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Sequence Number: 04-01-14
 Rule ID(s): 5680 - 5681
 File Date: 4/2/14
 Effective Date: 7/1/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1240-01-49	Families First Work Requirements
Rule Number	Rule Title
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1240-01-54	Child Care - Families First Program
Rule Number	Rule Title
1240-01-54-.02	Transitional Child Care Coverage

Chapter 1240-01-49
Families First Work Requirements

Amendments

Rule 1240-01-49-.02, Exemption Determination, is amended by deleting the rule in its entirety and by substituting instead the following language, so that, as amended, rule 1240-01-49-.02 shall read as follows:

1240-01-49-.02 Exemption Determination.

- (1) The following individuals are exempt, except as otherwise provided in this Chapter, from participation in the Families First/TANF work and/or educational requirements:
 - (a) An individual who is disabled. An individual is disabled if the individual:
 1. Has been approved for Social Security Disability (Title II) or Supplemental Security Income on the basis of his/her disability;
 2. Receives Veterans benefits on the basis of his/her one hundred percent (100%) disability; or
 3. Receives Black Lung benefits based on his/her disability;
 - (b) An individual who is determined to be incapacitated for the purpose of participating in a work and/or educational activities requirement. The incapacity determination shall be made according to paragraph (2);
 - (c) An individual for whom an incapacity determination, under paragraph (2), is pending;
 - (d) An individual who is age sixty-five (65) or older;
 - (e) An individual who is needed in the home to care for an in-home relative who is disabled as determined by a physician or a licensed or certified psychologist, and no other appropriate member of the household is available to provide the needed care;
 - (f) An individual who is the caretaker, in a single-parent household, of a child under one (1) year of age; provided, however, the Department may reduce the exemption to sixteen (16) weeks for persons who were exempt but chose to volunteer to fulfill the work and/or educational requirements;
 - (g) An individual who is one (1) of two (2) parents in a two-parent household caring for a child under age sixteen (16) weeks; and
 - (h) A non-parental caretaker who chooses not to be included in the assistance group.
- (2) Evaluation of Disabled Individuals and Individuals Alleging Incapacity for Participation in Work and/or Educational Activities.
 - (a) The Department shall refer a Families First/TANF applicant/recipient, who alleges incapacity, to the Department's Medical Evaluation Unit (MEU) when:
 1. The Families First/TANF recipient alleges incapacity to work that is expected to last for a period of at least (30) days; or
 2. An incapacity evaluation is necessary to determine deprivation of parental support. MEU shall determine whether incapacity exists that would deprive a child of parental support.
 - (b) For purposes of the MEU determination, incapacity is deemed to exist when the defect, illness, or impairment is:

1. Supported by competent medical evidence; and
 2. Expected to last for a period of at least thirty (30) days.
- (c) Review of MEU Incapacity Status. For incapacity determinations made by the MEU, incapacity status shall also be reviewed and verified at the end of the MEU approval period if continued incapacity is claimed.
1. Individuals who were recently terminated from Social Security Disability/SSI disability benefits who claim continued incapacity may continue to be exempt as incapacitated while the necessary information is being secured and submitted to the MEU.
 2. If the client fails to cooperate with the MEU without good cause or refuses to cooperate, the exemption on the basis of incapacity ends.
- (d) Period of Incapacity for Families First/TANF recipients exempt from work and/or educational requirements.
1. At any time, if there is any indication the Families First/TANF recipient is no longer incapacitated, the recipient's complete medical file shall be resubmitted to the MEU with current medical-social information, including the facts which indicate that incapacity no longer exists.
 2. For an active incapacity exemption denied by the MEU, the exemption will be terminated as soon as the recipient is notified.
- (e) Effective July 1, 2014, the Department shall refer all Families First recipients/applicants, who are disabled or who are deemed incapacitated for longer than six (6) months, as determined by MEU, to the Division of Rehabilitative Services (DRS) to undergo an evaluation. The DRS shall determine, under Chapter 1240-08-04, whether the Families First/TANF recipient/applicant is eligible for DRS services that would provide the individual an opportunity to voluntarily fulfill the Families First/TANF work and/or educational activities requirement, consistent with his/her capabilities.
1. Any Families First/TANF recipient who voluntarily participates in the DRS program shall have the opportunity to volunteer for the work and/or educational activities requirement for Families First/TANF.
 2. There is no requirement for financial participation in the DRS program by the individual for receiving any vocational rehabilitation services if the individual is determined eligible for Families First/TANF cash assistance.
- (3) Voluntary Participation in Families First/TANF Work and/or Educational Activities.
- (a) Any individual who is exempt from the Families First/TANF work and/or educational requirements under this rule, except SSI recipients and Child Only caretakers, may choose to volunteer to participate in the work and/or educational activities.
 - (b) Any individual who voluntarily chooses to participate in the Families First/TANF work and/or educational requirements may retain exempt status if he/she chooses not to comply, except those individuals who are caretakers, in a single-parent household, of a child at least sixteen (16) weeks of age.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-102, 71-3-104, and 71-3-104(h)(3)(A)-(G), 71-3-108(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602; 42 U.S.C. § 607(c), (d), and (e); 42 U.S.C. § 608; 42 U.S.C. § 608(b); 42 U.S.C. § 609, 42 USC §1315(a); Public Acts of 1996, Chapter 950, 45 CFR 233.90(c)(iv), and 45 CFR 250.30, §1115 of the Social Security Act; 45 C.F.R. § 260.30; 45 C.F.R. § 260.31; 45 C.F.R. 233.90, 45 C.F.R. § 261.2(b) through (m); 45 C.F.R. § 261.2(n); Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Public Acts of 2007, Chapter 31.

Rule 1240-01-49-.04, Failure to Comply, Conciliation, Good Cause, and Sanctions, is amended by deleting the rule in its entirety and by substituting instead the following language, so that, as amended, rule 1240-01-49-.04 shall read as follows:

1240-01-49-.04 Failure to Comply, Conciliation, Good Cause, and Sanctions.

- (1) The Department shall sanction a Families First/TANF recipient who is required to participate in a work and/or educational activities requirement and who fails without good cause, to participate in the required work and/or educational activities in his/her Personal Responsibility Plan.
 - (a) Failure to participate in required work and/or educational activities includes, but is not limited to, refusal to cooperate in the required activities, failure to make satisfactory progress in the required activities, failure to meet minimum attendance standards for the required activities, refusal to participate in the activities directed towards the recipient's employment goals, falsifying employment documentation, refusal to accept suitable employment, refusal to participate in Family Focused Solutions (FFS) if FFS hours are being used as job search/ job readiness hours, or voluntarily quitting employment without good cause.
 1. Following non-compliance with required work and/or educational activities, a sanction shall make the entire assistance unit (AU) ineligible during the mandatory period of case closure when the Families First/TANF recipient to be sanctioned is the caretaker or either parent in a two (2) parent AU.
 2. Following non-compliance with required work and/or educational activities, a sanction shall be applied to remove a Families First/TANF recipient from the AU when that individual is a minor parent who is also a dependent child in an AU.
 - (b) Failure to make satisfactory progress shall be determined by a Families First/TANF recipient's grades in educational activities, objective performance measurements of the recipient's employer, or other objective criteria for the measurement of a recipient's performance for each specific work and/or educational activity. The recipient is responsible for obtaining such written documentation as the Department determines may be necessary to verify satisfactory progress.
 - (c) Exempted Individuals Volunteering. If a Families First/TANF recipient chooses to volunteer to participate in the work and/or educational activities requirement, the recipient may retain exempt status if he/she choose not to comply, except those individuals who are caretakers, in a single-parent household, of a child at least sixteen (16) weeks of age.
- (2) Attendance Standards and Good Cause.
 - (a) All Families First/TANF work and/or educational activities requirements are mandatory, unless otherwise provided in this Chapter. Recipients shall be sanctioned for any unexcused absences from Families First/TANF work and/or educational activities requirements. A recipient's first unexcused absence is considered non-compliance and is grounds for a sanction.
 - (b) Good cause may excuse a Families First/TANF recipient's failure to comply with their work and/or educational activities requirement. Good cause reasons include, but are not limited to, the following:
 1. Recipient is determined through medical evidence to be physically or mentally unable to perform the work and/or educational activities requirement assigned;
 2. Recipient lacks child care;
 3. Recipient has a serious household emergency;
 4. Recipient meets a work and/or educational activities requirement exemption criterion;
 5. Recipient's health or safety is at risk;

