amount of assistance or in termination of assistance follow the policies outlined in Section 3.554.

### **3.551 LATE REDETERMINATIONS**

When a client fails to return his or her redetermination packet by the last day of the month of the expiring eligibility period, the client's case shall be discontinued following the policies outlined in Section 3.554.

- A. If the client returns the redetermination packet within thirty (30) calendar days after discontinuation, the following processing requirements shall be implemented:
  1. If the client has good cause, the client's grant payments shall be reinstated. There shall be no break in the client's grant payments. The county department will have ten (10) days to act on such redeterminations, to include scheduling and conducting the interview and requesting any necessary verification. The county must make an eligibility decision on redetermination forms received within thirty (30) calendar days after discontinuation within thirty (30) days from receipt of such redetermination.
  2. If the client does not have good cause, the county department shall use the redetermination packet as a new application. The date of the new application shall be the date the county department received the redetermination packet. There shall be a break in the client's grant payments.
- B. If the client returns the redetermination packet thirty-one (31) or more days after the discontinuation, the county department shall require the client to complete a new application. This will result in a break in the client's grant payments.

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**3.552 REPORTING CHANGES**

- A. When a client is certified for Adult Financial grant payments, a certification period is assigned. During the certification period, the client is required to report and provide verification of changes applicable to eligibility. Examples of changes include, but are not limited to, income, marital status, household composition, shelter costs, resources, and citizenship status. If a client does not report changes as required and as a result is overpaid grant payments, the client will be held liable for repaying any grant payments he or she was not eligible to receive.
- B. Some changes may be reported directly to the county department through interfaces. Unless otherwise specified in Section 3.520.5, information that is received through interfaces is considered verified upon receipt and is not subject to additional verification by the client. The date of the change for this information shall be considered the date the information is reported to the county through an interface. The county department shall act on these changes within ten (10) calendar days of the date of the change, unless otherwise prescribed in Section 3.520.5.
- C. Clients shall be required to report and provide verification of changes in circumstances by the 10th of the month following the month in which the change occurred. The county department has up to ten (10) calendar days to act on the information from the date the change is reported and verified, as outlined in Section 3.553.
- D. The client shall be allowed to report changes in person, by telephone, in writing, or electronically. Changes reported by the client by telephone, electronically, or in person shall be acted upon in the same manner as those reported in writing. If reporting by mail, clients will have met the reporting requirement provided the envelope is postmarked by the 10th of the month following the month in which the change occurred.
- E. If additional verification is required to process the reported change, the client shall be notified of the verification needed and the deadline for submitting required verification to the county department, utilizing the process described in Section 3.520.4.D. The notice shall inform the client that the change must be verified prior to action being taken by the county department if grant payments are to be increased.
- F. When a change in client circumstances occurs and the county department has determined that a client has failed to cooperate in providing verification necessary to determine eligibility, the client's eligibility shall be terminated following written timely notice. Clients experiencing difficulty in obtaining necessary verification shall be assisted by the county department either in obtaining the documentary evidence or by making a collateral contact. The county department must ensure that the client was notified of the needed verification and at least eleven (11) calendar days was allowed to obtain the verification.

**3.553 ACTION ON CHANGES**

- A. A change shall be considered to be reported as of the date the county department is notified of the change. A change shall be considered verified as of the date the county department receives verification of the change. If a change is reported and verified by the tenth (10th) of the month following the date of the change, the change shall be considered timely reported by the client.
- B. The county department shall process the change within ten (10) calendar days from the date the change was verified, to be considered timely processed by the county department. Changes reported by clients shall be documented in the case record to indicate the change, the date the change was reported, and the date the change was verified. If the change causes a change to the client's grant, a notice of action form shall be issued to inform the client of the change.

- C. Changes shall be acted upon as follows:
1. Changes that result in an increase in grant payments shall take effect the month following the month the change was verified by the client. Due to the time required for processing by the county department, receipt of any increase in grant payments may be delayed beyond the month following the month of the change.
  2. Changes that result in a decrease in grant payments or total ineligibility shall affect a case following the policies outlined in Section 3.554.
- D. If grant payments are over-paid because a client fails to timely report and/or timely verify changes in circumstances or income as required, a claim shall be established and a notice of overpayment and a public assistance repayment agreement form referenced in Section 3.582.B.4. will be mailed. If the over-payment is discovered within the certification period, the client must be given written timely notice if grant payments are to be reduced.

**3.554 TIMELY AND ADEQUATE NOTICE**

- A. The county department and/or the Single Entry Point (SEP) shall notify a client of any change from his or her prior grant payment amount, the reason for the action, and the date the action becomes effective in writing.
- B. Clients shall receive written timely notice, giving at least eleven (11) calendar days advance notice before any adverse action, such as a grant payment reduction, suspension, termination or denial, becomes effective during the certification period, except as specified in Section 3.554.C. The notice shall explain the reason for the proposed action and the date the action becomes effective.
1. When acting on a change in accordance with Section 3.553, if the eleven (11) calendar day timely notice period can be given within the month the written timely notice is sent, the change will become effective the first day of the following month.
  2. If the 11 calendar day timely notice period concludes in the following month, the change shall become effective the first day of the month after which the timely notice period concluded.
  3. If the timely notice period ends on a weekend or holiday and a request for a state level fair hearing and continuation of grant payments is received the first business day after the timely notice period, the request shall be considered timely received.
- C. Adequate notice, not timely notice, is required in the following situations:
1. When facts indicate an overpayment because of probable fraud or an intentional program violation and such facts have been verified to the extent possible, prior notice shall be mailed at least five (5) calendar days before the proposed effective date.
  2. The county department has determined that the State prescribed medical certification has expired.
  3. The county department and/or SEP has determined that the client has stopped receiving Home Care Allowance (HCA) and is now receiving Home and Community Based Services (HCBS).
  4. The client has died.

5. The client has provided a clear statement which states that he or she no longer wishes to receive assistance/services.
  6. The client begins receiving SSI or SSDI. A claim to recover the AND-SO or Colorado Supplement grant payments that are issued in the same month that the SSI or SSDI benefits are received shall be created and the client shall be liable to repay the AND-SO or Colorado Supplement grant payments that were issued.
  7. At application or redetermination, when a certification period has not yet been set.
- D. If the change in circumstances requires a reduction or termination of grant payments, the following action will be required:
1. Send a written timely notice.
  2. If a client requests a county conference, conduct the county conference as specified in Section 3.586. If a client is dissatisfied with the results of the county conference and requests a state level fair hearing before an Administrative Law Judge, such a request shall be in accordance with Section 3.587.  
  
If a client does not request a county conference and only requests a state level fair hearing any time prior to the effective date of the timely notice, and the certification period has not expired, the client's grant payments shall be continued on the basis authorized immediately prior to the timely notice. Continued grant payments shall not be issued for a period beyond the end of the current certification period. Grant payments shall be continued until a final decision has been made by the Office of Appeals or until the certification period ends, whichever occurs first. The county department shall explain to the client that repayment will be required for the amount of any grant payments determined by the hearing officer to have been over-paid or the continued grant payments to which the client was not eligible to receive.
  3. If the certification period expires before the hearing process is completed, the client may reapply for benefits.
  4. If the client does not appeal the timely notice to decrease or terminate grant payments within the timely notice period, the changes shall be made in accordance with timeframes outlined in Section 3.553.C.

### **3.560 CASE TRANSFERS**

- A. If the client's eligibility has been discontinued and he or she reports a change of address after the discontinuation, the client shall be required to complete a new application for benefits in the new county department of residence. This will result in a break in the client's grant payments.
- B. If the client notifies a county department of a change in address while the client's case is approved, the following steps shall be completed:
  1. The case transfer shall be completed or additional verification shall be requested within three (3) working days. Verification will be acted on by the transferring county prior to transferring in accordance with timeliness requirements outlined in Section 3.553.
  2. Prior to transferring an ongoing case to the new county department, the originating county department shall update the case to address any unresolved IEVS, discrepancies, claims, and any unworked case changes.

3. The new county department may choose to pull a case from the originating county department.
  - a. If the new county department chooses to pull the case, it is responsible for addressing any unresolved IEVS, notifying the originating county department that the case has been transferred, and requesting from the originating county department any unworked changes so the new county department can process the changes.
  - b. The originating county department shall be responsible for researching and documenting any discrepancies and claims.
- C. If the client notifies the county department of a change of address during his or her redetermination certification period, the following apply:
  1. The county department receiving the change of address notice shall:
    - a. Notify the client of the redetermination due date and the affected benefit month; and,
    - b. Determine whether the client has received the redetermination packet.
      - 1) If yes, the client shall be instructed to complete and return the redetermination packet to the new county department.
      - 2) If no, the new county department shall mail a redetermination packet to the client's new address, ask the client to come to the office to complete a redetermination, or ask the client to complete the redetermination through the online application process.
  2. If a client submits their redetermination packet to the originating county department prior to the end of the eligibility period and subsequently submits a new application in the client's new county department of residence before the redetermination is processed, the date of the redetermination shall be the date of application. The new county department may process the redetermination at the same time the new application is processed.
  3. When the client's redetermination packet has been mailed and then the client reports a change in address, the following shall apply:
    - a. If the client reports the change of address and returns the redetermination packet to the originating county department, the originating county department shall process the redetermination and then transfer the case to the new county department.
    - b. If the client reports the change of address to the new county department prior to returning his or her redetermination packet to the originating county department, the originating county department shall instruct the client to return their redetermination to the new county department for processing.
    - c. If the client reports the change of address to the new county department after returning his or her redetermination packet to the original county department, the redetermination shall be processed by the original county department and then transferred to the new county department.

4. When the client's redetermination packet has not been mailed and the client reports the change in address during the recertification timeframe, the county department receiving the change of address shall:
  - a. Update the client's address in the statewide automated system to ensure the redetermination is mailed to the client's new address when it is generated by the statewide automated system;
  - b. Inform the client that his or her case shall be transferred to the new county department; and,
  - c. Provide the client with the name and address of the new county department office; and,
  - d. The originating county department shall transfer the case.

### **3.570 HOME CARE ALLOWANCE AND BURIAL**

#### **3.570.1 HOME CARE ALLOWANCE**

##### **3.570.11 PURPOSE OF PROGRAM**

- A. Home Care Allowance (HCA) is a special cash payment made to a client, five (5) years of age or older for the purpose of securing in-home, personal care services.
  1. HCA is a non-entitlement program;
  2. HCA cannot be received while receiving Home and Community Based Services; and,
  3. HCA is designed to serve clients with the lowest functional abilities and the greatest need for paid care.
- B. Effective September 1, 2018, the HCA grant standard maximums are as follows:
  1. Tier 1 - \$330.00
  2. Tier 2 - \$472.00
  3. Tier 3 - \$605.00
- C. The tier grant standard maximums shall be lower for certain clients with special circumstances, as defined in Section 3.570.13, D.
- D. The HCA grant is not taxable income to the client. The payment made to the care provider using the HCA grant received by the client is income to the care provider and subject to taxation under State and Federal laws.
- E. The HCA grant standards shall be adjusted to stay within available appropriations. Appeals shall not be granted for these adjustments.
- F. In addition to the regular monthly HCA grant payments, supplemental payments necessary to comply with the Federal Maintenance of Effort (MOE) requirements, as incorporated in Section 3.531.D, may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.

**3.570.12 DEFINITIONS**

“Activities of daily living” (ADL) mean physical transfers, bladder care, bowel care, mobility, dressing, bathing, hygiene, and eating.

“Authorized representative” means an individual or organization designated by the client, or by the parent or guardian of the client, if appropriate, to assist in acquiring or utilizing Home Care Allowance (HCA). The extent of the authorized representative's involvement shall be determined upon designation.

“Care planning” means identifying client goals and choices for the care needed, services needed, appropriate service providers, and knowledge of the client and of community resources. The care plan shall be documented on the State Department prescribed care plan tool.

“Case management” means the assessment of a client's long-term care needs, development and implementation of a care plan, coordination and monitoring of the long-term care service delivery, evaluation of service effectiveness, and periodic reassessment of client needs.

“Functional assessment” means the comprehensive evaluation of the client's ability to manage his or her activities of daily living and to determine the level of assistance the client requires to complete his or her activities of daily living.

“Home” means a non-facility residence. A home cannot include a homeless shelter or other temporary setting.

“Intake/screening/referral” means the initial contact with clients by the Single Entry Point (SEP) and shall include, but not be limited to, a preliminary screening of: the client's need for long term care services, the client's need for referral to other programs or services, eligibility for financial and program assistance, and the need for a comprehensive assessment.

“Medical leave” means the absence of the client from their home for more than twenty-four (24) hours due to admittance to a hospital or other facility, upon physician's order with the presumption on the part of the physician that the client will be returning to their home. Medical leave may be planned or unplanned.

“Non-medical leave” means the absence of the client from their home for more than twenty-four (24) hours for non-medical reasons that are not part of a client's care plan. Non-medical leave may be planned or unplanned.

“Non-skilled care” means care provided by licensed and unlicensed non-medical personnel, including caregivers who assist or help the individual with daily tasks such as bathing, eating, cleaning the home, and preparing meals.

“Ongoing case management” means the evaluation of the effectiveness and appropriateness of services, on an ongoing basis, through contacts with the client, appropriate collateral contacts, and service providers.

