

CHAPTER 2-000 ELIGIBILITY

2-001 Eligibility for Other Respite Services: The assistance provided by the RSP is only for those individuals not eligible for respite funding through any other government administered respite program. The applicant must –

1. Submit current program plans if currently receiving support from a service program, as requested;
2. Describe any support received in the past from any service program;
3. Report any instance when an application for service was denied;
4. Apply to all appropriate resources not previously explored; and
5. Accept any appropriate support offered through another program.

2-002 Application Process

2-002.01 Right to Apply: Any individual or agency may submit an application for himself/herself or as a representative for another person. Note: Applications submitted by any person, agency or organization on behalf of any individual are considered a referral and will be processed by Department staff the same as any other application.

2-002.02 Application Form: The applicant must either complete a current application form or use an alternate format to provide the Department with the following information:

1. Name, address and telephone number of person with special needs;
2. Social Security number and date of birth of person with special needs;
3. The total number of people who live in the household. Including parents, brothers and sisters ages 0 through 18;
4. A description of the person's special needs;
5. An explanation of the caregiver's need for respite;
6. Whether the client/caregiver are receiving other financial assistance for respite and a description of that assistance;
7. Health insurance coverage;
8. The source, frequency and amount of all gross earned and unearned income;
9. Disability-related expenses, the cost and the frequency of the expenses;
10. Resources (only liquid resources with no significant penalty for withdrawal);
11. The name, Social Security number and relationship of the caregiver;
12. Signature and the date signed by client or his/her representative.

2-002.03 Withdrawal: The applicant may voluntarily withdraw an application at any time during the process. If a written request to withdraw is received, it is not necessary to send a written notice closing/rejecting the case/application.

2-003 Respite Service Populations: Department staff may divide funding among populations in equal proportions. However, in order to ensure that all budgetary funds may be utilized, the Department may move funds from one population to the other. (See 464 NAC 1-002). A child who reaches age 19 will automatically transition into the adult population and an adult who reaches age 60 will automatically transition into the elderly population. Populations will be divided as follows:

1. Birth through age 18;
2. Age 19 through age 59; and
3. Age 60 and above.

2-004 Eligibility Criteria:

2-004.01 Eligible Clients: Eligible clients must:

1. Reside in the State of Nebraska;
2. Reside in a non-institutional setting;
3. Have a special need;
4. Meet the financial criteria for the RSP; and
5. Be a citizen of the United States of America or a qualified alien under the federal Immigration and Nationality Act and be lawfully present in the United States:
 - a. Attestation: The applicant must attest that s/he is a citizen of the United States of America or that s/he is a qualified alien under the federal Immigration and Nationality Act, 8 USC 1101 et seq., as such act existed on January 1, 2009; and is lawfully present in the United States. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her United States Citizenship and Immigration Services (USCIS) documentation upon request.
 - b. Verification: For any applicant who has attested that s/he is a qualified alien under 464 NAC 2-004.01, item 5.a., eligibility for benefits must be verified through the Systematic Alien Verification for Entitlements Program. Until verification of eligibility is made, the attestation may be presumed to be proof of lawful presence unless the verification is required before providing the public benefits under another provision of state or federal law.

2-004.02 Caregiver Requirements: Caregivers must:

1. Be providing care or supervision of the individual with special needs without reimbursement or payment;
2. Need a break from the ongoing care of a client; and
3. Reside in the same home as the client.

Note: Respite is not a substitute to allow the caregiver to work. The caregiver may maintain a separate residence but s/he must be residing with or staying with the client on an ongoing basis.

2-004.03 Financial Eligibility:

2-004.03A Family Size: Family size is determined by the number of adults and/or children related by blood, marriage or adoption who reside in the same household. An unborn child may be included. The following are considered separate families:

1. Related adults other than spouses and unrelated adults who reside together;
2. Children living with non-legally responsible relatives;
3. Emancipated minors;
4. A minor parent; and
5. Children placed outside the home and who are not residing full-time with the biological parents or usual caretaker.

2-004.03B Other Available Resources: Clients who have access to financial or other resources sufficient to meet their needs may be found ineligible for RSP services.

2-004.03C Income Eligibility: Clients whose gross income minus allowable disregards is at or below 312 percent of the federal poverty level for the appropriate family size, meet the income criteria for the Respite Subsidy Program.

2-004.03C1 Sources of Income: HHS staff must consider the gross amount of all earned and unearned income to the family in determining initial and ongoing eligibility unless it is specifically excluded below.

2-004.03C2 Income Exclusions: HHS staff will not consider the following income sources when determining beginning or ongoing eligibility:

1. Any monies received from Indian or Alaska Native Claims Commission or Court of Claims or per capita payments to tribes;
2. Bank withdrawals or loans;
3. Money received from the sale of property such as stocks, bonds, a house, or a car (unless the person was engaged in the business of selling such property in which case the net proceeds would be counted as income from self-employment);
4. Tax refunds, Capital gains, earned income credits and Advanced Earned Income Credits;
5. Lump sum payments from any source, including but not limited to, gifts, inheritances, insurance payments, child support or Social Security Administration payments;
6. The value of Food Stamps, USDA donated foods or food commodities, or food or reimbursements received under the Child Nutrition Act of 1966 or the National School Lunch Act;
7. Funds or reimbursement benefits from any program administered by HHS;
8. Medicare premiums;
9. In-kind income;
10. Any student financial assistance including work study for an undergraduate student.
11. Payments made to any individual from any claim or class action suits or from any funds established by Legislative acts due to harm from any act of war, disaster or health condition;

12. Payments made under any program for education or training, including but not limited to Work Investment Act, Vocational Rehabilitation, Training Workforce Investment Act or Veterans Education and Employment Assistance Act;
13. Earnings of a child age 18 or younger;
14. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
15. Housing assistance provided by Housing and Urban Development or by a local housing program;
16. Home produce used for household consumption;
17. Vendor payments of any kind, including but not limited to, payments made by an absent parent for child care, or rent;
18. Reimbursement benefits received to purchase items or services, such as Veterans Aide and Attendant;
19. Payments for services or reimbursement of expenses to volunteers serving as foster grandparents, senior health aides, or Senior Companions Services Corp., of Returned Executives (SCORE), Active Corps of Executives (ACE), Green Thumb Volunteers and any other programs under Titles II and III.