6. Recipient lacks transportation;
 7. Recipient voluntarily quits employment with good cause as set forth in Rule 1240-01-49-.06;
 8. Recipient is under threat of domestic violence; or
 9. Any other factor which exists that is beyond the control of the Families First/TANF recipient.
- (3) The Department shall impose sanctions on all Families First/TANF recipients who are determined non-compliant, without good cause, with the work and/or educational activities requirements included in his/her Personal Responsibility Plan as set forth below.
- (a) Notification of non-compliant Families First/TANF recipients. The Department shall receive notification from the work and educational service providers for Families First/TANF recipients to determine whether the recipient is non-compliant with required work and/or educational activities.
 - (b) ADA Evaluation. Prior to issuing a notice of adverse action, the Department's eligibility counselor shall review the referred recipient's case to determine whether the recipient may have any disabilities, as defined by the Americans with Disabilities Act, or barriers to employment that prevent the recipient from complying with required work and/or educational activities.
 - (c) Conciliation and Adverse Action.
 1. Notice of Adverse Action. If the Department's eligibility counselor determines that a Families First/TANF recipient is non-compliant with assigned work and/or educational activities, the eligibility counselor shall close the recipient's Families First/TANF case and issue the non-compliant recipient a notice of adverse action. The notice of adverse action shall contain:
 - (i) Notice to the Families First/TANF recipient that he/she must contact the Department's eligibility counselor within ten (10) calendar days of the date of the notice to provide verification of good cause for non-compliance with work and/or educational activities;
 - (ii) The effective date of closure; and
 - (iii) Notice of the Department's appeal procedures.
 2. Conciliation/Adverse Action Period. The Families First/TANF recipient must contact the Department during the ten (10) calendar day conciliation/adverse action period to provide verification of good cause. If the recipient contacts the Department during the ten (10) calendar day conciliation/adverse action period and provides adequate verification of good cause the Department shall reverse the closure of the recipient's Families First/TANF case.
 3. Sanction Period. If the non-compliant recipient fails to provide the Department adequate verification of good cause during the ten (10) calendar day conciliation/adverse action period, the recipient's case closure shall be effective on the date set forth in the notice of adverse action and a sanction shall be applied to the recipient's Families First/TANF case pursuant to paragraph (4) below.
- (4) Length of Sanction. The mandatory sanction shall be imposed for the following time periods:
- (a) First violation. The first violation shall result in the imposition of a one (1) month case closure period of ineligibility for cash assistance.

- (b) Second violation. The second violation shall result in the imposition of a three (3) month case closure period of ineligibility for cash assistance.
 - (c) Third violation. The third violation shall result in the imposition of a six (6) month case closure period of ineligibility for cash assistance.
 - (d) Fourth or Subsequent Violation. The fourth or subsequent violation shall result in a twelve (12) month case closure period of ineligibility for cash assistance.
 - (e) The sanction shall begin with the next recurring month following the expiration of the adverse action period, unless the participant timely appeals within ten (10) days of the date of the conciliation/adverse action notice.
- (5) Child Care. The Department shall not provide transitional child care to any Families First/TANF recipient whose case is closed due to noncompliance with the work and/or educational activities requirement.
- (6) Early Re-entry during Case Closure. A Families First/TANF recipient whose case was closed due to noncompliance with the work and/or educational activities requirement may apply for early re-entry if he/she meets the following criteria:
- (a) The early re-entry criteria during the mandatory sanction periods are:
 - 1. The receipt of cash assistance would prevent removal of a child from the home by the Department of Children's Services;
 - 2. The recipient has become disabled or incapacitated according to the Families First/TANF work activities exemption policy;
 - 3. The recipient is under a threat of domestic violence;
 - 4. The receipt of cash assistance would prevent the recipient's family or AU from becoming homeless; or
 - 5. The recipient has assumed the responsibility of caring for an in-home disabled relative.
 - (b) Fourth or Subsequent Sanction Period. If a non-compliant recipient has been continuously employed for a period of three (3) months for at least thirty (30) hours per week, is still employed, and is able to verify the employment, then that recipient is eligible for early re-entry during a fourth or subsequent sanction period.
- (7) Families First/TANF Eligibility after Sanction.
- (a) Applications filed prior to the expiration of the mandatory sanction period shall be denied due to ineligibility for benefits during the sanction period unless the applicant is able to show early re-entry criteria, as set forth in paragraph (6) above.
 - (b) Participation in Families First/TANF after a sanction due to non-compliance with the work and/or educational activities requirement may resume when:
 - 1. The mandatory sanction period has expired;
 - 2. The former recipient timely files a new Families First/TANF application as required by subparagraph (a) of this paragraph (7) and meets all other eligibility criteria; and
 - 3. The former Families First/TANF recipient complies with required work and/or educational activities for ten (10) consecutive business days after re-application.

- (c) The Department shall consider a former recipient's Families First/TANF application pending during the mandatory ten (10) consecutive business day compliance period and the recipient shall receive childcare, as needed.
- (8) Appeals. Any individual who receives notification of a case closure as a result of non-compliance with the work and/or educational activities requirement may timely appeal according to the appeal procedures outlined in Chapter 1240-05 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act.
 - (a) To continue receiving benefits, without the imposition of a sanction, the Families First/TANF recipient must request a hearing during the ten (10) day period following the notice of adverse action. If the recipient appeals during the adverse action period, no sanctions shall be imposed until a final decision is entered.
 - (b) Overpayments. If a final decision upholding the sanction decision is entered, the cash assistance received during the sanction period pending the fair hearing will be considered an overpayment and DHS may collect the overpayment in accordance with the procedures set forth in Chapter 1240-01-52.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-1-105(12), 71-3-101 through 71-3-115, 71-3-104(a), (d)(1)(B) and (C), (g) and (h), 71-3-107(c)(1) and (f), and 71-3-108(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c)(2)(C), 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(a)(4) and 42 U.S.C. § 609; 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996; Acts of 1996, Chapter 950, and 45 CFR 250.34 through 250.36, §1115 of the Social Security Act, 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006) and Public Acts of 2007, Chapter 31.

Rule 1240-01-49-.06, Voluntary Quit, is amended by deleting the rule in its entirety and by substituting instead the following language, so that, as amended, rule 1240-01-49-.06 shall read as follows:

1240-01-49-.06 Voluntary Quit.

- (1) Any member of an AU with a work and/or educational activities requirement, including either parent in a two-parent AU, shall not voluntarily quit employment, without good cause, within the two (2) months prior to the month of application, during the month of application, or during the application processing period for Families First/TANF cash assistance.
 - (a) If any member of an AU with a work activities requirement voluntarily quits employment as set forth in this section, the application will be pended.
 - (b) An AU is eligible for Families First/TANF cash assistance after a voluntary quit prior to or during the application processing period when:
 - 1. The Families First/TANF applicant meets all eligibility criteria; and
 - 2. The Families First/TANF applicant complies with required work and/or educational activities for ten (10) consecutive business days after application.
- (2) If, during receipt of Families First/TANF cash assistance, any member of an AU with a work activities requirement, including either parent in a two-parent AU, voluntarily quits employment without good cause, the individual and/or AU shall receive a sanction as set forth in Rule 1240-01-49-.04.
- (3) Good cause to avoid a voluntary quit sanction includes, but is not limited to:
 - (a) Complications of pregnancy which render the mother incapacitated, as certified by a physician;
 - (b) The individual was required to return to work prior to the end of sixteen (16) weeks of leave following the birth of a child;

- (c) Existing child care became unavailable and substitute child care could not be arranged, for reasons beyond the caretaker's control;
- (d) Transportation was unavailable and the employee submits evidence that substitute transportation could not be arranged;
- (e) The employee was needed in the home to care for an ill or disabled family member;
- (f) The employer refused to allow time off for the employee to attend to a temporary family emergency;
- (g) The job paid less than minimum wage based on the number of hours actually worked;
- (h) There was discrimination by the employer based on age, race, sex, color, handicaps, religious beliefs, national origins, or political beliefs;
- (i) Work demands or conditions rendered continued employment unreasonable;
- (j) The employee accepted other employment with at least comparable gross wages;
- (k) The employee left a job in connection with patterns of employment in which workers frequently move from one employer to another;
- (l) The employer failed to provide reasonable accommodations for the employee pursuant to the Americans with Disabilities Act; or
- (m) The employer violated any federal, state, or local employment law in the employer's treatment of the employee.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105(12), 4-5-209, 71-3-101 through 71-3-115, 71-3-104(a), (d), (g) and (h), 71-1-105, 71-3-107(c)(1) and (f), and 71-3-108(d)(2)(D), 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, (c), (d), 42 U.S.C. § 607 and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(b)(3), 42 U.S.C. § 609, 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996, 42 USC §1315(a), Acts of 1996, Chapter 950, and § 1115 of the Social Security Act, 45 C.F.R. § 261.2, 45 C.F.R. § 261.10, 45 C.F.R. § 261.14, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31, and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Public Acts of 2007, Chapter 31.