“Reassessment” means a comprehensive re-evaluation by the case manager with the client and appropriate collaterals (such as family members, friends and/or caregivers) to determine the client's level of functioning, service needs, available resources, potential funding resources, and necessity for paid care. The reassessment of functional need shall be documented on the State Department prescribed assessment tool.

“Single Entry Point (“SEP”) agency” means the agency selected by HCPF to provide case management functions for persons in need of long term care services within specific demographic areas, pursuant to Section 25.5-6-106, C.R.S.

“Skilled personal care” means some exceptions to personal care for activities of daily living that, because of the severe or complex nature of the client's need, requires a person with specialized training and skill to complete the task. Skilled personal care is not a paid service of the Home Care Allowance (HCA) program. See Section 8.489.30 (10 C.C.R. 2505-10) of the HCPF rules for the definitions of personal care and the skilled exceptions to personal care.

**3.570.13 ELIGIBILITY**

- A. Eligibility for HCA shall be based on both financial need and the client's functional needs. The client shall meet eligibility for both financial and functional requirements to be approved for an HCA payment.
- B. To be financially eligible, the client shall:
1. Be approved for Supplemental Security Income (SSI) benefits; or,
  2. Meet all eligibility criteria required for Aid to the Needy Disabled – State Only (AND-SO) program; or,
  3. Have been receiving both Old Age Pension (OAP) grant payments and HCA as of December 31, 2013 and remain continuously eligible for both benefits.
- C. To be functionally eligible, the client shall have an HCA eligible functional assessment score. The functional assessment score is calculated by determining the client's functional capacity score and need for paid care score, as follows:
1. Functional Capacity: determined by assessing the client's ability to complete all activities of daily living (ADLs) and applying a score to his or her ability to complete the ADLs using the functional impairment scale; and,
  2. Need for Paid Care: determined by identifying the unmet need for paid care and applying a score to the unmet need using the need for paid care scale, as outlined in Section 3.570.14; and,
  3. Combining the functional capacity score and the need for paid care score to determine whether the client meets the minimum scores for eligibility and, if eligible, the tier of grant payments to be approved, as follows:

<b>Tier</b>	<b>Capacity Score</b>	<b>Need for Paid Care Score</b>
1	21 or Higher	1 to 23
2	21 or Higher	24 to 37
3	21 or Higher	38 to 51

- D. The SEP shall not approve the maximum authorized HCA amount for the tier if:
1. The client's needs can be fully or partially met through other paid or unpaid sources (excluding family and friends); or,
  2. The HCA provider is able to provide the authorized services for less than the maximum authorized amount; or,
  3. The client is unwilling or unable to use the maximum authorized amount.
- E. Each client who meets the minimum functional assessment scoring requirements for the HCA program shall be functionally eligible for an HCA grant.

1. The authorization by the SEP shall be forwarded to the county department to determine financial eligibility.
  2. Clients shall not be approved for HCA if financially ineligible, even if the client is functionally eligible.
  3. Clients shall not be approved for HCA if functionally ineligible, even if the client is financially eligible.
- F. If financially and functionally eligible for HCA, the HCA grant payment shall begin on the first day of the month following the month in which the HCA is approved or the payment effective date from the State approved form completed by the SEP, whichever date is later. There shall be no retroactive HCA payments.
- G. If a client is assessed and does not meet the functional assessment scoring requirements, the county department and SEP shall refer the client to other agencies or services available in the community, such as Area Agencies on Aging (AAA), Aging and Disability Resources for Colorado (ADRC), Centers for Independent Living, and/or other local community resources to help with any identified needs.

**3.570.14 FUNCTIONAL ASSESSMENT SCORING**

- A. The need for skilled personal care shall not be included in the scoring of the need for paid care.
- B. In order to be eligible for the Home Care Allowance program, each client shall score a minimum of twenty one (21) points when assessed for the ability to complete the ADL using the following functional impairment scale:
1. Independent: score zero (0) if the client is physically able to perform all essential components of the ADL, with or without an assistive device.
  2. Low: score one (1) if the client requires occasional or intermittent supervision or stand-by assistance in a limited number of the components of the activity such as he or she is able to perform all essential components of the function, but impairment of function exists even with an assistive device.
    - a. Occasional or intermittent means the client does not need assistance daily, but may need assistance a few times a month or up to two (2) times per week.
    - b. Supervision means verbal prompting, cueing, and reminders to help the client if he or she needs assistance up to two (2) times per week.
    - c. Stand-by assistance means assistance or monitoring to help the client if he or she needs physical assistance up to two (2) times per week.
  3. Moderate: score two (2) if the client is unable to perform the majority of the essential components of the function even with an assistive device, and the client requires hands-on and frequent assistance to accomplish the activity.
    - a. Frequent means the client needs assistance at least three (3) times per week and up to daily.
    - b. Hands-on assistance means the care provider must physically assist the client in completing the task.

4. Severe: score three (3) if the client is totally unable to perform the function and requires someone to perform the task, or the client requires constant supervision for the task.
- C. The need for paid care score shall be based on the frequency of the client's unmet need for paid care and shall be modified by the following factors:
1. Need for paid care shall be scored as zero (0) when those services are provided through another program, agency, or individual.
  2. For clients living with others, the need for paid care shall be scored only on the client's needs that are greater than and differentiated from typical household routine and the typical expectation of assistance by family members living in the home.
- D. For children age five (5) through eighteen (18) years, functional capacity and need for paid care shall be scored according to age appropriate criteria. Children under the age of 5 shall not be scored and are not eligible to receive Home Care Allowance.
- E. The need for paid care scale is as follows:

Score	Frequency	Definition Of Frequency
0	None	Client's needs are met. No need for paid care.
1	Weekly	Client needs paid care up to and including once a week.
2	Daily	Client needs paid care more than once a week and up to once a day, seven days a week.
3	Twice Daily	Client needs paid care two or more times per day at least five days per week.

- F. The functional assessment shall be scored on the State Department prescribed form, which shall list each activity of daily living, the functional capacity score and the need for paid care score for each ADL.

### **3.570.15 ACTIVITIES OF DAILY LIVING**

- A. Activities of daily living (ADL) shall be scored using the functional capacity impairment scale and the need for paid care scale.
- B. The activities of daily living are:
1. Critical ADL
    - a. Transfers: the ability to move between surfaces, such as getting in and out of bed; transferring from a bed to a chair, wheelchair, or walker; moving from a chair or wheelchair to a walker or to a standing position; and the ability to use assistive devices, including prosthetics.
    - b. Bladder care: the extent to which the client has control of his OR her bladder functions and the ability of the client to accomplish the tasks of toileting, including catheterizing, getting on and off the toilet, changing incontinence products, and cleaning him/herself.
    - c. Bowel care: the extent to which the client has control of his OR her bowel functions and the ability of the client to accomplish the tasks of toileting, including getting on and off the toilet, changing incontinence products, and cleaning him/herself.

2. Basic ADL

- a. Mobility: the ability of the client to ambulate around the home and around essential places outside the home, with or without assistive devices.
- b. Dressing: the ability of the client to accomplish all phases of the activities of dressing and undressing, including getting, putting on, fastening, and taking off all items of clothing, braces, and artificial limbs.
- c. Bathing: the ability of the client to safely accomplish the task of washing body parts including getting into bathing waters, with or without assistive devices or whether the client requires stand by or hands-on assistance from another person.
- d. Hygiene: the ability of the client to maintain personal hygiene other than bathing, including combing hair, brushing teeth, and clipping nails.
- e. Eating: the ability to cut food into manageable size pieces, chew, and swallow food, with or without assistive devices.

3. Instrumental ADL

- a. Meals: the ability to safely prepare food to meet the basic nutritional requirements of the client, including cutting food, transferring food to cooking vessels and/or dishes, utilizing utensils, using a stove or microwave, and implementing special dietary needs. A child age 5 to 18 years shall not be scored for meals.
- b. Housekeeping: the ability to maintain the interior of the client's residence for the purpose of health and safety, such as wiping surfaces, cleaning floors, making a bed, and cleaning dishes. A child age 5 to 18 years shall not be scored for housekeeping.
- c. Laundry: the ability to gather and wash soiled clothing and linens; use washing machines and dryers; hang, fold, and put away clean clothing and linens. A child age 5 to 18 years shall not be scored for laundry.
- d. Shopping: the ability to purchase goods that are necessary for health and safety. Activities include the ability to make needs known, to make a list, reach for the needed items at the store, ability to estimate or determine the cost of the item, and to move items into the home and put them away. A child age 5 to 18 years shall not be scored for shopping.

4. Supportive ADL

- a. Medicine: the ability to manage medications, including knowing the name of the medication, knowing the amount, frequency, and how to take the medicine, understanding the reason for taking it, and understanding possible side effects. A child age 5 to 14 years shall not be scored for medicine.
- b. Appointment: the ability to schedule or make an appointment for essential activities, such as doctor visits, meetings with caseworkers, and transportation. A child age 5 to 18 years shall not be scored for appointments.

- c. Money: the ability to manage money, such as balancing a check book, writing checks or paying a bill electronically, and ability to understand financial decisions. A child age 5 to 18 years shall not be scored for money.
- d. Access: the ability to access resources or services in the community, such as locating the resource/service and completing the process necessary to receive the resource or service. A child age 5 to 18 years shall not be scored for access.
- e. Telephone: the ability to use the telephone to communicate essential needs, such as answering the phone in a reasonable time, speaking clearly and loudly enough to be understood, dialing the phone, initiating a conversation, hearing the caller, and placing a call in an emergency. A child age 5 to 12 years shall not be scored for telephone.

**3.570.16 CARE PLANNING AND CASE MANAGEMENT**

- A. Home Care Allowance may be used to purchase:
  - 1. Non-skilled assistance with activities of daily living, as defined in Section 3.570.15; and;
  - 2. Electronic monitoring, such as an emergency alert button; and,
  - 3. One-time deep cleaning if a referral is initiated by Adult Protective Services and determined necessary by the SEP.
- B. The SEP shall develop a care plan on the State Department prescribed form within ten (10) working days after program eligibility has been determined and prior to the arrangement for services.
  - 1. The care plan shall be:
    - a. Signed by the client, SEP, and the service provider; and,
    - b. Reviewed and updated at least once every twelve months; and,
    - c. Reviewed sooner if there is a change in the client's needs; and,
    - d. Provided to all parties.
  - 2. Care planning shall include, but not be limited to, the following tasks:
    - a. Identifying and documenting care plan goals and client choices.
    - b. Identifying and documenting services, including type, duration and frequency.
    - c. Arranging for services through a service provider, family member, or other provider of the client's choosing.
      - 1) Providers shall be at least eighteen (18) years of age or older and have the ability to provide appropriate services.
      - 2) The SEP shall negotiate with the client and care provider to arrive at the total number of paid care hours to be provided monthly.

- 3) The HCA payments shall be made directly to the client or authorized representative who shall pay the provider the agreed upon, authorized amount monthly.
    - 4) No portion of the authorized HCA amount shall be withheld by the client for personal use. The entire HCA authorized amount shall be spent for HCA allowable services.
  - d. Coordinating service delivery, negotiating with the service provider and the client regarding service provision, and formalizing the provider agreement.
  - e. Completing program requirements for the authorization of services.
  - f. Referring the client to community resources, as needed, and attemptING to develop resources for the client if a resource is not available within the client's community.
  - g. Explaining the complaint procedures to the client, as listed on the care plan document.
  - h. Explaining the client's right to appeal any decision.
- 3. The SEP shall meet the client's needs, with consideration of the client's choices, using the most cost effective methods available.
  - a. When services are available to the client at no cost from family, friends, volunteers, or others, these services shall be utilized before the purchase of services, providing these services adequately meet the client's needs.
  - b. When public dollars must be used to purchase services, the SEP shall assist the client in comparing the cost of services.
  - c. The SEP shall ensure there is no duplication in services provided by any other public or privately funded services.
  - D. The SEP shall discuss with the client if other waivers and/or services are more appropriate or beneficial to the client and assess as needed.
- C. The SEP shall provide ongoing case management, as follows:
  - 1. Monitoring the quality of care provided to the client.
  - 2. Contacting service providers concerning service coordination, effectiveness, and appropriateness.
  - 3. Reviewing the client's assessment, care plan, and service agreements to include changes in client functioning, service effectiveness, appropriateness, and cost-effectiveness that may require a reassessment or a change in the care plan.
  - 4. Making changes in care plans as appropriate to client needs and/or referring the client to community resources, if appropriate.
  - 5. Providing conflict resolution and/or crisis intervention, as needed.

6. Identifying and contacting appropriate individuals, and resolving any problems or complaints raised by the client or others regarding service delivery.
  7. Notifying the appropriate law enforcement and/or child/Adult Protective Services agency of suspected abuse, neglect or exploitation, as required by Sections 18-6.5 108, 19-3-304 and 26-3.1-102, C.R.S.
- D. The SEP shall complete a review of the client's current assessment or reassessment and the care plan with the client six months following the assessment or reassessment.
1. The review shall be conducted by telephone, at the client's place of residence, at the place of service, or other appropriate setting as determined by the client's needs.
  2. An in-person home visit shall be completed when significant changes in the client's condition are identified.
- E. The SEP shall complete an in-person functional reassessment within twelve (12) months of the initial functional assessment and every twelve months thereafter. A reassessment shall be completed sooner if the client's condition changes.
- F. Reassessment shall include the following tasks:
1. Reviewing the care plan, service agreement, and provider contract or agreement.
  2. Evaluating service effectiveness, quality of care, and appropriateness of services.
  3. Verifying continuing financial and program eligibility.
  4. Annually, or more often if indicated, completing a new care plan and service agreement.
  5. Referring the client to community resources, as needed; and
  6. Discussing with the client if a HCPF waiver and/or service is more appropriate or beneficial and assess as needed.
- G. The SEP shall update the information provided at the previous assessment or reassessment, utilizing the State Department prescribed form and the HCPF prescribed system. When a new functional assessment is completed a copy shall be sent to the county department within ten (10) working days of the reassessment.