2-004.03C3 Income Disregards: When determining financial eligibility for the RSP, Department staff may disregard income for disability-related expenses above and beyond those incurred in households where no people with disabilities reside. These costs must actually be incurred by the family/client and not paid or reimbursed by any other source. This income includes but is not limited to:

1. Additional cost of health insurance due to a disability, for example, Comprehensive Health Insurance Pool (CHIP) premiums;
2. Transportation for medical services (for example, an automobile modification or payment for ambulance travel if required by the disability or special needs);
3. Medical costs, including over-the-counter remedies related to client's special needs;
4. Attendant care costs;
5. Cost of special equipment;
6. Cost of home modifications; and
7. Other health or medical expense related to the special need of the client.

2-005 Prudent Person Principle: When the statements of the client are incomplete, unclear or inconsistent, or when other circumstances in the particular case indicate to a prudent person that further inquiry must be made, the worker determining eligibility must obtain additional verifications before eligibility is determined.

2-006 Maximum Support: The client has the right to determine how much respite care will be used each month. The support provided through this program must not exceed \$125 per client per month except as noted below. The Department determines the maximum monthly expenditure for each case based on need and available funds. This maximum does not prohibit the use of other personal or private resources to meet total support costs.

Note: If the caregiver would like to save up the respite care for an extended period, HHS staff may make special arrangements in advance. Up to three months of consecutive Respite Subsidy may be saved for use all at once to allow for extended respite services.

Exceptions: A client or caregiver may contact HHS staff to request additional services for unusual circumstances.

2-007 AUTHORIZING SUPPORT

2-007.01 Determining Eligibility: The Department's RSP worker determines eligibility and authorizes respite services. The determination process must include, but not be limited, to the following:

1. Determine if the caregiver resides with the client;
2. Determine if the caregiver is paid or reimbursed;
3. Consider the needs of the client and the caregiver/per the application;
4. Compare financial resources of the client to the program guidelines;
5. Calculate a budget and compare income to the program guidelines;
6. Determine if all points of eligibility have been met; and
7. Authorize respite services by sending a notice to the client or reject the application.

2-007.02 Notices: Department staff must notify each applicant in writing when s/he has been determined –

1. Eligible to participate in the program. The notice identifies the type and amount of support for which the individual/family is eligible;
2. Eligible for participation, but placed on a waiting list due to insufficient funds;
3. Ineligible for participation; or
4. In need of a review/recertification application/process.

2-007.03 Adverse Action Notices: The Department must provide written notice to the client at least ten calendar days in advance of the effective date if respite services are to be reduced or terminated before the current authorization period ends, unless the reduction or termination is due to the request or death of the client.

2-008 Eligibility Periods: The Department establishes eligibility periods for participants with ongoing needs. Eligibility must be reviewed at least every 12 months or more often if circumstances indicate to a prudent person that a review should be completed.

2-008.01 Changes within Eligibility Periods: Each individual or head of a family receiving respite services under this program shall immediately report any change in income, resources, living arrangement or need to the Department. Failure to do so may result in an overpayment that must be refunded to the Department. See also 464 NAC 1-007.

2-009 Prior Authorization: Department staff must prior authorize services before the RSP will pay for them. The notice of eligibility serves as documentation of the authorization.

2-010 Payments: Support payments may be made directly to the client or family or as vendor payments to respite providers.

2-010.01 Payment to the Client: If payments are to be made directly or to the person with special needs, s/he must submit an itemized statement or receipt to the Department which:

1. Describes the services provided;
2. Includes the dates and hours of service;
3. Is signed by the provider or on customized forms; and
4. Includes the provider's Social Security number or Federal Tax I.D. number.

The client must not bill for more than the amount authorized according to his/her notice of eligibility. Regardless of the total respite expenses, the Department payment must not exceed the maximum dollar amount allowed the client.

Note: Respite Subsidy payments made directly to the client may be considered as income by other assistance programs.

2-010.02 Payment to the Provider: If payments are made directly to providers, the provider must submit an itemized statement to the Department which –

1. Describes the service provided;
2. Includes the dates and hours of service;
3. Is signed by the client or caregiver; and
4. Includes the provider's Social Security number or Federal I.D. tax number.

The provider must not bill for more than the amount authorized for the client according to the client's notice of eligibility. Regardless of the total respite expenses, the Department payment must not exceed the maximum dollar amount allowed the client.

2-010.03 Frequency of Payments: Clients or providers must submit billings no more than once a month after all the respite services have been provided for the month. Department staff must review the bill/receipt and issue a check in a timely manner.

Clients or providers must submit billings for any given month within 90 days of when the service is provided.

2-011 Right to Appeal: Any individual or family who is denied respite services or whose respite services are to be reduced or terminated under this program may appeal by requesting a fair hearing in writing within 90 days of the date of the written notice or alleged inaction. This request must –

1. Include a short summary of the Department's action being appealed;
2. Describe the reason for the appeal; and
3. Be addressed to the Director of the Nebraska Department of Health and Human Services.

The Department must conduct the appeal and fair hearing according to the policies in 465 NAC 6-000 ff.

2-012 Record Retention: HHS staff must retain case files for four years after the RSP case has been closed/rejected.