Rule 1240-01-49-.08, Reserved for Future Use, is amended by deleting the rule in its entirety and by substituting instead the following language, so that, as amended, rule 1240-01-49-.08 shall read as follows:

1240-01-49-.08 Definitions.

For purposes of this Chapter:

- (1) "Adverse Action Notice" is a computer generated notice sent to a Families First/TANF recipient when a negative action is taken on a Families First/TANF case.
- (2) "Assistance Unit (AU)" means the "aid group (AG)" or group of people applying for or receiving Families First/TANF cash assistance benefits.
- (3) "Caretaker" is a relative within a specified degree of relationship to the child who:
 - (a) provides a home for the child; and
 - (b) exercises primary responsibility for care and control of child.
- (4) "Child Care" means the provision of supervision and protection, and at a minimum, meeting the basic needs of a child or children for less than twenty-four (24) hours a day. Child care is provided when necessary for the participant to take part in work or training activities while the AU is receiving Families First/TANF cash assistance.

- (5) "Child Only caretaker" is a caretaker who is either a non-parental relative who is not included in the AU or a caretaker receiving SSI benefits.
- (6) "Conciliation" means a ten (10) calendar day period of time given to a Families First/TANF recipient to establish good cause for failure to comply with their work activities requirements following the issuance of a notice of adverse action, unless the tenth (10th) day falls on a weekend or holiday.
- (7) "Department" means the Department of Human Services.
- (8) "Employee" means the Families First/TANF recipient and/or caretaker, who works in the service of another person, private entity, or governmental entity.
- (9) "Employment" means the relationship between an employee and his/her employer consisting of the employee's work responsibilities for the employer.
- (10) "Families First" refers to the temporary public assistance program provided under Temporary Assistance for Needy Families ("TANF"), administered by the Department pursuant to Title IV-A of the Social Security Act and title 71, chapter 5, part 3 of the Tennessee Code Annotated.
- (11) "Family Focused Solutions ("FFS")" refers to a Families First/TANF support service whose purpose is to provide supportive assistance to Families First/TANF recipients who may have barriers to employment.
- (12) "Incapacity" is deemed to exist when one parent has a physical or mental defect, illness, or impairment. The incapacity shall be supported by competent medical testimony and must be of such a debilitating nature as to reduce substantially, or eliminate the parent's ability to support or care for the otherwise eligible child and be expected to last for a period of at least thirty (30) days. Incapacity may be a reason for deprivation or may be a reason for a temporary exemption from a work activities requirement.
- (13) "Sanction" means the period of time during which a Families First/TANF case is closed due to lack of adequate participation in required work and/or educational activities.
- (14) "Support Services" means the transportation, optical, dental, and other services which are provided by the Families First/TANF work activity contractor when necessary for participation in work and/or educational activities.
- (15) "Work activities" means the work and/or educational activities performed in return for cash assistance benefits that provide a Families First/TANF recipient with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-1-105(12), 71-3-101 through 71-3-115, 71-3-104(a), (d)(1)(B) and (C), (g) and (h), 71-3-107(c)(1) and (f), and 71-3-108(d)(2)(D); 42 U.S.C. §§ 601 et seq. , 42 U.S.C. § 602, 42 U.S.C. § 607(c)(2)(C), 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(a)(4) and 42 U.S.C. § 609; 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996; Acts of 1996, Chapter 950, and 45 CFR 250.34 through 250.36, §1115 of the Social Security Act, 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006) and Public Acts of 2007, Chapter 31.

Chapter 1240-01-54
Child Care
Families First Program

Amendments

Rule 1240-01-54-.02, Transitional Child Care Coverage, is amended by deleting the rule in its entirety, by substituting instead the following language, so that, as amended, rule 1240-01-54-.02 shall read as follows:

1240-01-54-.02 Transitional Child Care Coverage.

- (1) Transitional Child Care (TCC) shall be provided following the effective date of the Families First/TANF case closure for a minimum of a twelve (12) month period of time, beginning with the month following the effective date of the Families First/TANF closure for any reason except for closures resulting from circumstances described in paragraphs (3) or (4). If the recipient does not request TCC at case closure and then later requests TCC, then TCC will only be provided for the remaining months in the twelve (12) month period of time that followed case closure.
- (2) TCC for a minimum of twelve (12) months shall be provided when:
 - (a) The caretaker has a minimum of thirty (30) hours per week in allowable activities, as defined by policy;
 - (b) The individual's gross wages equal the current federal minimum wage when averaged over the number of hours worked per week; and
 - (c) Total family income is below the income level established in State Transitional Child Care policies. This income level will be set at sixty percent (60%) of the state median income or higher.
- (3) An Assistance Unit (AU) is ineligible for TCC beginning with the month after the Families First/TANF AU becomes ineligible when the case is closed due to:
 - (a) Non-cooperation with child support establishment and enforcement requirements; or
 - (b) Non-compliance with work activity requirements.
- (4) Eligibility for Transitional Child Care (TCC) ends and does not begin again until re-application for Families First, when:
 - (a) The AU moves out of state;
 - (b) The caretaker fails to pay required parent co-pay fees or to make acceptable payment arrangements;
 - (c) There is no eligible adult;
 - (d) The only child in the assistance unit leaves the home;
 - (e) The case has no minor parent (Eligible Child) in the AU who has signed a Personal Responsibility Plan;
 - (f) The case that was approved for interim benefits is later found to have been ineligible for Families First;
 - (g) The caretaker fails to cooperate with child support establishment and enforcement requirements as determined by the Department;
 - (h) The case is closed due to non-compliance with work activity requirements; or

(i) The established period of TCC eligibility ends.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105; 71-3-104(b)(1); 71-3-107; 71-3-108; and 42 USCA § 1315(a).

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on 03/17/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/16/13

02/04/13; 02/05/13; 02/06/13; 02/07/13; 02/10/13;

Rulemaking Hearing(s) Conducted on: (add more dates). 02/11/13; 02/13/13; 02/14/13

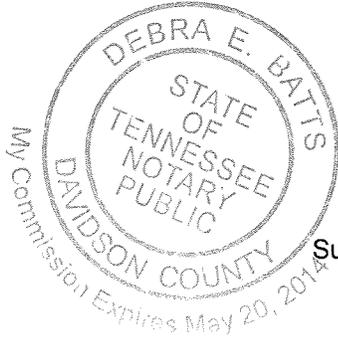
Date: March 17, 2014

Signature: Madeline Brough

Name of Officer: Madeline Brough

Assistant General Counsel

Title of Officer: Tennessee Department of Human Services



Subscribed and sworn to before me on: March 17, 2014

Notary Public Signature: Debra E. Batts

My commission expires on: May 20, 2014

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter
3-24-14
Date

Department of State Use Only

Filed with the Department of State on: 4/2/14

Effective on: 7/1/14

Tre Hargett
Tre Hargett
Secretary of State

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Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment One:

In Rule 1240-01-49-.02(2)(a)-(b), members of the public were concerned about DRS's ability to handle the all the referrals of Families First/TANF recipients and still maintain the positive changes that have been made in the past two years in that program. These concerns were based on the following entries in the VR 2014 State Plan: VR projected in its 2014 State Plan that an additional 793 individuals would join the waiting list during 2014 and that "The Division's resources (staff) remain inadequate to serve individuals in all four priority categories." Additionally, there were concerns about mandating DRS assessment and participation for Families First/TANF recipients who were either already classified as disability according to the Social Security Administration or were alleging incapacity. Commenters states that it is contrary to both the interests and legal rights of persons who have been found to be disabled by the Social Security Administration and by the Department's Disability Determination Services to require them to undergo and evaluation by DRS. Such individuals have already been deemed incapable of performing substantial gainful employment.