### **3.570.17 DENIALS, DISCONTINUATIONS, AND CASE TRANSFERS**

- A. The responsibility of the SEP is to determine the functional eligibility of the client. The SEP shall deny or discontinue the client from the HCA program if he or she is determined functionally ineligible and provide timely or adequate notice as required by Section 3.554.
1. The client shall be informed of his or her appeal rights as outlined in Section 3.587.
  2. The client shall be provided appropriate referrals to other community resources within one (1) working day of discontinuation or denial.
  3. If the discontinuation or denial is due to functional eligibility, the SEP shall notify the client that he or she must notify the providers on the care plan within one (1) working day of receiving notice from the county department.

4. If the discontinuation or denial is due to financial eligibility, the SEP shall notify the client that he or she must notify all providers on the care plan within one (1) working day of receiving notice from the county department.
  5. The SEP shall notify the county department within FIVE (5) working days of discontinuation.
  6. The SEP shall prepare for and defend at the state level fair hearing any appeal related to functional denial or discontinuation. The SEP may request assistance and/or testimony from the county department.
- B. The responsibility of the county department is to determine the financial eligibility of the client. The county department shall deny or discontinue the client from the HCA program if he or she is determined financially ineligible and provide timely or adequate notice as required by Section 3.554.
1. The client shall be informed of his or her appeal rights as outlined in Section 3.587.
  2. The client shall be provided appropriate referrals to other community resources within one (1) working day of discontinuation or denial.
  3. The county department shall notify the SEP within FIVE (5) working days of discontinuation.
  4. The county department shall prepare for and defend at the state level fair hearing any appeal related to financial denial or discontinuation. The county department may request assistance and/or testimony from the SEP.
- C. Following the notice procedures outlined in Section 3.554, denial and/or discontinuation from the HCA program shall occur for the following reasons:
1. Financial and Functional Eligibility: The SEP or county department shall deny or discontinue a client if the client is not financially eligible and/or is not functionally eligible for HCA.
  2. Level of Care: The SEP shall deny or discontinue when the client:
    - a. Does not meet functional capacity score minimum requirements; or,
    - b. Does not meet need for paid care score criteria.
  3. Receipt of Services: The SEP or county department shall deny or discontinue when the client:
    - a. Has not received services for one month;
    - b. Has twice refused to schedule an appointment for an initial assessment, six (6)-month review, or reassessment within a thirty (30) consecutive DAY period;
    - c. Has failed to keep three (3) scheduled appointments within a thirty (30) consecutive day period;
    - d. Has refused to schedule an appointment for a required visit after the client's case has been transferred to a new SEP or county department;

- e. Refuses to use the HCA payment to pay for services or uses the payment for services not identified in the service agreement;
  - f. Refuses to sign the intake form, care plan, or other documents and forms required to receive services.
- 4. Facility Status: The SEP or county department shall deny or discontinue when the client:
  - a. Is a resident of a nursing facility, hospital, or any other long-term care facility; or,
  - b. Enters a hospital or other long-term care facility for treatment, hospitalization, or rehabilitation that continues for thirty (30) calendar days or more.
- 5. Service Limitations Related to Safety: The SEP or county department shall deny or discontinue when the client cannot be safely served given the type and/or amount of services available. Evidence of safety concerns include, but are not limited to:
  - a. The results of an Adult Protective Services assessment that substantiates ongoing risk.
  - b. A statement from the client's physician attesting to diminished cognitive capacity, debilitating mental health concerns, or ongoing risk.
  - c. Lack of available and/or appropriate service providers.
  - d. A functional assessment score indicating a level of need for services in excess of those available under the HCA program.
  - e. Other available information or evidence that will support the determination that the client's safety is at risk.
- 6. Service Limitations Related to Cost Effectiveness: The SEP or county department shall deny or discontinue when other more cost effective alternatives are available to meet the client's needs.
- 7. Living Arrangements: The SEP or county department shall deny or discontinue when the client is residing anywhere other than his OR her home.
  - a. The SEP may continue to authorize services while a resident is on medical or non-medical leave.
  - b. Combined leave shall not exceed a total of forty-two (42) days in a twelve (12) month period beginning with the date the client was approved for the HCA program.
- 8. Move Out of State: The SEP or county department shall deny or discontinue when the client has moved out of state.
  - a. Discontinuation shall be effective the day after the date of the move.
  - b. Clients who leave the State on a temporary basis with the intent to return to Colorado within thirty (30) calendar days shall not be discontinued. If the client fails to return to Colorado the client shall be discontinued on day thirty one (31).

9. Voluntary Withdrawal from the Program: The SEP or county shall deny or discontinue when the client requests withdrawal from the HCA program.
  10. Death: The SEP or county shall discontinue the HCA program effective the day after the client's date of death. No notice of discontinuation shall be sent.
- D. The SEP shall complete the following procedures to transfer an HCA client to a new county department:
1. The SEP shall notify the county department of the client's plans to relocate to another county and the date of transfer.
  2. If the client's current service providers do not provide services in the area where the client is relocating, the SEP shall make arrangements, in consultation with the client, for new service providers.
- E. The SEP shall complete the following procedures to transfer an HCA client to a new SEP:
1. The transferring SEP shall contact the receiving SEP by telephone or email to give notification that the client is planning to transfer, to negotiate a transfer date, and to provide information.
  2. The transferring SEP shall forward copies of the client's case records, including forms required for the HCA program, to the receiving SEP prior to the relocation, if possible, but in no case later than five (5) working days after the client's relocation.
  3. The receiving SEP shall complete an in-person meeting with the client and an assessment and case summary update within ten (10) working days after notification of the client's relocation.
  4. The receiving SEP shall review the care plan and the assessment tool, revise as necessary, and coordinate services and providers.

**3.570.18 COUNTY DEPARTMENT AND SINGLE ENTRY POINT (SEP) REQUIREMENTS AND RESPONSIBILITIES**

- A. The county department shall:
1. Ensure all requirements of the county department are implemented, as appropriate for the HCA program, related to:
    - a. General requirements, as outlined in Section 3.520; and,
    - b. Old Age Pension, as outlined in Section 3.530; and,
    - c. Aid to the Needy Disabled State Only and Colorado Supplement, as outlined in Section 3.540 and 3.546; and,
    - d. Financial redetermination, as outlined in Section 3.550.
  2. Determine financial eligibility for HCA in the statewide automated system and update any changes in the case record.
  3. Notify the SEP in writing:

- a. Within five (5) working days of determining HCA eligibility.
    - b. Within five (5) working days after the eligibility worker determines that the client is no longer financially eligible for HCA.
    - c. Within one (1) working day when the client has filed a written appeal with the county department.
    - d. Within one (1) working day when the client has withdrawn the appeal or a final agency decision has been entered.
  - 4. Respond to requests for information from the SEP within ten (10) working days.
- B. The SEP shall:
- 1. Provide intake, screening, and referral activities, as follows:
    - a. Determine the appropriateness of a referral for a client assessment.
      - 1) If appropriate, complete intake activities within two (2) working days of the referral.
      - 2) Obtain the client's or client's authorized representative's signature on the intake form.
      - 3) Complete the HCA functional assessment within thirty (30) calendar days of referral.
    - b. Provide the client information and referral to other agencies, as needed.
  - 2. Identify potential payment source(s), including the availability of private funding:
    - a. Refer the client to the county department to complete an application; or,
    - b. Refer the client to another community resource that can assist in completing the application; or,
    - c. Verify the client's ability to private pay for services.
  - 3. Complete a functional assessment when the county department provides written notification that the client has requested HCA and is receiving or has submitted an application for Old Age Pension (OAP), Aid to the Needy Disabled Colorado Supplement (AND-CS), Aid to the Needy Disabled State Only (AND-SO), or the client is receiving Supplemental Security Income (SSI).
    - a. If the client is being discharged from a hospital or nursing facility, the SEP shall complete the functional assessment regardless of whether an application date for State assistance or Medicaid has been provided by the county department.
    - b. The SEP shall complete the functional assessment within two (2) working days after notification when a client is being transferred from a hospital to the HCA program.

- c. The SEP shall complete the functional assessment within five (5) working days after notification when a client is being transferred from a nursing facility to the HCA program.
  - d. The SEP shall complete the functional assessment within ten (10) working days after notification for all other clients. However, the SEP shall have a procedure for prioritizing urgent referrals.
- 4. Document all case information.
  - a. Documentation of contacts and case management activities shall be entered into the HCPF prescribed system within five (5) working days of the contact or activity.
  - b. All information related to intake, assessment, and care planning shall be thoroughly documented within ten (10) working days of the intake, assessment or care planning using State Department prescribed forms and the HCPF prescribed system.
  - c. Additional documentation that cannot be entered into the HCPF prescribed system shall be maintained in the case file.
- 5. Notify clients of their program status using the State Department prescribed form at the time of initial eligibility, when there is a significant change in the client's payment or services, when an adverse action is taken, or at the time of discontinuation.
- 6. Notify the county department in writing:
  - a. Within five (5) working days of determining HCA functional eligibility.
  - b. Within five (5) working days after the SEP determines that the client is no longer functionally eligible for HCA.
  - c. Within one (1) working day when the client has filed a written appeal with the SEP.
  - d. Within one (1) working day when the client has withdrawn the appeal or a final agency decision has been entered.
- 7. Respond to requests for information from the county department within ten (10) working days.
- 8. Notify the client, at the time of his or her application and at the time of reassessment or discontinuation of the right to request a state level fair hearing before an Administrative Law Judge as outlined in Section 3.587, and to appeal adverse actions of the SEP or county department.
- 9. Inform the client's Adult Protective Services caseworker, if applicable, of the client's status. The case manager shall participate in mutual staffing of the client's case.
- 10. Immediately report to the Colorado Department of Public Health and Environment any congregate facility, with three (3) or more residents, that is not licensed.

11. Immediately report to the county department any information that indicates an overpayment, incorrect payment, or misuse of any HCA benefit, and shall cooperate with the county department in any subsequent recovery process.
12. Be subject to routine quality control, program monitoring, and contract management to minimally include:
  - a. Targeted review of the HCPF prescribed system documentation;
  - b. Case file review;
  - c. Targeted program review conducted via phone, email, or survey;
  - d. Onsite program review;
  - e. A performance improvement plan to correct areas of identified non-compliance; and,
  - f. Contract sanctions when the SEP fails to implement a performance improvement plan.

### **3.570.4 BURIAL ASSISTANCE PROGRAM**

#### **3.570.41 PURPOSE OF PROGRAM**

Burial benefits are available to eligible clients to cover reasonable and necessary costs for burial services.

#### **3.570.42 DEFINITIONS**

"Burial benefit" means the State Department program to pay all or a portion of the cost of funeral, burial, or cremation services for certain deceased clients.

"Burial funds" means the funds authorized by the county department under the burial benefit.

"Burial plot" means the client's final resting place, whether a cemetery plot, vault, or crematorium niche.

"Burial services" means those services provided as part of funeral, burial, or cremation services, including:

- A. Transportation of the body from the place of death to a funeral home or other storage facility, and/or from the funeral home to the funeral/memorial site, and/or to the burial plot;
- B. Storage of the body prior to final disposition and/or storage of the cremated remains for no more than one hundred twenty (120) days, in those cases where the remains are not buried and are not claimed by the client's family or friends;
- C. Embalming, where necessary for preservation of the body and/or preparation of the body for the casket or for cremation;
- D. Purchase of a casket or of an urn or other receptacle for the cremated remains;
- E. Purchase of a gravesite, vault, vault liner, or crematorium niche;

- F. Purchase and placement of the grave marker and/or of perpetual care of the gravesite, vault, or crematorium niche;
- G. Funeral or memorial service;
- H. Cremation of the body;
- I. Burial or interment of the body or cremated remains in a burial plot, vault, or crematorium niche;
- J. Any other items that are incidental to burial services.

“Contributions” means any monetary payment or donation made directly to the service provider(s) by a non-responsible person to defray the expenses of a deceased public assistance or medical assistance recipient’s funeral, cremation, or burial, or any combination thereof.

“Legally responsible person(s)” means a person who is the decedent’s spouse or the decedent’s parent if the decedent is an unemancipated minor who is under the age of eighteen; and bears legal responsibility for the charges associated with the decedent’s funeral, cremation, or burial expenses.

“Nonresponsible person” means one of the following who makes a contribution to the charges for burial services:

- A. A relative of the decedent who is not a legally responsible person; or,
- B. Any other person or party.

### **3.570.43 ELIGIBILITY AND DETERMINATION FOR BURIAL ASSISTANCE**

- A. A burial benefit shall be available to cover all or part of reasonable and necessary costs for burial services when:
  - 1. A deceased client was receiving Old Age Pension (OAP), Aid to the Needy Disabled (AND-SO OR AND-CS), Home Care Allowance, and/or Colorado Medicaid assistance at the time of death; and,
  - 2. The deceased client's estate is insufficient to pay all or part of the burial services; and,
  - 3. The resources of the legally responsible person(s) for the support of the deceased client are insufficient, even with contributions from the client's estate, to enable the legally responsible person(s) to pay all or part of such expenses; and,
  - 4. The total cost for all burial services does not total more than two thousand five hundred dollars (\$2,500), except that the cost of a burial plot shall not be included in the \$2,500 maximum cost limit when:
    - a. The client has a prepaid burial plot valued at two thousand dollars (\$2,000) or less at the time of purchase; or,
    - b. A burial plot was purchased by someone other than the deceased client and donated to the deceased client; and,
- B. The total burial benefit shall not exceed the current burial benefit rate.

1. Effective March 1, 2020, the burial benefit shall not exceed one thousand five hundred dollars (\$1,500).
  2. The reimbursement rate shall be adjusted by the State Department as needed to stay within the available appropriations. There shall be no appeal granted for this adjustment.
- C. When assistance for funeral, burial, or cremation services is requested within thirty (30) days from the date of death on behalf of a deceased client as described in Section 3.570.43.A, by any interested party; an application requesting a burial benefit shall be completed and submitted to the county department for eligibility determination. Requests made after 30 days shall be evaluated by the county department and an extension may be given if good cause exists, not to exceed one (1) year from the date of death. Good cause shall exist for any application filed within one year of the date of death of the client, if the client's date of death preceded the effective date of this rule. The client's family or friends, or the county department when there are no known family or friends, shall make arrangements for disposition of the client's body in a reasonable, dignified manner which approximates the wishes and the religious and cultural preferences of the client or family, to the extent possible within the burial benefit rules and burial grant payment funds.
1. The county department shall ensure that a choice of disposition by the client is made in writing. The choice of disposition may be made on the client's most recent application for benefits, in the client's will, or by any other document which the county department deems credible. If there are conflicting documents expressing the client's choice of disposition, the county department shall utilize the most recent document containing the client's choice. If the client has not expressed a choice of disposition, the client's disposition shall be determined respectively by the client's spouse, adult children, parents, or siblings.
  2. The county department shall coordinate with the client's family or interested parties to explain the burial benefit rules, including:
    - a. Options in the event the client's or family's burial preferences cannot be met within the limitations of the burial rules or burial grant payment maximum; and,
    - b. If the family's burial preference is in opposition to the client's preference, as noted on the client's most recent application for benefits or other documentation, the burial grant payment shall be used to meet the client's preference, unless all options for meeting that preference have been exhausted within the limitations of the burial grant payment; and,
    - c. The legally responsible person's responsibility to pay the cost of burial services that exceed the approved burial grant payment; and,
    - d. That voluntary contributions from family, friends, or other interested parties, may be used to cover some or all of the legally responsible person's costs that exceed the approved burial grant payment up to the maximum cost limit.
  3. The county department shall use the following procedures when the deceased client's burial preferences are unknown and a family member cannot be located:
    - a. If a family member has not been located within twenty-four hours after the client dies, the county department shall have the body refrigerated or embalmed.

- b. If a family member has not been located within seven (7) days, the county department shall make the determination to bury or cremate the body based on the best option available.
    - c. The county department shall complete and send written authorization to the appropriate funeral home or crematorium.
- D. The county department shall reduce the burial grant payment by applying the following monies toward the full burial costs in the order listed:
  - 1. First, subtract monies due from any insurance policy of the deceased client to a legally responsible person or any other person who makes a contribution to burial services and is named as beneficiary or a joint beneficiary; then if costs remain,
  - 2. Subtract the value of the deceased client's estate as of the date of death that are available, including any cash or property of any kind which the deceased client owned or proportionate share of resources held in joint ownership at the time of death; then if costs remain,
  - 3. Subtract monies from the legally responsible person(s) for the client, as follows:
    - a. Social Security lump sum death benefits payable to a legally responsible person shall be exempt.
    - b. If the legally responsible person(s) has resources below the SSI resource limit of \$2,000 for an individual or \$3,000 for a couple any resources would not be used to reduce the burial grant payment. These limits are consistent with the provisions of Federal Regulations found at 20 CFR 416.1205 (2019), which are herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available for no cost at <https://www.ecfr.gov/>. These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.
      - 1) If the legally responsible person is the widow(er), the individual resource limit shall apply.
      - 2) The legally responsible person(s) may voluntarily contribute monies toward the cost of the burial services.
    - c. If the legally responsible person(s) has resources over the SSI limit, the amount of resources over the limit shall be used to reduce the burial grant payment; then if costs remain,
  - 4. The county department shall issue a written authorization for the amount of the burial grant payment, up to the burial grant payment limit, as set forth in Section 3.570.43.B.1.
- E. Once the application and choice of burial services is determined, the family or county department shall contact the appropriate provider(s) to obtain a written estimate of the provider's proposed charges for burial services. If more than one provider is involved, a separate written estimate from each provider shall be obtained.
- F. Once the proposal(s) from the provider(s) is received, the county department shall determine if a burial grant payment is appropriate.

1. If the combined charges from the provider(s) exceed two thousand five hundred dollars (\$2,500), no burial grant payment shall be paid.
  2. The county department shall allow the provider(s) to resubmit a written estimate within ten (10) calendar days of notification that the charges exceeded the burial grant payment maximum.
- G. All payments from a decedent's estate, payments from legally responsible persons, and contributions from any other person persons who make a contribution to burial services shall be paid directly to the provider(s) of services. After the provision of all services, the providers shall bill the county department directly for reimbursement for appropriate costs that have not been covered by the resources from or contributions made by the decedent's estate, legally responsible persons, or any other person persons who make a contribution to burial services. The county department shall reimburse the appropriate providers directly, based upon the statement of agreement.
- H. The county department of residence of the deceased client shall authorize the approved burial grant payment through the statewide automated system. The burial grant payment shall be paid directly to the provider(s). The burial application must be processed as soon as possible but no later than thirty (30) days from submission.
- I. The county department shall have a statement of agreement between the providers, which ensures that the distribution of burial grant payment is proportional to burial services provided or as the providers otherwise determine. The agreement shall be signed by all provider(s) and shall be approved and signed by the county department before the burial grant payment is authorized in the statewide automated system.
- J. The county department will seek recovery of resources if:
1. The resource was reported to the funeral director after the deadline date, and the funeral director does not collect from them.
  2. The resource becomes available only after the county department has paid for burial services.

**3.580 PAYMENTS, OVERPAYMENTS, INTENTIONAL PROGRAM VIOLATIONS, FRAUDULENT ACTS, RECOVERY, DISPUTE RESOLUTION, APPEAL, AND STATE LEVEL FAIR HEARING**

**3.581 PAYMENTS**

- A. A client shall be placed on an issuance schedule so that he or she receives grant payments on or about the same date each month once a certification period is established. Due to the effective date of eligibility, the date on which a client receives his or her initial payment need not be the date that the client must receive any subsequent payments.
- B. When the county department determines that a client was ineligible for all or a part of a grant payment that the client has already received, the county department shall, subject to timely notice and recovery rules, establish a claim, and if valid, initiate a recovery.
- C. If a client dies, payments to the client shall be treated as follows:
1. A client's eligibility shall end on the date of his or her death.
  2. If a client of any category of assistance dies before 12:00 a.m. on the first day of a month, no eligibility for a grant payment for the following month exists.

3. If a client of any category of assistance dies on or after 12:00 a.m. on the first day of a month, any payment to which the person was eligible shall be maintained for release to the client's personal representative as defined in Section 15-10-201(39), C.R.S., for a maximum of three (3) months. The following rules apply when a personal representative requests to receive a deceased client's last grant payment:
  - a. The individual claiming to be the personal representative of the deceased client must provide the court-issued letters described in Section 15-12-103, C.R.S. to the county department in order to receive the deceased client's last grant payment; or
  - b. If the personal representative presents a court order ordering the county department to pay the deceased client's last grant payment to a specific person or entity, the county department shall make the last grant payment payable to the person named in the order.

D. To calculate partial month payments:

1. Determine the client's monthly grant payment amount for the program according to program rules at 3.520.78, 3.533, 3.544, and 3.549;
2. Determine the number of days for which the client is eligible for assistance and, based on the table in subsection 4 below, find the decimal figure corresponding to the number of days of eligibility;
3. Multiply the client's monthly grant payment amount from subsection 1 by the decimal figure in the table in subsection 4 to determine the grant payment amount for the partial month;
4. To calculate the partial month payments, the following table shall be used:

Days	Standard	Days	Standard	Days	Standard
1	.03288	11	.36164	21	.69041
2	.06575	12	.39452	22	.72329
3	.09863	13	.42739	23	.75617
4	.13151	14	.46027	24	.78904
5	.16439	15	.49315	25	.82192
6	.19726	16	.52603	26	.85480
7	.23014	17	.55890	27	.88768
8	.26302	18	.59178	28	.92054
9	.29590	19	.62466	29	.95342
10	.32876	20	.65754	30	.98630

- E. All payments, including partial payments, shall have any cents dropped to the nearest dollar, except in cases where SSI income reduces the grant.

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- F. County departments shall not hold or delay the client's grant payment beyond the regular issuance date except when:
1. A final agency decision has been made authorizing the action.
  2. In cases where a corrected payment is to be issued, the corrected payment shall be issued by the effective date of the original warrant and the incorrect payment shall be cancelled.
  3. When the county department receives reliable information that the client no longer resides at the last known address and attempts to locate the person through the post office, relatives, friends, etc., have been unsuccessful, the case shall be discontinued following the policies outlined in Section 3.554. If the client contacts the county department before grant payments are discontinued and provides the current address and all other eligibility criterion have been met, the client shall receive the grant payments they are eligible for;
  4. Any grant payments issued to an Electronic Benefit Transfer (EBT) card and not accessed within three hundred sixty-five (365) days of issuance, shall be expunged. The county shall reissue grant payments within 90 days of the expungement if requested by the client verbally, electronically, in person, or in writing. The county may reissue up to twelve (12) months of expunged grant payments.
- G. The county department shall take prompt action to correct underpayments to clients of Adult Financial grant payments. There are two types of underpayments: 1) grant payment(s) received by or for a client that is less than the amount which the client should have received, but not a denial or termination, or 2) the failure of the county department to issue a grant payment to a client when such payment should have been issued (i.e., denials or termination of Adult Financial grant payments).
1. When the county department becomes aware of a potential underpayment, the county department shall:
    - a. Determine if an underpayment occurred; and,
    - b. Record the facts and basis of its determination in the case record.
  2. A county shall correct any underpayments by the month following the discovery of such underpayments.
  3. Underpayments shall be used to pay any validated claims against the client unless the county department has determined this action will cause an undue hardship to the client as determined on a case-by-case basis. Underpayments will be applied to claims using the following hierarchy:
    - a. Fraud or IPV claims first (undue hardship cannot be granted);
    - b. Client error claims second; and
    - c. Administrative error claims last. Instances that may result in an administrative error claim include, but are not limited to, the following:
      - 1) The county failed to take timely action on a change reported by the client.
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- 2) The county incorrectly computed the client's income, resources, or other information, or otherwise gave an incorrect grant payment.
    - 3) Any other situation not caused by willful withholding of information on the part of the client and/or their authorized representative.
  4. If an underpayment is discovered by the county department, the county department shall notify the client in writing, of its determination of the underpayment.
  5. Prompt action shall be taken to correct underpayments that occurred within the past twelve (12) months from the discovery date by issuing a retroactive payment. Retroactive payments shall not be made unless the amount is one dollar (\$1.00) or more.
- H. The county department shall reissue a lost or stolen payment if the loss or theft is not questionable and the county determines that such loss was beyond the client's control.
- A loss will be considered within the client's control when:
1. The client has shared the EBT pin number or written the pin number on the EBT card itself, or
  2. The client has given his or her card to another person for that person's use.
- I. A client is prohibited from using or allowing the use of his or her EBT card at automated teller machines (ATMs) and point of sale (POS) devices located in prohibited establishments as described in Section 3.520.4.C.4.f.
- A client's EBT transactions shall be monitored quarterly. Clients who use prohibited ATMs or POS devices shall be contacted by the county department. Inappropriate usage shall result in:
1. A written warning that the use of the EBT card in prohibited establishments will result in the card being disabled. The county department shall provide education about appropriate use, access, and alternatives;
  2. If continued misuse occurs (identified on the quarterly usage report after a warning has occurred), the cash grant payment portion of his or her EBT card shall be disabled for one month, requiring the county to notify the client of additional options for receipt of payment (direct deposit or county warrant) as well as notification of due process in accordance with State rules pursuant to Sections 3.520.1.H-I and 3.554.
  3. If misuse continues, the county department shall deny or discontinue the grant payments and impose a one month ineligibility period. The county shall require the client to complete a new application after the one month ineligibility period if he or she wants to receive Adult Financial assistance. The county department shall not accept a new application from the client until the one month ineligibility period expires. The county department shall follow the due process procedures pursuant to Sections 3.520.1.H-I and 3.554; and,
  4. After the one month ineligibility period for continued misuse, if/when the client reapplies, any future EBT card usage at prohibited establishments shall be considered continued misuse. Such subsequent violations will result in the one month ineligibility period and reapplication process referred to in subsection 3, above.