Response and reasons for adoption or rejection of suggested changes:

The Department has considered these comments and made changes to the Rule. The Rule still provides for a mandatory referral process to DRS for those Families First/TANF recipients who have a disability or allege incapacity to work which is determined by the Department to last longer than six (6) months; however, if found eligible for DRS, those individuals will not be mandated to participate, instead participation will be voluntary. The Department is working toward enabling all Families First/TANF recipients to have opportunities to become self-sufficient and a relationship between the Families First/TANF program and the DRS program will help reach that goal.

Comment Two:

In 1240-01-49-.02(2), (3) and 1240-01-49-.04(1)(b), members of the public were concerned that individuals who had been determined to be exempt from the work and/or educational activity requirements could be sanctioned for failure to comply with their assigned activities. The possibility of sanction will discourage individuals from opting in to participate in the work and/or educational activities. In addition, others stated that the rule essentially precludes many Families First/TANF recipients from having the opportunity to participate.

Response and reasons for adoption or rejection of suggested changes:

The Department has considered the comments and has decided to adopt the suggested changes. The Department has deleted the portion of the Rule providing for sanctions for those exempt individuals who opt-in to participate in the work and/or educational activities and then fail to meet those requirements.

Comment Three:

In 1240-01-49-.04(1)(a), members of the public commented that the standard, "failure to make satisfactory progress," was too subjective and arbitrary for the Department to initiate the sanction process.

Response and reasons for adoption or rejection of suggested changes:

The standard, "failure to make satisfactory progress," has been in the Department's rules prior to these changes in the Department's sanction policy. The Department, however, has considered these comments and provided clarification for the standard as a newly designated section 1240-01-49-.04(1)(b), which explains that the Department will evaluate "satisfactory progress" based on objective performance measurements criteria for each specific work and educational activity.

Comment Four:

In 1240-01-49-.04(2), members of the public commented that initiating the sanction policy based on the "first unexcused absence" is unduly harsh.

Response and reasons for adoption or rejection of suggested changes:

The Department disagrees that initiating the sanction process based on the "first unexcused absence" is unduly harsh.

harsh. The Families First/TANF recipient will have an opportunity to discuss and remedy any absence with the Employment and Case Management Service caseworker prior to the Department initiating any sanction process. In addition, the recipient/employee has opportunity to present to the Department verification of good cause for any absences/non-compliance with work activities prior to the imposition of a sanction.

Comment Five:

In 1240-01-49-.04(3), members of the public were concerned about language providing for the Department to, at its discretion, choose from two sanction processes, only one of which employed a cure period. The Rules did not lay out exactly how the Department would choose between the two sanction processes. Comments on this part also suggested that the thirty (30) day cure period was an integral part of the sanction process in all instances because a cure period is designed to encourage compliance.

Response and reasons for adoption or rejection of suggested changes:

The Department has considered the comments and determined that, due to the Department's desire to encourage compliance, the ineffectiveness of the current sanction policy, and the Department's systems processes, the option for a thirty (30) day cure period will be deleted from this Rule. The Department has amended the Rule to provide for a sanction process that will consist of conciliation and adverse action, without an opportunity for a thirty (30) day cure period.

The non-compliant Families First/TANF recipient will be referred by a work and education service provider to the Department for a determination of non-compliance. The Department's eligibility counselor will then evaluate a recipient's case to determine if the recipient may be unable to comply due to a disability under the Americans with Disabilities Act. If the eligibility counselor determines that the recipient's case does not reflect any ADA issues, then the eligibility counselor will initiate the conciliation/adverse action process. The recipient will have ten (10) days to provide the Department with verification of good cause, as defined in the rules, for any non-compliance as well as an opportunity to appeal any decision of the Department to sanction the individual for non-compliance.

Comment Six:

In 1240-01-49-.04(3), members of the public commented that if the Department does employ the thirty (30)-day cure period, a notice must be created and sent to each Families First/TANF recipient that includes an explanation of the cure period.

Response and reasons for adoption or rejection of suggested changes:

The Department will not be employing a thirty (30)-day cure period, as stated above. As such, the Department has not made any changes to the Rule based on this comment.

Comment Seven:

In 1240-01-49-.04(3), members of the public expressed concerns regarding the length of the conciliation period being only ten (10) calendar days. Some discussed how the Rules could possibly affect recipients with domestic violence issues or medical issues that may not have time to provide adequate verification of good cause within only ten (10) days. In addition, others commented that recipients are often unable to contact their eligibility counselors because the counselors do not answer phone calls, do not return calls, as well as have voicemail boxes that are completely full. One example provided was that it took fourteen (14) days for a recipient to contact their eligibility counselor. The suggestion was that the Department should at least extend the adverse action period time to longer than ten (10) days.

Response and reasons for adoption or rejection of suggested changes:

The Department has determined that a ten (10) day conciliation period is adequate time for a Families First/TANF recipient to provide verification of good cause. The Department currently strives to and will continue to strive to provide excellent and timely services for all Families First/TANF recipients.

Comment Eight:

In 1240-01-49-.06(3), members of the public commented that the good cause reason list for voluntary quit should include a failure to provide reasonable accommodations as required by the Americans with Disabilities Act and the employer's violation of any federal, state or local employment safety law with regard to the employee.

Response and reasons for adoption or rejection of suggested changes:

The Department has amended the Rule as suggested.

Comment Nine:

SS-7039 (October 2011)

14

RDA 1693

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March 17, 2014
March 17, 2014

In 1240-01-49-.06(3)(b), a comment was that the "Tennessee Family Medical Leave Act" did not exist.

Response and reasons for adoption or rejection of suggested changes:

The Department has considered this comment and has deleted the reference to "Tennessee Family Medical Leave Act."

Comment Ten:

In 1240-01-54-.02, some members of the public commented that the Transitional Child Care time limit should not be reduced to a minimum of twelve (12) months from the current 18-month limit for the following reasons:

- (1) Caretakers will lose their jobs and return to Families First, which negates any possible savings from shortening the time limit;
- (2) Former TANF clients are sixty percent (60%) more likely to still be employed after two years if they receive help paying for child care;
- (3) The longer caretakers receive child care, the longer they will work, which results in increased job retention and increased wages;
- (4) It is unlikely the Department will save enough from the shortened Transitional Child Care period to be able to apply the savings to a low Income child care program;
- (5) Removing the guarantee of eighteen (18) months of Transitional Child Care increases the likelihood that the child care funding that was used to cover the additional six (6) months will be lost because there is no requirement that this assistance be provided; and
- (6) The recipients who have been able to leave the program due to earned income are "success stories" for the Department and every effort should be applied to help them maintain employment and prevent the need to return to the program.

Response and reasons for adoption or rejection of suggested changes:

The Department has considered these comments and has decided, based on the Department's goal to provide more non-TANF related child care, to reject the suggested changes. The Department has determined that a minimum of twelve (12) months of transitional child care will be sufficient to enable the recipients to successfully transition off of Families First/TANF. In addition, the Department is exploring ways to provide child care assistance to non-Families First/TANF families. The money saved from a reduced Transitional Child Care may enable the Department to provide additional assistance to families that are not receiving Families First/TANF.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

For purposes of the Regulatory Flexibility Act of 2007, the Department of Human Services certifies that these rulemaking hearing rules do not regulate or attempt to regulate businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules have no projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Rule implements a new sanction policy for Families First/TANF recipients with work and/or educational activities requirements. In the previous sanction rule, after the Department determined a recipient was non-compliant, the Department would close the recipient's case, but the recipient could re-apply immediately and receive benefits after complying with work and/or educational activities for a five (5) day period. The Rule changes the previous sanctions policy in several ways:

First, following a referral from the work and educational services contractor of a Families First/TANF recipient's potential non-compliance with the required work and/or educational activities, the Department shall review the Families First/TANF case to consider whether the recipient was non-compliant and whether the recipient has any potential ADA issues or other barriers to compliance. If the Department does not find any issues that indicate significant barriers to compliance, the Department will take action to close the Families First/TANF case and issue the recipient a notice of adverse action/conciliation. The notice of adverse action/conciliation provides the recipient with notice that his/her Families First/TANF case has been closed and provides an effective date for the closure, notice that the Families First/TANF recipient has ten calendar days during which the recipient must contact the Department to verify that the recipient had good cause for non-compliance, as well as provide the recipient notice of the Department's appeal procedures. If the recipient does contact the Department within the ten calendar days and provides verification of good cause, the Department will reverse the adverse action.