### **3.582 OVERPAYMENTS**

The county department shall establish a claim on an overpayment before the last day of the quarter following the quarter in which the overpayment was discovered.

- A. An overpayment shall be adjusted if there is a record of any underpayment(s) for a prior period. The hierarchy of such adjustments shall be:
  - 1. Fraud or IPV claims first,
  - 2. Client error claims second; and,
  - 3. Administrative error claims last.
- B. Liability for an overpayment must be legally established. Methods for legally establishing an overpayment include but are not limited to:
  - 1. An executed promissory note;
  - 2. A court judgment;
  - 3. A final agency action;
  - 4. A signed public assistance repayment agreement form.
- C. Failure to sign the public assistance repayment agreement form shall be handled as follows:
  - 1. If the client against whom a collection action has been initiated is currently participating in any Adult Financial program and does not respond to the public assistance repayment agreement form within eleven (11) calendar days of the date the notice is mailed, grant payment reduction shall begin with the first month following the timely noticing period without further notice as described in Section 3.585.A.2.
  - 2. If the client against whom a collection action has been initiated is not participating in the program when a collection action for a claim is initiated or if a collection action has been initiated for repayment of a claim and no response is made to the public assistance repayment agreement form within eleven (11) calendar days of the date the notice is mailed, the county department shall pursue all legal recovery methods as described in Section 3.585 in order to recover the overpayment. Legal remedies include, but are not limited to, judgments, garnishments, claims on estates and the State income tax refund intercept process.
- D. The amount of the overpayments involving income shall be calculated to allow for income disregards described in Sections 3.533, 3.544, and 3.549 based on the Adult Financial program from which the client received grant payments.
- E. Computation of the overpayment for Adult Financial grant payments is based on the amount received that a client was originally eligible to receive. All earned and unearned income received by the client and any resources are taken into consideration in the computation.

In the instances where the overpayment is the direct result of actions tied to the determination of IPV and/or fraud, which resulted in receipt of grant payments in error, or grant payments received that the client was not eligible to receive, the overpaid grant payments shall be recovered from the client and/or a liable individual pursuant to the requirements of 3.583.

- F. The calculation of overpayment shall begin in the month that the overpayment occurred.
1. Start with the amount issued to the client;
  2. Determine the correct payment according to program rules at Sections 3.520.78, 3.533, 3.544, 3.549, and 3.581.D.
  3. Compare the amount issued to the client to the correct payment amount.
    - a. If the amount issued to the client is greater than the correct payment amount, the difference is the overpayment amount.
    - b. If the amount issued to the client is less than the correct payment amount, the difference is the underpayment amount, as addressed in Section 3.581.G.
  4. If the client is over the resource limit in any month, the client is totally ineligible for that month. Any payment received in such month(s) is an overpayment.
  5. If a client does not meet the non-financial eligibility requirements in any month, the client is totally ineligible for the month. Any payment received in such month(s) is an overpayment.
- G. When the county department has determined that a client has received an overpayment, the department shall:
1. Take action to research the overpayment and determine the amount of the overpayment.
  2. Determine if the overpayment is to be recovered as described in Section 3.585.
  3. Document the facts and situation that produced the overpayment. Document whether the overpayment is to be recovered. Retain all associated documentation and notices until the overpayment is repaid in full.
  4. Determine whether there was willful withholding of information, fraud, or IPV as described in Sections 3.583 and 3.584.
  5. Provide the client with timely or adequate notice as required by Section 3.554 of the amount due and the reason for the recovery including:
    - a. The liable individual(s) responsible for the repayment;
    - b. The amount of the claim;
    - c. The period the claim is for;
    - d. The reason for the overpayment including whether the overpayment is a result of fraud/IPV, client error, or administrative error;
    - e. The client's rights and responsibilities;
    - f. The method of repayment;
    - g. How to obtain free legal assistance; and
    - h. The applicable rules concerning the overpayment.

6. Send quarterly statements with the balance due.

**3.583 ADULT FINANCIAL INTENTIONAL PROGRAM VIOLATIONS (IPV)**

- A. All clients must be provided with their rights in relation to IPV as follows:

1. The client has the right to an administrative disqualification hearing (ADH) before an administrative law judge (ALJ).
2. The county department may offer an ADH at the county. This does not preclude the client from requesting the ADH be held before an ALJ.
3. A client may waive the right to an ADH, either before an ALJ or with the county department by signing a waiver of ADH form. Clients have a right to look at all the evidence that would be used at an ADH before deciding whether to waive the right to an ADH.
4. If a client chooses to appear at the ADH he or she will be afforded the right to represent him or herself or to be represented by an attorney at his or her expense.
5. The client may choose to be represented by any other person he or she chooses pursuant to Section 26-2-127(1)(a)(IV), C.R.S..
6. A client and/or his or her representative, upon providing a signed release, may look at his or her case file, including all the evidence that will be used at the ADH. The client and/or his or her representative has the right to look at his or her case file before and during the ADH.
7. The county department shall provide a free copy of the evidence to be utilized during the ADH to the client at least fifteen (15) days prior to an ADH heard by the county. Upon request, the county department will provide a free copy of any other parts of the case file that the client determines is needed at the ADH.
8. A client may bring witnesses to speak on his or her behalf at the ADH.
9. The client and/or his or her representative has the right to question or deny any evidence or statements made against him or her at the ADH. This includes the right to ask questions of persons testifying against him or her.
10. The client has the right to present any evidence that he or she feels is important to prove his or her case.

- B. All clients for Adult Financial programs must be provided with a written notice of the penalties for an IPV on the Adult Financial application form. All Adult Financial clients shall be notified of the penalties for an IPV when reporting changes on the redetermination form.

- C. A county department is required to refer the investigation to the appropriate investigatory agency for any client or representative payee whenever there is an allegation or reason to believe that individual has committed an IPV as described below.

When conducting an interview for IPV and/or fraud, the county department investigator or representative has the responsibility to ensure the following:

1. That an explanation was given to the individual regarding the reason the interview is taking place; and,

2. That the individual's rights have been provided to him or her (Section 3.520.1.I); and,
  3. That the individual's rights and responsibilities including confidentiality of records and information, the right to non-discrimination provisions, the right to a county conference, and the right to a state level fair hearing have been provided to him or her; and,
  4. That the rights and responsibilities presented in the "What I Should Know" section of the application that the client acknowledged when he or she signed the application form have not been violated; and,
  5. That the county and/or representative of the county shall not threaten the individual or engage in any other intimidation tactics toward the client.
- D. If the county receives questionable information that is necessary for determining a client's eligibility and the verification requested by the county department is not supplied by the client as required by the county department's verification request timeframes, grant payments may be reduced and/or the case closed and grant payments terminated for a client's failure to prove eligibility following the policies outlined in Section 3.554. These actions and notification shall not be used as an intimidation tactic or threat.
- E. Following an investigation, action must be taken on cases where documented evidence exists to show a client has committed one or more acts of IPV. Action must be taken through:
1. Obtaining a "Waiver of Administrative Disqualification Hearing"; or,
  2. An administrative disqualification hearing; or,
  3. Referral for civil or criminal action in a county or district court; or,
  4. Documenting in the case file the county department's decision to take no action to pursue IPV using documented evidence to support the decision. The county department shall establish a claim if appropriate.
- F. In proceeding against such a client, the county department must coordinate any action with actions taken under the Food Assistance program where the factual issues are the same or related.
- G. Overpayment actions shall be initiated within ten (10) calendar days of the investigation's conclusion, unless otherwise specified in the case file. This is required in all cases even if ADH procedures or referral for prosecution is not initiated, except in instances where notification of overpayments may prejudice the ongoing criminal case or investigation. In these instances, the county department may make the determination to postpone notification of claims to the client if the overpayment is being referred to a court of appropriate jurisdiction. The determination to postpone notification must be clearly documented in the case file.
- H. The State Department will not condone any actions of the county department that could be determined to be a violation of State or Federal law. Any actions taken by a county department that is determined to be in violation of State or Federal law may be subject to corrective action per 9 C.C.R. 2501-1 Section 1.150 et seq.
- I. These rules apply to all clients who commit an IPV who are recipients or representative payees of grant payments and/or services. The determination of IPV shall be based on clear and convincing evidence that demonstrates intent to commit IPV.

- J. Supporting evidence warranting the pursuit of an IPV disqualification must be documented with a supervisory review. If the county department determines there is evidence to substantiate that a person has committed an IPV, the person has a right to an ADH. However, the county department shall allow that person the opportunity to waive the right to an ADH.
1. The State approved IPV forms shall be provided to the individual suspected of an IPV. These may be offered to the individual during the investigation or mailed once it has been suspected an IPV has occurred, but there is no plan to pursue criminal charges.
  2. One of the State approved forms affords the individual the right to waive the ADH. If the individual chooses to waive his or her right to an ADH, the individual shall have fifteen (15) calendar days from the date the IPV forms are provided by the county to return the waiver. If the form is not returned, the county department shall pursue an ADH.
  3. The completion of the waiver is voluntary and the county department may not require, nor by its actions appear to require, the completion of the waiver.
- K. An IPV ADH must be requested whenever:
1. The facts of the case do not warrant civil or criminal prosecution;
  2. Documentary evidence exists to show an individual has committed one or more acts of IPV; and
  3. The individual has failed to sign and return the waiver of ADH form.
- L. An ADH may be requested against an accused individual whose case is currently being referred for prosecution on a civil or criminal action in county or district court.
- M. A county department may conduct an ADH or may use the Office of Administrative Courts (OAC) to conduct the ADH.
1. The individual may request verbally, in writing, electronically, or in person that the OAC conduct the ADH in lieu of a county ADH. Such an ADH must be requested ten (10) calendar days before the scheduled date of the county ADH.
  2. The OAC or the county department must mail by certified mail, return receipt requested, a notice of the date of the ADH on the form prescribed by the State Department, to the individual alleged to have committed an IPV. The notice must be mailed at least thirty (30) calendar days prior to the ADH date, to the individual's last known address. The notice form shall include a statement that the individual may waive the right to appear at an ADH.
  3. The ALJ or ADH officer shall not enter a default judgment against the individual for failure to file a written answer to the notice of hearing or failure to appear at the ADH, but shall base the initial decision upon the evidence introduced at the ADH.
  4. The ADH must be continued at the accused individual's request if good cause is shown. The request for continuance must be received by the presiding ALJ or ADH officer at least ten (10) calendar days prior to the ADH.

The ADH shall not be continued for more than a total of thirty (30) calendar days from the original ADH date. One additional continuance is permitted at the ADH officer or ALJ's discretion. If the ADH officer or ALJ considers it necessary, a medical assessment may be ordered to substantiate or disprove a good cause statement of an accused individual. Such assessment shall be obtained at the agency's expense and made part of the record.

**N. Disqualification for IPV shall be as follows:**

1. If the individual signs and returns the request for waiver of ADH within fifteen (15) calendar days from the date the waiver is sent, that person shall be provided with a notice of the period of disqualification.
2. The disqualification period shall begin no later than the first day of the following month from the date determined through the ADH process or, if the individual signed an ADH waiver, the date he or she signed the waiver.
  - a. Once the disqualification is imposed it shall continue without interruption. To consider a disqualification period served, the client shall have a break in grant payments totaling the time period of the disqualification. The disqualification period shall remain in effect unless and until the finding is reversed by the Office of Appeals or a court of appropriate jurisdiction or until the period of disqualification is served per Section c below.
  - b. The disqualification may be in addition to any other penalties which may be imposed by a court of law for the same offenses (i.e. criminal or civil sanctions).
  - c. The disqualification shall be in effect for twelve (12) months upon the first occasion of any such offense; twenty-four (24) months upon the second occasion of any such offense and permanently upon the third such offense. All disqualifications imposed shall run and be served consecutively.
3. The disqualification penalizes only the individual(s) found to have committed an IPV. If a client's spouse and/or sponsor(s) have received an IPV on his or her own case(s), the spouse's and/or sponsor(s)' income and resources, when applicable, will be considered available to the client and used for determining eligibility.
4. An IPV disqualification in one county is valid and effective in all other Colorado counties. A county department shall consider a disqualification imposed by another county department when determining the appropriate disqualification penalty for the disqualified individual without an additional ADH or further right to appeal.

**O. If, as a result of the ADH, the county ADH officer or ALJ finds the individual has committed an IPV, a written notice shall be provided to notify the individual of the decision. The county hearing decision notice shall be a State prescribed form, which includes a statement that a State ADH at the OAC may be requested.**

1. In an ADH before an ALJ, the determination of IPV shall be an initial decision, which shall not be implemented while pending State Department review and a final agency decision. The initial decision shall advise the client that failure to file exceptions to findings of the initial decision will waive the right to seek judicial review of a final agency decision affirming the initial decision.
2. When an individual waives his or her right to an ADH, a written notice of the disqualification penalty shall be mailed to the individual. This notice shall be on a State prescribed notice form.

3. In the event that the ADH was heard by the county, the client may appeal the decision of the county ADH to the OAC. An appeal must be received by the county department or by the OAC within fifteen (15) calendar days of the date the county department mails the local ADH decision to the client. See Section 3.587 for rules regulating the appeal process.
4. A copy of the county ADH decision shall be forwarded to the State Department's Employment and Benefits Division for review at the same time the decision is mailed to the client.

### **3.584 FRAUDULENT ACT**

- A. When the county department or local service delivery agency determines that it has paid a client a grant payment as a result of a fraudulent act, the facts used in the determination shall be reviewed with the department's legal counsel within the attorney general's office and/or a representative from the district attorney's office. If suspected fraud is substantiated by the available evidence, the case shall be referred to the district attorney. All referrals to the district attorney shall be made in writing and shall include the amount of assistance fraudulently received by the client.
- B. If any deduction is being made from the client's assistance payment it must be consistent with any court order resulting from a prosecution by the district attorney. If the individual being prosecuted is not an Adult Financial program client, another method of recovery shall be used to collect amounts due to the department.
  1. Interest shall be charged from the month in which the overpayment was received until the date the overpayment is recovered. Interest shall be calculated at the legal rate.
  2. The client may choose to repay the county department the entire amount of the overpayment at one time or establish a repayment plan. In either instance, the fraud charge should be discussed with the district attorney or appropriate investigative authority.
- C. If the district attorney declines to prosecute, the amount of overpayment due, as established by the department, will continue to be recovered by deduction from subsequent grant payments or other method of recovery if the individual is not a client of Adult Financial grant payments.

### **3.585 RECOVERY**

- A. A county department must take action to research and determine if recovery should be initiated within ten (10) calendar days of discovering a client received an overpayment. The recovery of valid overpayments is required regardless of when the overpayment occurred except in situations as described in Section 3.585.H. Overpayments may be recovered from the client who was overpaid or who fraudulently received the assistance payment or another liable individual.

If a client is deceased, overpayments shall be recovered from the deceased client's estate.
- B. The following rules do not apply in instances where the State or county department seeks recovery in a case that was transferred to the district attorney and prosecuted through the courts:
  1. The client shall be notified of the recovery action to be taken, using the notice rules found at Section 3.554.C.;

2. When the overpayment is caused by an unintentional error, the client's willful withholding or an administrative error, such overpayment shall be deducted, after notice has been given pursuant to Section 3.554, from subsequent grant payments while the client is actively receiving Adult Financial grant payments.
  - a. The client may choose to repay the county department the entire amount of the overpayment at one time. The client shall work with the county department to determine how a lump sum repayment can be made.
  - b. When the recovery amount is not to be repaid in a single payment per subsection a above, and the case remains active, the county department shall establish a monthly recovery deduction from subsequent assistance payments. The monthly rate of recovery shall be ten dollars or ten percent of the assistance payment, whichever is higher.

The following procedure shall be used to arrive at the monthly recovery deduction amount:

    - 1) If the error is a result of an agency error and the client does not meet criteria set forth in Section 3.585, compute ten percent (10%) of the Adult Financial grant payment amount. If the resulting percentage amount is less than ten dollars (\$10), the deduction from the grant payment amount shall be ten dollars (\$10).
    - 2) Deduct the percentage amount or ten dollars (\$10), whichever is higher, from the grant payment. The result shall be rounded to the next lower whole dollar amount, if not already a whole dollar amount. This rounded amount is the final payment amount.
    - 3) When the authorized payment amount is less than ten dollars (\$10), the case is considered a "no payment" case and no deduction shall be made.
    - 4) When the recovery is due to a fraudulent action on the part of the client and interest may be added thereto in accordance with Section 3.584.B.1., the interest amount shall not be included in the grant payment deduction unless the client agrees to such inclusion. If the client does not so agree, the interest amount shall be collected separately.
    - 5) The amount of the grant payment deduction for recovery shall be recorded in the client's case file and collected via the statewide automated system.
  - c. The county department shall not establish a claim unless the amount of the claim is greater than \$200, except in the following circumstances:
    - 1) The overpayment is identified through a Federal or State level quality control review; or,
    - 2) The claim is being pursued as and results in an IPV.
3. When the overpayment is caused by the client's willful withholding of information or an administrative error, and the Adult Financial case is no longer active, recovery of such overpayment shall be based upon the public assistance repayment agreement form or other methods of recovery.

- a. The county shall establish a monthly repayment agreement with a former client. The repayment agreement shall not exceed twenty-five percent (25%) of available monthly income. Determination of the repayment amount must be clearly documented in the electronic case file.
  - b. The client may choose to repay the county department the entire amount of the overpayment at one time. The client shall work with the county department to determine how a lump sum repayment can be made.
  - c. The county department may write-off unpaid valid claims as follows:
    - 1) Valid administrative error claims less than one hundred twenty-five dollars (\$125.00) can be written off ninety (90) days after the termination of all public assistance.
    - 2) Valid claims for client error, fraud, and IPV less than three hundred dollars (\$300.00).
    - 3) Any unpaid valid claim of \$125 or more for an individual who was not convicted of an IPV or fraud specific to the overpayment, is no longer receiving public assistance, and the overpayment was established six (6) or more years ago, and the county department has determined that it is no longer cost effective to pursue collection.
  - d. If the client begins to receive Adult Financial grant payments again after the overpayment has been established and still has a claim balance, the deduction of grant payments shall occur as described in Section 3.585.B.2.
- C. The client may issue the State a refund of any overpaid grant payments from his or her existing balance of Adult Financial grant payments on his or her Electronic Benefits Transfer (EBT) card by contacting the county department. This requires a written statement from the client.
- D. Clients are not entitled to grant payments that were paid in error or mistakenly provided to the client based on a data entry error into the statewide automated system or an error resulting from the statewide automated system. The county shall create a claim and may retrieve the grant payments from the client's EBT card within twenty-four (24) hours of the issuance without prior written authorization by the client. The client shall have no appeal rights in relation to this grant payment because he or she was not eligible for the initial receipt of the grant payment(s) in the first instance.

When grant payments issued in error are not retrieved from the client's EBT card within twenty-four (24) hours, funds shall not be taken from the card using this method unless permission is granted from the client in writing using the State prescribed form. If permission is not granted, the county department shall pursue other methods of recovery as described in Section 3.585.
- E. The client may request voluntary deductions be applied to the overpayment. These are considered to be an amount in addition to the deduction from the grant payment as established through the recovery calculations in Section 3.585.B. The client shall be provided written confirmation of the amount to be deducted and that he or she has the right to stop the voluntary deduction at any time by written request.
- F. A claim may be filed against the estate of a client for overpayment. This includes cases where overpayments were made and not recovered. The county department's legal advisor must be consulted in determining the amount of assistance payments for which a claim is to be filed.

- G. In accordance with Sections 26-2-133 and 39-21-108, C.R.S., the State and county departments may recover overpayments of public or medical assistance benefits through the offset (intercept) of a taxpayer's State income tax refund. Tax refunds shall not be offset in instances where the taxpayer is making regular, ongoing payments as agreed to in the public assistance repayment agreement and/or based on arrangements between the taxpayer and the county(ies). Unless agreed to by the client, the county shall not offset tax refunds during the same month the client makes a payment on a claim if the payment agreement was established prior to the offset. Rent rebates are subject to the offset procedure. The offset of the taxpayer State income tax refund and/or rent rebate may be used to recover overpayments that have been:
1. Determined by final agency action; or,
  2. Ordered by a court as restitution; or,
  3. Reduced to judgment.
- H. Prior to certifying the taxpayer's name and other information to the Colorado Department of Revenue, the Colorado Department of Human Services shall notify the taxpayer, in writing at his or her last-known address, that the State intends to use the tax refund offset to recover the overpayment. In addition to the requirements of Section 26-2-133(2), C.R.S., the pre-offset notice shall include the name of the county department claiming the overpayment, the program that made the overpayment, and the current balance owed.
- I. Effective August 1, 1991, the taxpayer is entitled to object to the offset by filing a request for a county conference or state level fair hearing within thirty (30) calendar days from the date that the State Department mails its pre-offset notice to the taxpayer. In all other respects, the procedures applicable to such hearings shall be those that are stated in Section 3.587. At the hearing on the offset, the county department or ALJ shall not consider whether an overpayment has occurred because overpayment has already been otherwise legally established, but may consider the following issues if raised by the taxpayer in his or her request for a hearing:
1. Whether the taxpayer was properly notified of the overpayment;
  2. Whether the taxpayer is the person, who owes the overpayment;
  3. Whether the amount of the overpayment has been paid or is incorrect;
  4. Whether the debt created by the overpayment has been discharged through bankruptcy; or,
  5. Whether other special circumstances exist including, but not limited to, the circumstances described in Section 3.585.H, (i.e., facts that show that the taxpayer was without fault in creating the overpayment and will incur financial hardship if the income tax refund is offset).
- J. If an offset is established, an overpayment shall not be recovered using another method described in Section 3.585 in the month the offset occurs unless prior authorization is received from the individual making the recovery payments.
- K. The county department is required to pursue collection of the overpayment from the client/responsible payee who managed and administered the Adult Financial funds. The county department shall pursue all available overpayment recovery options to collect the overpayment from the client/responsible payee first and then any other liable individuals legally responsible for overpayments, unless otherwise specified.

1. In instances where a trustee has used a client's trust income or property in a manner contrary to the terms of the trust:
  - a. Determine whether an overpayment of Adult Financial grant payments has occurred as a result of the client's loss of income based on the trustee's improper actions;
  - b. Consult with the county attorney or other legal resource to determine how to pursue action against a trust/trustee;
  - c. Advise the trustee of the overpayment circumstances; and
  - d. If the trustee disagrees with such circumstances and overpayment, pursue the recovery establishment and collection through appropriate legal means; or
  - e. Take appropriate steps to secure repayment with the cooperation of the trustee; or,
  - f. Report such behavior or action by the trustee to the county Adult Protective Services to ensure the protection of the client's rights in the trust.
2. In instances where a power of attorney has used his or her legal authority for purposes other than for the benefit of the client:
  - a. Determine whether an overpayment of Adult Financial grant payments has occurred as a result of the power of attorney's improper actions;
  - b. Consult with the county attorney or other legal resource to determine how to pursue action against a power of attorney;
  - c. Advise the holder of the power of attorney of the overpayment circumstances; and,
  - d. If the holder of the power of attorney disagrees with such circumstances and overpayment, pursue the recovery establishment and collection through appropriate legal means; or
  - e. Take appropriate steps to secure repayment with the cooperation of the holder of the power of attorney; or
  - f. Report such behavior or action by the trustee to the county Adult Protective Services to ensure the protection of the client's rights and benefits.
- L. In any case in which an overpayment has been made, there shall be no recovery from any person:
  1. Who is without fault in the creation of the overpayment; and,
  2. Who has reported any increase in income or other circumstances affecting the client's eligibility within the timely reporting requirements for the program; and,

3. If such recovery would deprive the person of income required for ordinary and necessary living expenses and would be against equity and good conscience. The fact that the client is receiving public assistance shall not be the only factor in making a determination that the person would be deprived of income required for ordinary and necessary living expenses and that equity and good conscience exist.
  - a. If a client has ten (10) percent or more of income remaining after necessary living expenses, he or she shall not be considered deprived of income.
  - b. If a client's expenses exceed his or her income, additional questions must be asked to determine how he or she is meeting expenses to ascertain if other income (i.e. gift, in-kind) needs to be included in the income calculation.
- M. When the overpayment recovery is not pursued, such fact, together with the reason, shall be documented in the statewide automated system. All information pertaining to the reason, establishment, and collection of claims shall be retained in the case record until the claim is written off or paid in full.

### **3.586 DISPUTE RESOLUTION**

The dispute resolution process is available for disputes concerning county department actions related to eligibility, reduction of grant payment amounts, redetermination procedures, and other county actions that do not involve allegations of fraudulent acts or IPV on the part of the client. If there is a dispute regarding fraudulent actions or IPV, that dispute must be handled according to Sections 3.583 and 3.584 regarding IPV and fraudulent acts.

In order to resolve disputes between county departments and/or the local service delivery agency and clients, county departments and local service delivery agencies shall adopt procedures for the resolution of disputes consistent with this section. The procedures shall be designed to establish a simple non-adversarial format for the informal resolution of disputes.