Second, if the Families First/TANF recipient fails to provide good cause to the Department within ten days following the notice of adverse action/conciliation, the Department will impose sanctions on the entire assistance unit (except in cases of a minor parent who is a dependent). For the first sanction, the assistance unit will be ineligible for cash assistance for one (1) month. For the second sanction, the assistance unit will be ineligible for three (3) months. For the third sanction, the assistance unit will be ineligible for six (6) months. For the fourth and any subsequent sanctions, the assistance unit will be ineligible for twelve (12) months.

Third, if the Families First/TANF recipient faces situations where his/her child may be taken away by DCS, he/she may become homeless, the caretaker has become incapacitated or is taking care of a disabled family member, or the caretaker has become continuously employed for at least three (3) months then the recipient may be able to be deemed eligible for Families First/TANF prior to the expiration of the mandatory sanction periods.

This Rule also decreases the previous eighteen (18) months of Transitional Child Case to a "minimum of twelve (12) months."

Lastly, this Rule provides for a mandatory referral program of disabled, except SSI recipients, and incapacitated Families First/TANF recipients (only those expected to be incapacitated for longer than six (6) months) to the Department's Division of Rehabilitative Services. If eligible for DRS services then the Families First/TANF recipient may choose to voluntarily comply with work requirements through DRS participation.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Title 42, section 607(c) and (d) of the United States Code provide the relevant federal law regarding TANF work requirements. In § 607(e), federal law provides for the state agency's ability to reduce the amount of assistance if the TANF recipient refuses to engage in required work and/or educational activities. In addition, Title 71, section 3-104(4), provides that the Department will determine appropriate sanctions for Families First/TANF recipients who, without good cause, fail to comply with a work plan requirement imposed within the recipient's personal responsibility plan.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Recipients of Families First/TANF benefits as well as the Department's eligibility counselors are most directly affected by this Rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Not applicable, there are not any attorney general opinions or judicial rulings that directly relate to this Rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is no impending real or potential loss or gain of federal or state funding as a result of these rules. However, the new sanction policy might bring about the following changes: Based on the average number of sanctions (947 per month) and an average benefit amount of one hundred sixty-four dollar (\$164.00) during FY 2013, we can estimate that if each of these cases had been sanctioned for one month, the State would have saved \$155,308.00. This is what could be expected in the first year of the new sanction policy as all initial sanctions after July 1, 2014, will be one month sanctions. As individuals are sanctioned for two, three, or a subsequent number of times and for longer periods, the savings in TANF benefits will increase, the caseload will decrease, and support services such as child care and transportation will stop for each sanctioned case.

- the Families First/TANF caseload will drop;
- less will be spent on Families First/TANF over time;
- if more Families First/TANF cases are closed for non-compliance for a longer period, child care spending will be reduced;
- the funding of other support services such as transportation will be reduced; and
- a reduction in the caseload based on individuals leaving the program due to sanctions may help us avoid a loss of Federal funding reduction credits.

In addition, the Rule requires systems modifications, which total approximately \$50,000. This includes developing a project note, modifying coding for the new sanction policy, and testing the system for a total of eight hundred ten hours (810) of man power.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Madeline B. Brough, Assistant General Counsel
David Sanchez, Assistant Commissioner of Family Assistance and Child Support
Wanda Franklin, Director of Families First

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Madeline B. Brough, Assistant General Counsel
Wanda Franklin, Director of Families First

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**“REDLINE VERSION-CHAPTERS 1240-01-49 AND 1240-01-54
DATED MARCH 17, 2014”**

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-49
FAMILIES FIRST WORK REQUIREMENTS**

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1240-01-49-.01 FAMILIES FIRST WORK REQUIREMENTS.

- (1) The Department of Human Services administers the Families First Program directly and through contractual arrangements with other entities to provide or arrange for employment, training, education, and support services for Families First recipients. All Families First adult recipients in the AG must participate in the Families First work requirements unless they are exempt from this requirement.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c), (d) and (e), 42 U.S.C. § 608 and 42 U.S.C. § 609; Public Acts of 1996, Chapter 950, and 45 CFR 250., 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2, 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31, and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Public Necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

1240-01-49-.02 EXEMPTION DETERMINATION.

~~(1) The following adults/individuals are exempt, except as otherwise provided in this Chapter, from participation in the Families First/TANF Work and/or educational Requirements, but may volunteer to participate if they are an eligible member of the Assistance Group:~~

~~(1) Reserved for future use.~~

~~(2) Reserved for future use.~~

~~(3a) An individual who is disabled. An individual is disabled if the individual:~~

~~(a)1. An individual who has been approved for Social Security Disability (Title 11) or Supplemental Security Income on the basis of his/her disability;~~

~~2. Receives Veterans benefits on the basis of his/her one hundred percent (100%) disability; or~~

~~3. Receives Black Lung benefits based on his/her disability, is exempt from the Families First work requirements;~~

**“REDLINE VERSION-CHAPTERS 1240-01-49 AND 1240-01-54
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____(4b) An individual who has been determined to be incapacitated for the purpose of participating in a work and/or educational activities requirement. The incapacity determination shall be made according to paragraph (2);-

(a) ~~Incapacity is deemed to exist when one parent has a physical or mental defect, illness or impairment. The defect, illness or impairment must be:~~

1. ~~Supported by competent medical testimony;~~
2. ~~Of such a debilitating nature as to reduce substantially, or eliminate the parent's ability to support or care for the child(ren); and~~
3. ~~Expected to last for a period of at least thirty (30) days.~~

(b) ~~Incapacity shall be determined by:~~

1. ~~Reserved for future use.~~
2. ~~Reserved for future use.~~
3. ~~Reserved for future use.~~
4. ~~Reserved for future use.~~
5. ~~The Department's Medical Evaluation Unit (MEU). All claims of incapacity must be forwarded to the Medical Evaluation Unit (MEU) for review.~~

(c) ~~Review/Redetermination of Incapacity. Incapacity status must be reviewed at each twelve month case review. Individuals who were recently terminated from Social Security Disability/SSI disability benefits who claim continued incapacity may continue to be exempt as incapacitated while the necessary information is being secured and submitted to the MEU. If the client fails to cooperate with the MEU without good cause or refuses to cooperate, the exemption on the basis of incapacity ends.~~

(d) ~~Period of Incapacity for Families First.~~

1. ~~Verification of continued incapacity must be made at the end of the MEU approval period if continued incapacity is claimed.~~
2. ~~Reserved for future use.~~
3. ~~For an active incapacity exemption denied by the MEU, the exemption will be terminated as soon as the recipient is notified.~~
4. ~~If there is any indication the client is no longer incapacitated, the complete medical file will be resubmitted to MEU with current medical social information including the facts which indicate that incapacity no longer exists.~~

____(5c) An individual for whom an incapacity determination, under paragraph (2), is pending;

____(6d) An individual who is age sixty-five (65) or older;

(7) ~~An individual who is age sixty (60) or over as of July 1, 2007. If the participant leaves Families First after their sixtieth (60th) birthday and returns to the program before their sixty-fifth (65th) birthday and meets no other exemption criteria, the individual will have a work requirement.~~

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____ (8e) An individual who is needed in the home to care for an in-home relative who is disabled as determined by a physician or a licensed or certified psychologist, and no other appropriate member of the household is available to provide the needed care; This exemption does not apply if the ill or incapacitated family member is attending school full-time.

____ (9f) An individual who is the caretaker, in a single-parent household, of a child under one (1) year of age ~~16 weeks~~; provided, however, the Department may reduce the exemption to sixteen (16) weeks for persons who were exempt but chose to volunteer to fulfill the work and/or educational requirements;

(g) An individual who is one (1) of two (2) parents in a two-parent household caring for a child under age sixteen (16) weeks; and

(h) A non-parental caretaker who chooses not to be included in the assistance group.

~~(10) Reserved for future use.~~

(2) Evaluation of Disabled Individuals and Individuals Alleging Incapacity for Participation in Work and/or Educational Activities.