- A. The county department or local service delivery agency, prior to taking action to deny, terminate, recover, initiate vendor payments or modify financial assistance provided under the Adult Financial program to a client, shall, at a minimum, provide the client an opportunity for a county conference.
  1. The right of a client to a county conference is primarily to ensure that the proposed action is valid, to protect the client against an erroneous action concerning grant payments, and to ensure reasonable promptness of county action. The client may choose, however, to bypass the county conference and appeal directly to the State Office of Administrative Courts, pursuant to Section 3.587.
  2. The client is entitled to:
    - a. Representation by an authorized representative retained at his or her own expense, such as legal counsel, relative, friend, or another spokesperson, or he or she may represent himself or herself;
    - b. Examine the contents of the case file and all documents and records used by the county department or agency in making its decision. Examination of the file is available at a reasonable time before the conference and during the conference. However, the file shall not include names of confidential informants, privileged communications between the county department and its attorney, or the nature and status of pending criminal prosecutions and any other information that is confidential or privileged; and

- c. Present new information or documentation to support reversal or modification of the proposed adverse action.
- 3. Failure of the client to request a county conference within ninety (90) calendar days from the date timely notice of the proposed action was mailed to the client without making a request for postponement within that same ninety (90) days, shall constitute abandonment of the right to a conference. The client does not lose the right to appeal directly to the OAC pursuant to Section 3.587.
- 4. Failure of the client to appear at the scheduled county conference without making a request for postponement prior to the scheduled date of the conference shall constitute abandonment of the right to a conference unless the client can show good cause for his or her failure to appear. The client does not lose the right to appeal directly to the OAC pursuant to Section 3.587.
- B. The county conference shall be held before a person who was not directly involved in the initial determination of the action in question in the county department or agency where the proposed decision is pending. The county worker or contractor who initiated the action in dispute shall not conduct the county conference.
  - 1. The person designated to conduct the conference shall be in a position which, based on knowledge, experience, and training, would enable him or her to determine if the proposed action is valid. This could include, but is not limited to, a supervisor, quality assurance personnel, or a manager with no previous knowledge of the case.
  - 2. Two or more county departments/local service delivery agencies may schedule a joint county conference related to the same client. If two or more counties/local service delivery agencies schedule a joint county conference, the location of the conference need not be held in the county or agency taking the action, and the conference location shall be convenient to the client.
  - 3. The county conference may be conducted either in person, by telephone, or video conference. A telephonic or video conference must be agreed to by the client.
  - 4. The county/agency worker or other county or department employee or contractor shall attend the county conference and present the factual basis for the disputed action.
  - 5. The county conference shall be conducted on an informal basis. The county department/agency must provide specific reasons for the proposed action, and the applicable State Department's rules, or county policy. In the event the client does not speak English, an interpreter shall be provided by the county department/agency.
  - 6. The county/agency shall have available at the conference all pertinent documents and records in the case file relevant to the specific action in dispute.
  - 7. To the extent possible, the county conference shall be scheduled and conducted prior to grant payments being reduced or terminated.
  - 8. The county department/local service agency shall provide notice to the client at least four (4) days prior to the scheduled time and location for the conference, or the time of the scheduled telephone or video conference. Notice should be in writing. The client may provide a written or verbal waiver that written notice of the scheduled conference is not necessary when the county department is able to conduct the conference within four (4) days.

9. The county department may consolidate a client's disputes regarding the Adult Financial program, the food assistance program, or any other public assistance program if the facts are similar and consolidation would facilitate resolution of all disputes.
  10. The goal of the county conference is to reach an agreement between the client and the county department and/or the local service delivery agency.
- C. At the conclusion of the conference, the person presiding shall summarize the discussion in writing. The summary shall include whether the issue was resolved and include the client's appeal rights as described in Section 3.587.A. A copy of the written summary shall be provided to the client and/or his or her representative within eleven (11) calendar days. A copy of the summary will also be maintained in the client's case file.

### **3.587 APPEAL AND STATE LEVEL FAIR HEARING**

- A. These rules apply to all state level fair hearings of county department actions concerning assistance payments and actions taken pursuant to State rules governing the Adult Financial program. An affected client who is dissatisfied with a county department or local service delivery agency action or the result of a county conference or failure to act concerning grant payments may appeal to the Office of Administrative Courts (OAC) for a state level fair hearing before an independent administrative law judge (ALJ). This will be a full evidentiary hearing of all relevant and pertinent facts to review the decision of the county department or local service delivery agency. The time limitations for submitting a request for an appeal are:
1. When the client elects to avail him or herself of a county conference, but is dissatisfied with that decision, the request must be submitted in writing and mailed or delivered as described in 3 below within the ninety (90) day period specified in 2, below;
  2. When the client elects not to avail him or herself of a county conference but wishes to appeal directly to the state, a written request for an appeal must be mailed or delivered as described in 3 below no later than ninety (90) calendar days from the date timely notice of the proposed action was mailed to the person;
  3. A request for an appeal must be mailed or delivered to the Office of Administrative Courts. If the request for appeal is sent to or made with the county department, the county shall forward such request to the OAC.
- B. Requests for state level fair hearings may result from such reasons as:
1. The opportunity to make an application or reapplication has been denied;
  2. An application for assistance or services has not been acted upon within the maximum time period for the category of assistance;
  3. The application for assistance has been denied; the grant payment has been modified or discontinued; requested reconsideration or a grant payment amount deemed incorrect has been refused or delayed; grant payment has been delayed through the holding of payments; the county department is demanding repayment for any part of a grant payment to a client which the client does not believe is justified; or the client disagrees with the type or level of benefits or services provided.
- C. The basic objectives and purposes of the appeal and state level fair hearing process are:
1. To safeguard the interests of the client;

2. To provide a practical means by which the client is afforded a protection against incorrect action on the part of the county department or local service delivery agency;
  3. To bring to the attention of the State Department and county department or local service delivery agency information that may indicate need for clarification or revision of State and county policies and procedures;
  4. To assure equitable treatment through the administrative process without resort to legal action in the district courts.
- D. Any clear expression verbally or in writing by the client or his or her representative, that the client wants an opportunity to have a specific action of a county department or local service delivery agency reviewed by the State Department is considered an appeal and a request for a state level fair hearing. The county department or local service delivery agency shall, when asked, aid the person in preparing a request for a hearing. If the request for a hearing is made verbally, the county department shall prepare a written request within ten (10) calendar days for the client or his or her representative's signature or have the client prepare such request, specifying the action he or she would like to appeal and the reason for appealing that action.
1. The client is entitled to:
    - a. Representation by any person he or she chooses pursuant to Section 26-2-127(1)(a)(IV), C.R.S., legal counsel retained at the client's own expense, or he or she may represent him or herself;
    - b. Examine the complete case file and any other documents, records, or pertinent material to be used by the county at the state level fair hearing, at a reasonable time before the date of hearing as well as during the hearing. However, the file shall not include the names of confidential informants, privileged communications between the county departments and its attorney, the nature and status of pending criminal prosecutions, and any other information that is confidential or privileged.
  2. The client and staff of the county department are entitled to:
    - a. Present witnesses;
    - b. Establish all facts and circumstances pertinent to the decision being appealed;
    - c. Advance any arguments without undue interference;
    - d. Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

### **3.587.1 STATE LEVEL FAIR HEARING PROCEDURES**

One or more persons from the Colorado Department Personnel & Administration, OAC, are appointed to serve as ALJ for the State Department.

- A. The State ALJ shall, in preparation for the hearing, review the reasons for the decision under appeal and be prepared to interpret applicable departmental rules governing the Adult Financial program and the issue(s) under appeal.

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- B. When legal counsel does not represent the client and/or the department or local service delivery agency, the ALJ shall assist in bringing forth all relevant evidence and issues relating to the appeal.
- C. Upon receipt by the OAC of an appeal request, OAC assigns a case number. The OAC sets a hearing date at least ten (10) days from the date the appeal was requested, and sends a letter by first class or certified mail to the appellant and the county department or local service delivery agency notifying them of the date, time, and place of the hearing.
1. The letter advises the appellant that if these arrangements are not satisfactory, he or she must notify the OAC. An ALJ will decide if good cause exists, and whether the date, time, and/or place of the hearing will be changed.
  2. An information sheet shall be enclosed with the letter that explains the hearing procedures to the appellant. The information sheet informs the appellant that:
    - a. He or she has the right to representation by an authorized representative retained at his or her own expense, such as legal counsel, a relative, a friend, or another spokesperson, or he or she may represent himself or herself;
    - b. The appellant or his or her representative has the right to examine all materials to be used at the hearing, before and during the hearing; and
    - c. Failure to appear at the hearing as scheduled, without having secured a proper extension in advance, or without having shown good cause for failure to appear, shall constitute abandonment of the appeal and cause a dismissal thereof.
  3. If OAC sets the hearing forty-five (45) days or more from the date of the notice of hearing, the county department/agency shall, within fifteen (15) days but no later than thirty (30) days prior to the hearing, prepare and mail a hearing packet to the appellant with a copy to OAC. If the hearing is set less than 45 days from the date of the notice of hearing, the county department/agency shall, within five (5) days but no later than ten (10) days prior to the hearing, prepare and mail the hearing packet. The hearing packet shall contain the following information:
    - a. The reasons for the decision of the county department or local service delivery agency and a specific explanation of each factor involved, such as the amount of excess property or income, assignment or transfer of property, or residence factors;
    - b. The specific State rules governing the Adult Financial program on which the decision is based with a numeric reference to each such rule, including the appropriate Code of Colorado Regulations (C.C.R.) cites;
    - c. Notice that the county department or local service delivery agency will assist him or her by providing relevant documents from the case file for his or her claim, if he or she so desires, and that he or she has the opportunity to examine rules and other materials to be used at the hearing concerning the basis of the county decision.
  4. Information that the appellant or his or her representative does not have an opportunity to see shall not be made available as a part of the hearing record or used in a decision on an appeal. No material made available for review by the ALJ may be withheld from review by the appellant or his or her representative.
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5. In Adult Financial program appeals, the ALJ has twenty (20) calendar days from the hearing date to arrive at an initial decision. Once an initial decision is rendered, the OAC immediately sends the case and the initial decision to the State Department, Office of Appeals. The Office of Appeals serves the initial decision on the parties via first class mail and provides for an opportunity for the parties to file exceptions to the initial decision prior to the Office of Appeals issuing a final agency decision.
  6. The initial decision shall not be implemented pending review by the Office of Appeals and entry of a final agency decision. All final agency decisions on these appeals shall be made within ninety (90) calendar days from the date the request for hearing is received.
- D. When the client has had a county conference and wishes to appeal the county department or local service delivery agency's action to the OAC, the following procedures shall be followed:
1. As part of the county conference the client is informed that if he or she wishes to appeal to the OAC for a hearing, the county department or local service delivery agency shall provide relevant documents from the case file for the client's claim, if he or she so desires, and that he or she may have the opportunity to examine materials as described in the Section 3.587.1.C.2.;
  2. The county department or local service delivery agency shall forward a copy of the county decision being appealed and a copy of the written notification of the decision given to the client to the OAC.
  3. A copy of the OAC's notice to the client setting a date for the hearing is forwarded to the county department or local service delivery agency. The county department or local service delivery agency shall provide the client with a hearing packet in accordance to Section 3.587.1.C.3.
  4. If the client indicates to the county department that he or she desires to withdraw the appeal, the county department shall obtain a statement to that effect in writing and forward it to the OAC.
  5. If a client has legal counsel or another authorized representative for the appeal, the county department or local service delivery agency will not discuss the merits of the appeal or the question of whether or not to proceed with it with the client unless the discussion is in the presence of, or with the permission of, such counsel or such other authorized representative.
  6. If the county department or local service delivery agency learns that legal counsel will represent the client, the county department or local service delivery agency shall make every effort to ensure that it, too, is represented by an attorney at the hearing. The county department/agency may be represented by an attorney in any appeal that it considers such representation desirable.
  7. If the appellant needs interpretation services, the county department shall arrange to have present at the hearing a certified interpreter who will be sworn to translate correctly.
  8. The fact that an appellant and the county department or local service delivery agency have been notified that a hearing will be held does not prevent the county department/agency from reviewing the case and considering any new factors which might change the status of the case, or taking such action as may be indicated to reverse its decision or otherwise settle the issue. Any change that results in voiding the cause of appeal shall be immediately reported by the county department to the OAC.

9. Upon receipt of notice of a State hearing on an appeal, the county department or local service delivery agency shall arrange for a suitable hearing room appropriate to accommodate the number of persons, including witnesses, who are expected to be in attendance, taking into consideration such factors as privacy; absence of distracting noise; and the need for table, chairs, electrical outlets, adequate lighting and ventilation, and conference telephone facilities.
- E. Telephonic conference hearings may be conducted as an alternative to in-person hearings unless otherwise requested by any of the parties. All applicable provisions of the in-person hearing procedures will apply, such as the right to be represented by counsel, the right to examine and cross-examine witnesses, the right to examine the contents of the case file, and the right to have the hearing conducted at a reasonable time and date.
1. The ALJ shall conduct the hearings in accordance with the State Administrative Procedure Act, Article 4 of Title 24, C.R.S., specifically, Section 24-4-105.
  2. The county department or local service delivery agency shall have the burden of proof, by a preponderance of the evidence, to establish the basis of the decision being appealed. Every party to the proceeding shall have the right to present his or her case or defense by verbal and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing is expedited and the interests of the parties will not be subsequently prejudiced thereby, the ALJ may receive all or part of the evidence in written form or by verbal stipulations.
- F. The following provisions govern the procedure at State hearings before the ALJ:
1. The hearing is closed to the public. However, any person or persons whom the appellant wishes to appear for or with him or her may be present, and, if requested by the appellant on the record, such hearing may be public;
  2. The purpose of the hearing is to determine the pertinent facts in order to arrive at a fair and equitable decision in accordance with the rules of the State Department. In arriving at a decision, only the evidence and testimony introduced at the hearing is considered by the ALJ. However, in circumstances when it is shown at the hearing that medical or other evidence could not, for good cause, be obtained in time for the hearing, the ALJ may permit the introduction of such evidence after the hearing. The opposing party must also be furnished with a copy of this new evidence and must have the opportunity to controvert or otherwise respond to it. Delays in rendering the initial decision will be attributed to the party requesting that the ALJ hear additional evidence after the hearing;
  3. Although the hearing is conducted on an informal basis and an effort is made to place all the parties at ease, it is essential that the evidence be presented in an orderly manner so as to result in an adequate record;
  4. When an ALJ makes a decision regarding the merits of the case, or the dismissal of the appeal, that decision is called an initial decision, see Section 3.587.2 addressing initial decisions;
  5. A complete and exact record of the hearing shall be made by electronic or other means. When requested by the party, the OAC shall cause the proceedings to be transcribed at the expense of the requesting party;

6. The ALJ shall not enter a default against any party for failure to file a written answer in response to the notice of hearing, but shall base the initial decision upon the evidence introduced at the hearing. However, an appellant may be granted a postponement of the hearing if the county department or local service delivery agency has failed to provide the hearing packet required by Section 3.587.1.D.3, and the appellant has therefore been unable to prepare for the hearing.
7. When the ALJ dismisses an appeal for reasons other than failure to appear, the decision of the ALJ shall be an initial decision which shall not be implemented until after the Office of Appeals completes its review and enters a final agency decision.
8. When OAC has notified the appellant of the time, date, and place of the OAC hearing and the appellant fails to appear at the hearing, without giving notice to the ALJ of acceptable good cause for his or her inability to appear at the hearing, then the appeal shall be considered abandoned. The ALJ shall enter an order of dismissal and the OAC shall serve it upon the parties. The dismissal order shall not be implemented pending review by the Office of Appeals and entry of a final agency decision.

However, the appellant, shall have ten (10) calendar days from the date the order of dismissal was mailed to draft and send a letter to the ALJ explaining the reason for his or her failure to appear. If the ALJ then finds that there was good cause for the appellant not appearing, the ALJ shall vacate the order dismissing the appeal and reschedule the hearing date.

If the appellant submits a letter seeking to show good cause and the ALJ finds that the stated facts do not constitute good cause, the ALJ shall enter an initial decision confirming the dismissal.

If the appellant does not submit a letter seeking to show good cause within the ten (10) day period, the order of dismissal shall be filed with the Office of Appeals of the State Department. The Office of Appeals shall confirm the dismissal of the appeal by a final agency decision, which shall be served upon the parties.

After the final agency decision is served on the parties, the county department or local service delivery agency shall carry out the necessary actions within ten (10) calendar days of the final agency decision becoming effective. The actions may be: to provide assistance in the correct amount; to terminate assistance; to recover assistance incorrectly paid; and/or other appropriate actions in accordance with the rules and final agency decision.

9. The appellant may file exceptions to any ALJ initial decision pursuant to Section 3.587.2.C.

### **3.587.2 DECISION AND NOTIFICATION**

- A. Following the conclusion of the state level fair hearing, the ALJ shall promptly prepare and issue an initial decision and file it with the State Department, Office of Appeals.

The Office of Appeals of the State Department is the designee of the State Department's Executive Director for reviewing the initial decision of the ALJ. The Office of Appeals enters a final agency decision on behalf of the executive director affirming, modifying, or reversing the initial decision.

1. The initial decision shall make an initial determination whether the county, local service delivery agency, or State Department or its agent acted in accordance with, and/or properly interpreted, the rules of the State Department governing the Adult Financial program.
  2. The ALJ has no jurisdiction or authority to determine issues of constitutionality or legality of departmental rules.
  3. The initial decision shall advise the client who brought the appeal that failure to file exceptions to findings of the initial decision will waive the right to seek judicial review of a final agency decision that affirms those findings.
  4. The Office of Appeals shall promptly serve the initial decision upon each party by first class mail, and shall transmit a copy of the decision either electronically or in writing to the division of the State Department that administers the program(s) pertinent to the appeal.
  5. The initial decision shall not be implemented pending review by the Office of Appeals and entry of a final agency decision.
- B. Upon receiving the initial decision, the Office of Appeals may issue an order of remand based on an issue that warrants an immediate remand before the initial decision is even mailed to the parties.

Additionally, the Office of Appeals may issue an order of remand after its substantive review of an initial decision, and prior to issuing a final agency decision, based on the need for further clarification, findings, conclusions of law, and/or further proceedings. An order of remand is not a final agency decision that is subject to judicial review.

- C. Any party seeking a final agency decision which reverses, modifies, or remands the initial decision of the administrative law judge shall file exceptions to the decision with the Office of Appeals, within fifteen (15) days (plus three days for mailing) from the date the initial decision is mailed to the parties. If that date falls on a weekend or State holiday, the due date shall be moved to the next business day. Exceptions must state specific grounds for reversal, modification or remand of the initial decision.
1. If the party asserts that the ALJ's findings of fact are not supported by the weight of the evidence, the party shall, simultaneously with, or prior to, the filing of exceptions, request that the OAC create a transcript of all or a portion of the hearing and file it with the Office of Appeals. No transcript is required if the review is limited to a pure question of law. Similarly, if the exceptions assert only that the ALJ improperly interpreted or applied State rules or statutes, the party filing exceptions is not required to provide a transcript or recording to the Office of Appeals.  
  
If applicable, the exceptions shall state that a transcript has been requested. Within five (5) days of the request for a transcript, the party requesting it shall advance the cost therefore to the transcriber designated by the OAC, unless the transcriber waives prior payment.
  2. A party who is indigent and unable to pay the cost of a transcript may file a written request, which need not be sworn, with the Office of Appeals for permission to submit a copy of the hearing audio recording instead of the transcript. If submission of a recording is permitted, the party filing exceptions must promptly request a copy of the recording from the OAC and deliver it to the Office of Appeals. Payment in advance shall be required for the preparation of a copy of the recording.

3. The Office of Appeals shall serve a copy of the exceptions on each party by first class mail. Each party shall be limited to ten (10) calendar days from the date exceptions are mailed to the parties in which to file a written response to such exceptions. The Office of Appeals shall not permit verbal argument.
  4. The Office of Appeals shall not consider evidence that was not part of the record before the ALJ. However, the case may be remanded to the ALJ for rehearing if a party establishes in its exceptions that material evidence has been discovered that the party could not with reasonable diligence have produced at the hearing.
  5. While review of the initial decision is pending before the Office of Appeals, the record on review, including any transcript or recording of testimony filed with the Office of Appeals, shall be available for examination by any party at the Office of Appeals during regular business hours.
  6. The State Department's division responsible for administering the program relevant to the appeal may file exceptions to the initial decision, or respond to exceptions filed by a party, even though the division has not previously appeared as a party to the appeal. The division's exceptions or responses must be filed in compliance with the requirements of this section. Exceptions filed by a division that did not appear as a party at the hearing shall be treated as requesting review of the initial decision upon the State Department's own motion.
  7. In the absence of exceptions filed by any party or by a division of the State Department, the Office of Appeals shall review the initial decision, and may review the hearing file of the ALJ and/or the recorded testimony of witnesses, before entering a final agency decision. Review by the Office of Appeals shall determine whether the decision properly interprets and applies the rules of the State Department and/or relevant statutes, and whether the findings of fact and conclusions of law support the decision. If a party or division of the State Department objects to the final agency decision entered upon review by the Office of Appeals, the party or division may seek reconsideration of the final agency decision pursuant to subsection D below.
  8. The Office of Appeals shall mail copies of the final agency decision to all parties by first class mail.
  9. For purposes of requesting judicial review, the effective date of the final agency decision shall be the third day after the date the decision is mailed to the parties, even if the third day falls on Saturday, Sunday, or a legal holiday. The parties shall be advised of this in the final agency decision.
  10. The State or county department or local service delivery agency shall initiate action to comply with the final agency decision within three (3) working days after the effective date. The department shall comply with the decision even if reconsideration is requested; unless the effective date of the final agency decision is postponed by order of the Office of Appeals or a reviewing court.
- D. No motion for reconsideration shall be granted unless it is filed in writing with the Office of Appeals within fifteen (15) days of the date that the final agency decision is mailed to the parties. The motion must state specific grounds for reconsideration of the final agency decision.

The Office of Appeals shall mail a copy of the motion for reconsideration to each party of record and transmit electronically or in writing to the appropriate division of the State Department.

A motion for reconsideration of a final agency decision may be granted by the Office of Appeals for the following reasons:

1. A showing of good cause for failure to file exceptions to the initial decision within the fifteen (15) day period allowed by Section 3.587.2.b; or,
  2. A showing that the final agency decision is based upon a clear or plain error of fact or law. An error of law means failure by the Office of Appeals to follow a rule, statute, or court decision, which controls the outcome of the appeal.
- E. When a final agency decision concludes that an action of the county, local service delivery agency, or State Department was not in accordance with the rules of the State Department, or when the county/agency or State Department determines that its action was not supported by the State Department's rules after the client makes a request for a hearing, the adjustment or corrective payment is made retroactively to the date of the incorrect action.
- F. The client is to be fully informed by the final agency decision of his or her further right to apply for judicial review of the final agency decision. Judicial review can be started by filing an action for review in the appropriate State district court. Any such action must be filed in accordance with Section 24-4-106, C.R.S. and with the Colorado Rules of Civil Procedure within thirty-five (35) days after the final agency decision becomes effective.
- G. The State Department will establish and maintain a method for informing, in summary and depersonalized form, all county departments and other interested persons concerning the issues raised and decisions made on appeals.

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### **Editor's Notes**

Primary sections of 9 CCR 2503-1 have been recodified effective 09/15/2012. See list below. Versions and rule history prior to 09/15/2012 can be found in 9 CCR 2503-1. Prior versions can be accessed from the All Versions list on the current rule page.

Rule section 3.100, et seq. has been recodified as 9 CCR 2503-1, (Reserved for Future Use).

Rule section 3.200, et seq. has been recodified as 9 CCR 2503-2, (Reserved for Future Use).

Rule section 3.300, et seq. has been recodified as 9 CCR 2503-3, COLORADO REFUGEE SERVICES PROGRAM (CRSP).

Rule section 3.400, et seq. has been recodified as 9 CCR 2503-4, (Reserved for Future Use).

Rule section 3.500, et seq. has been recodified as 9 CCR 2503-5, ADULT FINANCIAL PROGRAMS.

Rule section 3.600, et seq. has been recodified as 9 CCR 2503-6, COLORADO WORKS PROGRAM.

Rule section 3.700, et seq. has been recodified as 9 CCR 2503-7, LOW-INCOME ENERGY ASSISTANCE PROGRAMS (LEAP).

Rule section 3.800, et seq. has been recodified as 9 CCR 2503-8, ADMINISTRATIVE PROCEDURES FOR THE COLORADO CHILD CARE ASSISTANCE PROGRAM.

Rule section 3.900, et seq. has been recodified as 9 CCR 2503-9, COLORADO CHILD CARE ASSISTANCE PROGRAM.

### **History**

Rules 3.500-3.500.63 repealed eff. 09/15/2012.

Entire rule eff. 03/02/2014.

Rules 3.530-3.530 A emer. rules eff. 05/02/2014.

Rule 3.581 emer. rule eff. 06/06/2014.

Rules 3.520.4-3.520.4 D.6 emer. rules eff. 07/11/2014.  
Rule 3.530 eff. 08/01/2014.  
Rules 3.540-3.540 A emer. rules eff. 08/06/2014.  
Rules 3.520.4-3.520.4 D.6, 3.540-3.540 A, 3.581 eff. 10/01/2014.  
Rules 3.530, 3.540, 3.581 emer. rules eff. 01/01/2015.  
Rules 3.532, 3.543, 3.583 emer. rules eff. 01/22/2015.  
Rules 3.530, 3.540, 3.581 eff. 03/20/2015.  
Rules 3.532, 3.543, 3.583 eff. 04/01/2015.  
Rules 3.510, 3.520.71, 3.542 eff. 06/01/2015.  
Rule 3.520.4 emer. rule eff. 06/05/2015.  
Rule 3.520.4 eff. 09/01/2015.  
Rules 3.520.4-3.520.4 D eff. 01/01/2016.  
Rules 3.532 F.2, 3.532 H, 3.543 I, 3.570.11 B, 3.570.21 B, 3.583 D.4.a, 3.583 D.5.a eff. 10/01/2016.  
Rules 3.530, 3.540, 3.581 emer. rules eff. 11/04/2016.  
Rules 3.530, 3.540, 3.581 eff. 03/02/2017.  
Rules 3.530, 3.540, 3.581 emer. rules eff. 12/01/2017.  
Rules 3.530, 3.540, 3.581 eff. 04/01/2018.  
Rules 3.540 A, 3.570.11 B, 3.570.21 B eff. 09/01/2018.  
Rules 3.520.71, 3.540.1, 3.541, 3.541.1, 3.542 A eff. 11/01/2018.  
Rules 3.530, 3.540, 3.581 emer. rules eff. 11/02/2018.  
Rules 3.530, 3.540, 3.581 eff. 02/01/2019.  
Rules 3.530, 3.540, 3.581 emer. rules eff. 01/01/2020.  
Entire rule eff. 03/01/2020.  
Rule 3.540.2 eff. 07/01/2020.  
Rules 3.510, 3.583 I, 3.583 N.2 eff. 01/01/2021. Rules 3.530, 3.546 emer. rules eff. 01/01/2021.

### **Annotations**

Rule 3.520.4.D.6. (adopted 08/08/2014) was not extended by Senate Bill 15-100 and therefore expired 05/15/2015.