(a) The Department shall refer a Families First/TANF applicant/recipient, who alleges incapacity, to the Department's Medical Evaluation Unit (MEU) when:

1. The Families First/TANF recipient alleges incapacity to work that is expected to last for a period of at least (30) days; or

2. An incapacity evaluation is necessary to determine deprivation of parental support. MEU shall determine whether incapacity exists that would deprive a child of parental support.

(b) For purposes of the MEU determination, incapacity is deemed to exist when the defect, illness, or impairment is:

1. Supported by competent medical evidence; and

2. Expected to last for a period of at least thirty (30) days.

(c) Review of MEU Incapacity Status. For incapacity determinations made by the MEU, incapacity status shall also be reviewed and verified at the end of the MEU approval period if continued incapacity is claimed.

1. Individuals who were recently terminated from Social Security Disability/SSI disability benefits who claim continued incapacity may continue to be exempt as incapacitated while the necessary information is being secured and submitted to the MEU.

2. If the client fails to cooperate with the MEU without good cause or refuses to cooperate, the exemption on the basis of incapacity ends.

(d) Period of Incapacity for Families First/TANF recipients exempt from work and/or educational requirements.

1. At any time, if there is any indication the Families First/TANF recipient is no

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longer incapacitated, the recipient's complete medical file shall be resubmitted to the MEU with current medical-social information, including the facts which indicate that incapacity no longer exists.

2. For an active incapacity exemption denied by the MEU, the exemption will be terminated as soon as the recipient is notified.

(e) Effective July 1, 2014, the Department shall refer all Families First recipients/applicants, who are disabled or who are deemed incapacitated for longer than six (6) months, as determined by MEU, to the Division of Rehabilitative Services (DRS) to undergo an evaluation. The DRS shall determine, under Chapter 1240-08-04, whether the Families First/TANF recipient/applicant is eligible for DRS services that would provide the individual an opportunity to voluntarily fulfill the Families First/TANF work and/or educational activities requirement, consistent with his/her capabilities.

1. Any Families First/TANF recipient who voluntarily participates in the DRS program shall have the opportunity to volunteer for the work and/or educational activities requirement for Families First/TANF.

2. There is no requirement for financial participation in the DRS program by the individual for receiving any vocational rehabilitation services if the individual is determined eligible for Families First/TANF cash assistance.

(3) Voluntary Participation in Families First/TANF Work and/or Educational Activities.

(a) Any individual who is exempt from the Families First/TANF work and/or educational requirements under this rule, except SSI recipients and Child Only caretakers, may choose to volunteer to participate in the work and/or educational activities.

(b) Any individual who voluntarily chooses to participate in the Families First/TANF work and/or educational requirements may retain exempt status if he/she chooses not to comply, except those individuals who are caretakers, in a single-parent household, of a child at least sixteen (16) weeks of age.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-154, and 71-3-154(h)(3)(A)-(G), 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602; 42 U.S.C. § 607(c), (d), and (e); 42 U.S.C. § 608; 42 U.S.C. § 608(b); 42 U.S.C. § 609, 42 USC §1315(a); Public Acts of 1996, Chapter 950, 45 CFR 233.90(c)(iv), and 45 CFR 250.30, §1115 of the Social Security Act 45 C.F.R. § 260.30; 45 C.F.R. § 260.31; 45 C.F.R. 233.90, 45 C.F.R. § 261.2(b) through (m); 45 C.F.R. § 261.2(n); Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

1240-01-49-.03 FAMILIES FIRST WORK REQUIREMENT PROVISIONS.

(1) An individual, unless otherwise exempt, will be required to participate in work or work-related activities for thirty (30) hours per week as set forth in his/her Personal Responsibility Plan (PRP). At least twenty (20) hours must be spent working in core activities; the remaining ten (10) hours must be spent in core or non-core activities.

(2) Activities that will be included as a part of the Families First work requirements include:

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- (a) Core Activities. Core Activities must be used to meet the first twenty (20) hours of the work requirement and can be used to meet the entire work requirement. The use of core activities to meet the Families First work requirement is subject to allowances or restrictions on these activities, as defined by federal law and regulation. Unless expanded through federal law or regulation, core activities are:
 - 1. Unsubsidized Employment.
 - 2. Job search and job readiness assistance.
 - 3. Work Experience.
 - 4. Community Service.
 - 5. Vocational Education.
 - 6. On-the-job training.
 - 7. Subsidized work. Families First participants can be placed in private or public sector subsidized work positions.

 - (b) Non-core Activities. Non-core activities can be used to fulfill up to ten (10) hours of the Families First work requirement as long as the recipient is engaged in twenty (20) hours of core activities. The use of non-core activities to meet the Families First work requirement is subject to allowances or restrictions on these activities, as defined by federal law and regulation. Unless expanded through federal law or regulation, non-core activities are:
 - 1. Job Skills Training Directly Related to Employment.
 - 2. Education Directly Related to Employment.
 - 3. Satisfactory attendance at secondary school or in a GED course, for those who do not yet have a high school diploma.

 - (c) Reserved for future use.
 - (d) Reserved for future use.
 - (e) Reserved for future use.
 - (f) Reserved for future use.
 - (g) Reserved for future use.
 - (h) Reserved for future use.
 - (i) Reserved for future use.
 - (j) Reserved for future use.
 - (k) Reserved for future use.
- (3) Reserved for future use

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- (4) The Families First work requirement can be met through satisfactory attendance at secondary school, in the case of a minor parent recipient who:
 - (a) has not completed secondary school; and
 - (b) is a caretaker who is nineteen (19) years of age or younger.
- (5) A minor parent who is eligible as a dependent child must attend school. Failure to comply with this requirement will result in the needs of the non-compliant individual being removed from the grant.
- (6) A caretaker who is in the residential program at Renewal House is in compliance with the Families First work requirement if she is in good standing with Renewal House program requirements.
- (7) Participation in Vocational Rehabilitation services will meet the Families First work requirement.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 609; Public Acts of 1996, Chapter 950, and 45 CFR 250.30 through 32; 45 CFR 234.60, §1115 of the Social Security Act; 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

1240-01-49-.04 FAILURE TO COMPLY, CONCILIATION, GOOD CAUSE, AND SANCTIONS.

- (1) ~~The Department shall sanction a Families First/TANF participant-recipient who is required to meet the participate in a work and/or educational activities requirement, and who fails, without good cause, to participate in the required work and/or educational activities in his/her Personal Responsibility Plan program, will be sanctioned. When the non-exempt caretaker or other parent in a two-parent unit in the Families First assistance group fails or refuses to comply with the work requirement in the caretaker's Personal Responsibility Plan, and he/she does not have good cause for failure to comply, the entire assistance group will be ineligible for cash assistance until compliance~~

- (a) Failure to participate in required work and/or educational activities includes, but is not limited to, refusal to cooperate in the required activities, failure to make satisfactory progress in the required activities, failure to meet minimum attendance standards for the required activities, refusal to participate in the activities directed towards the recipient's employment goals, falsifying employment documentation, refusal to accept suitable employment, refusal to participate in Family Focused Solutions (FFS) if FFS hours are being used as job search/ job readiness hours, or voluntarily quitting employment without good cause.

1. Following non-compliance with required work and/or educational activities, a sanction shall make the entire assistance unit (AU) ineligible during the mandatory period of case closure when the Families First/TANF recipient to be sanctioned is the caretaker or either parent in a two (2) parent AU.

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2. Following non-compliance with required work and/or educational activities, a sanction shall be applied to remove a Families First/TANF recipient from the AU when that individual is a minor parent who is also a dependent child in an AU.

(b) Failure to make satisfactory progress shall be determined by a Families First/TANF recipient's grades in educational activities, objective performance measurements of the recipient's employer, or other objective criteria for the measurement of a recipient's performance for each specific work and/or educational activity. The recipient is responsible for obtaining such written documentation as the Department determines may be necessary to verify satisfactory progress.

(c) Exempted Individuals Volunteering. If a Families First/TANF recipient chooses to volunteer to participate in the work and/or educational activities requirement, the recipient may retain exempt status if he/she choose not to comply, except those individuals who are caretakers, in a single-parent household, of a child at least sixteen (16) weeks of age.

(a2) Attendance Standards and Good Cause.

(a) All Families First/TANF work and/or educational activities requirements are mandatory. Participants-Recipients will shall be sanctioned for any unexcused absences from Families First/TANF work and/or educational activities requirements. A participant's recipient's first unexcused absence is considered non-compliance and is grounds for sanction. The DHS worker will determine whether an absence is excused or unexcused. The participant will have the opportunity to claim a good cause for an absence during the conciliation process. Excused absences are never grounds for sanction.

(b) Good Cause: may excuse ~~The DHS worker is responsible for determining good cause any time she/he learns that a Families First/TANF recipient's participant has failure to comply with their work and/or educational activities requirement or refused to cooperate, failed to make satisfactory progress in the required work activities, failed to meet minimum attendance standards, refused to accept suitable employment, or quit employment. Good cause reasons include, but are not limited to, the following:~~

1. Recipient is determined through medical evidence to be physically or mentally unable to perform the work and/or educational activities requirement assigned;
2. Recipient Lacks of child care;
3. Recipient has Aa serious household emergency;
4. Recipient Mmeets a work and/or educational activities requirement exemption criterion;
5. Recipient's Hhealth or safety is at risk;
6. Reserved for future use. Recipient lacks transportation;
7. Reserved for future use. Recipient voluntarily quits employment with good cause as set forth in Rule 1240-01-49-.06;
8. ~~Reserved for future use.~~
9. ~~Lack of transportation.~~

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~~10. Reserved for future use.~~

~~118. Recipient is under threat of is actively seeking shelter from domestic violence or abuse, such as someone residing in a domestic violence or abuse shelter, or fleeing from immediate harm; or~~

~~129. There are Any other factors which exists that are clearly is beyond the control of the participant Families First/TANF recipient.~~

~~(3) The Department shall impose sanctions on all Families First/TANF recipients who are determined non-compliant, without good cause, with the work and/or educational activities requirements included in his/her Personal Responsibility Plan as set forth below.~~

~~(a) Notification of non-compliant Families First/TANF recipients. The Department shall receive notification from the work and educational service providers for Families First/TANF recipients to determine whether the recipient is non-compliant with required work and/or educational activities.~~

~~(b) ADA Evaluation. Prior to issuing a notice of adverse action, the Department's eligibility counselor shall review the referred recipient's case to determine whether the recipient may have any disabilities, as defined by the Americans with Disabilities Act, or barriers to employment that prevent the recipient from complying with required work and/or educational activities.~~

~~(c) Conciliation and Adverse Action. An attempt to resolve the non-compliance will be made by the Department during the ten (10) day adverse action period. The following conciliation guidelines will apply:~~

~~1. If the participant contacts the DHS worker during the adverse action period and provides verification of good cause, the case will be reopened.~~

~~2. If the participant contacts the DHS worker during the adverse action period, and does not have good cause, but wants to comply, he/she will be re-referred to a work activity and must comply for five (5) consecutive business days.~~

~~3. Following the five-day compliance period, the case will be reopened.~~

~~4. If the participant does not comply or does not want to comply, the case will remain closed, but the participant may reapply at any time. Compliance for five (5) days will be required prior to subsequent approval.~~

~~5. If the participant contacts the DHS worker after the expiration of the ten (10) day adverse action period, he/she must reapply.~~

~~(d) Sanctions. Refusal or failure, without good cause, by a non-exempt caretaker (including either parent/caretaker in a two-parent AG) to engage in the required work activities that are included in the caretaker's Personal Responsibility Plan will result in the application of sanctions.~~

~~1. If the person to be sanctioned is the caretaker or in a two-parent AG, either parent, the entire assistance group is ineligible for the cash assistance payment.~~

~~2. An individual who is not the head of household, who has not reached eighteen (18) years of age, who has a child who is at least sixteen (16) weeks of age in~~

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~~such person's care, and who has not successfully completed a high school education or its equivalent, will be removed from the Families First AG unless the individual participates in educational activities directed toward the attainment of a high school diploma or its equivalent.~~

~~(i) If the sanctioned individual in the previous paragraph (part 2 of this paragraph) is the only child in the AG, assistance may continue for the caretaker if the caretaker remains otherwise eligible.~~

~~3. An individual who is the head of his/her household, who has not reached twenty (20) years of age, who has a child who is at least sixteen (16) weeks of age in such person's care, and who has not successfully completed a high school education or its equivalent, will be subject to sanction for his/her entire AG unless the individual participates in:~~

~~(i) Educational activities directed toward the attainment of a high school diploma or its equivalent; or~~

~~(ii) Thirty (30) hours of countable work activities as described in 1240-1-49-03.~~

~~1. Notice of Adverse Action. If the Department's eligibility counselor determines that a Families First/TANF recipient is non-compliant with assigned work and/or educational activities, the eligibility counselor shall close the recipient's Families First/TANF case and issue the non-compliant recipient a notice of adverse action. The notice of adverse action shall contain:~~

~~(i) Notice to the Families First/TANF recipient that he/she must contact the Department's eligibility counselor within ten (10) calendar days of the date of the notice to provide verification of good cause for non-compliance with work and/or educational activities;~~

~~(ii) The effective date of closure; and~~

~~(iii) Notice of the Department's appeal procedures.~~

~~2. Conciliation/Adverse Action Period. The Families First/TANF recipient must contact the Department during the ten (10) calendar day conciliation/adverse action period to provide verification of good cause. If the recipient contacts the Department during the ten (10) calendar day conciliation/adverse action period and provides adequate verification of good cause the Department shall reverse the closure of the recipient's Families First/TANF case.~~

~~3. Sanction Period. If the non-compliant recipient fails to provide the Department adequate verification of good cause during the ten (10) calendar day conciliation/adverse action period, the recipient's case closure shall be effective on the date set forth in the notice of adverse action and a sanction shall be applied to the recipient's Families First/TANF case pursuant to paragraph (4) below.~~

~~(e4) Length of Sanctions. If a Families First participant fails to comply with the work requirements without good cause, sanctions are applied. The mandatory sanction shall be imposed for the following time periods:~~

~~1. For non-compliance with the work requirement, the AG will be ineligible for Families First until the sanctioned person complies or becomes exempt.~~

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~~2. Reserved for future use.~~

~~3. Reserved for future use.~~

~~4. When an individual agrees to comply during the 10-day adverse action period and completes the required compliance period without an unexcused absence, eligibility will begin the first of the month after the last month benefits were received.~~

~~5. When an individual agrees to comply anytime after the expiration of the 10-day adverse action period, a new application must be filed. If the required compliance period is completed within the 45-day processing period, eligibility will begin effective the date of application, provided all other conditions of eligibility are met. If the required compliance period is not completed due to the fault of the client within the 45-day processing period, the application will be denied.~~

~~6. Reserved for future use.~~

~~(a) First violation. The first violation shall result in the imposition of a one (1) month case closure period of ineligibility for cash assistance.~~

~~(b) Second violation. The second violation shall result in the imposition of a three (3) month case closure period of ineligibility for cash assistance.~~

~~(c) Third violation. The third violation shall result in the imposition of a six (6) month case closure period of ineligibility for cash assistance.~~

~~(d) Fourth or Subsequent Violation. The fourth or subsequent violation shall result in a twelve (12) month case closure period of ineligibility for cash assistance.~~

~~(e) The sanction shall begin with the next recurring month following the expiration of the adverse action period, unless the participant timely appeals within ten (10) days of the date of the conciliation/adverse action notice.~~

~~(5) Child Care. The Department shall not provide transitional child care to any Families First/TANF recipient whose case is closed due to noncompliance with the work and/or educational activities requirement.~~

~~(6) Early Re-entry during Case Closure. A Families First/TANF recipient whose case was closed due to noncompliance with the work and/or educational activities requirement may apply for early re-entry if he/she meets the following criteria:~~

~~(a) The early re-entry criteria during the mandatory sanction periods are:~~

~~1. The receipt of cash assistance would prevent removal of a child from the home by the Department of Children’s Services;~~

~~2. The recipient has become disabled or incapacitated according to the Families First/TANF work activities exemption policy;~~

~~3. The recipient is under a threat of domestic violence;~~

~~4. The receipt of cash assistance would prevent the recipient’s family or AU from becoming homeless; or~~

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5. The recipient has assumed the responsibility of caring for an in-home disabled relative.

(b) Fourth or Subsequent Sanction Period. If a non-compliant recipient has been continuously employed for a period of three (3) months for at least thirty (30) hours per week, is still employed, and is able to verify the employment, then that recipient is eligible for early re-entry during a fourth or subsequent sanction period.

(7) Families First/TANF Eligibility after Sanction.

(a) Applications filed prior to the expiration of the mandatory sanction period shall be denied due to ineligibility for benefits during the sanction period unless the applicant is able to show early re-entry criteria, as set forth in paragraph (6) above.

(b) Participation in Families First/TANF after a sanction due to non-compliance with the work and/or educational activities requirement may resume when:

1. The mandatory sanction period has expired;

2. The former recipient timely files a new Families First/TANF application as required by subparagraph (a) and meets all other eligibility criteria; and

3. The former Families First/TANF recipient complies with required work and/or educational activities for ten (10) consecutive business days after re-application.

(c) The Department shall consider a former recipient's Families First/TANF application pending during the mandatory ten (10) consecutive business days compliance period and the recipient shall receive childcare, as needed.

(8) Appeals. Any individual who receives notification of a case closure as a result of non-compliance with the work and/or educational activities requirement may timely appeal according to the appeal procedures outlined in Chapter 1240-05 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act.

(a) To continue receiving benefits, without the imposition of a sanction, the Families First/TANF recipient must request a hearing during the ten (10) day period following the notice of adverse action. If the recipient appeals during the adverse action period, no sanctions shall be imposed until a final decision is entered.

(b) Overpayments. If a final decision upholding the sanction decision is entered, the cash assistance received during the sanction period pending the fair hearing will be considered an overpayment and DHS may collect the overpayment in accordance with the procedures set forth in Chapter 1240-01-52.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-1-105(12), 71-3-151 through 71-3-165, 71-3-154(a), (d)(1)(B) and (C), (g) and (h), 71-3-157(c)(1) and (f), and 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c)(2)(C), 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(a)(4) and 42 U.S.C. § 609; 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996; Acts of 1996, Chapter 950, and 45 CFR 250.34 through 250.36, §1115 of the Social Security Act, 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006) and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed December 13, 2002; effective February 26, 2003.

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Amendment filed December 19, 2003; effective March 3, 2004. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

1240-01-49-05 APPEALS AND HEARINGS. The Department of Human Services is responsible for hearing appeals on any disputed matter relating to Families First eligibility and amount of grant and any Families First work requirement dispute including but not limited to a referral to Families First service providers, effective participation in Families First work requirements, whether good cause for failure to participate exists, and imposition of sanctions. These appeals will be conducted according to appeal procedures set forth in Chapter 1240-5 and Title 4, Chapter 5, Part 3 of the Administrative Procedures Act and which shall not be more narrow than those in existence on August 31, 1996.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 4-5-301 et seq., 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c)(2)(C), 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(a)(4) and 42 U.S.C. § 609; Public Acts of 1996, Chapter 950, Title 4, Chapter 5, Part 3, and 45 CFR 205.10 and 250.36, 45 C.F.R. 205.10, 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006) and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

1240-01-49-06 VOLUNTARY QUIT.

(1) ~~When an applicant caretaker, including either parent in a two-parent AG, voluntarily quits a job without good cause within three months prior to the month of application, during the month of application, or during the application processing period, the application will be denied until the individual completes a five (5) day compliance with the thirty (30) hour work requirement. Any member of an AU with a work and/or educational activities requirement, including either parent in a two-parent AU, shall not voluntarily quit employment, without good cause, within the two (2) months prior to the month of application, during the month of application, or during the application processing period for Families First/TANF cash assistance.~~

~~(a) If any member of an AU with a work activities requirement voluntarily quits employment as set forth in this section, the application will be pending.~~

~~(b) An AU is eligible for Families First/TANF cash assistance after a voluntary quit prior to or during the application processing period when:~~

~~1. The Families First/TANF applicant meets all eligibility criteria; and~~

~~2. The Families First/TANF applicant complies with required work and/or educational activities for ten (10) consecutive business days after application.~~

(2) ~~When a recipient caretaker, including either parent in a two-parent group, if, during receipt of Families First/TANF cash assistance, any member of an AU with a work activities requirement, including either parent in a two-parent AU, voluntarily quits a job employment without good cause, the assistance group will be terminated and will remain ineligible until the individual completes a five (5) day compliance with the thirty (30) hour work requirement the individual and/or AU shall receive a sanction as set forth in Rule 1240-01-49-04.~~

(3) Good cause to avoid a voluntary quit sanction includes, but is not limited to:

(a) Complications of pregnancy which render the mother incapacitated, as certified by a physician;

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- (b) ~~¶~~The individual was required to return to work prior to the end of ~~the sixteen (16)~~ weeks of leave following the birth of a child, ~~as provided for in the Tennessee Family Medical Leave Act;~~
- (c) ~~e~~Existing child care became unavailable and substitute child care could not be arranged, for reasons beyond the caretaker's control;
- (d) ~~¶~~Transportation was unavailable and the ~~caretaker-employee~~ submits evidence that substitute transportation could not be arranged;
- (e) ~~T~~he ~~caretaker-employee~~ was needed in the home to care for an ill or disabled family member;
- (f) ~~¶~~The employer refused to allow time off for the ~~caretaker-employee~~ to attend to a temporary family emergency;
- (g) ~~¶~~The job paid less than minimum wage based on the number of hours actually worked;
- (h) ~~¶~~There was discrimination by the employer based on age, race, sex, color, handicaps, religious beliefs, national origins, or political beliefs;
- (i) ~~w~~Work demands or conditions rendered continued employment unreasonable;
- (j) ~~¶~~The ~~caretaker-employee~~ accepted other employment with at least comparable gross wages; ~~or~~
- (k) ~~t~~The employee left a job in connection with patterns of employment in which workers frequently move from one employer to another; ~~or~~
- (l) ~~Reserved for future use.~~The employer failed to provide reasonable accommodations for the employee pursuant to the Americans with Disabilities Act; or
- (m) The employer violated any federal, state, or local employment law in the employer's treatment of the employee.

~~(4) The assistance group may reapply before compliance, but eligibility will not be approved until compliance is met or the individual meets exemption criteria. An individual who has been sanctioned for quitting a job as head of one assistance group will carry the sanction with him/her to a new assistance group if he/she joins the new group as a parent/caretaker.~~

~~(5) Reserved for future use.~~

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-1-105(12), 71-3-151 through 71-3-165, 71-3-154(a), (d), (g) and(h), 71-3-157(c)(1) and (f), and 71-3-158(d)(2)(D), 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c), (d) and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(b)(3), 42 U.S.C. § 609, 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996, 42 USC §1315(a), Acts of 1996, Chapter 950, and §1115 of the Social Security Act, 45 C.F.R. § 261.2, 45 C.F.R. § 261.10, 45 C.F.R. § 261.14, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31, and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Amendment filed December 13, 2002; effective February 26, 2003. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

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1240-01-49-.07 STRIKERS.

- (1) Definitions.
 - (a) The term “strike” includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted shutdown or other concerted interruption of operation by employees.
 - (b) The term “participating in a strike” means an actual refusal in concert with others to provide services to one’s employers.
- (2) Eligibility Factors.
 - (a) If a parent with whom the children live is participating in a strike, the entire assistance group is ineligible for as long as the parent is on strike. The parent does not have to be a member of the assistance group to cause ineligibility.
 - (b) If an assistance group member other than a parent is participating in a strike, that individual is ineligible for assistance as long as she/he is on strike.
 - (c) If a payment of Families First benefits has already been made for any month(s) in which a parent or other assistance group member participated in a strike as of the last day of the month, the payment (or the individual’s share) for the entire month constitutes an overpayment subject to recovery.

Authority: T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.106.

Administrative History: Original rule filed December 2, 1996; effective February 15, 1997.

1240-01-49-.08 ~~RESERVED FOR FUTURE USE~~ DEFINITIONS.

For purposes of this Chapter:

- (1) “Adverse Action Notice” is a computer generated notice sent to a Families First/TANF recipient when a negative action is taken on a Families First/TANF case.
- (2) “Assistance Unit (AU)” means the “aid group (AG)” or group of people applying for or receiving Families First/TANF cash assistance benefits.
- (3) “Caretaker” is a relative within a specified degree of relationship to the child who:
 - (a) provides a home for the child; and
 - (b) exercises primary responsibility for care and control of child.
- (4) “Child Care” means the provision of supervision and protection, and at a minimum, meeting the basic needs of a child or children for less than twenty-four (24) hours a day. Child care is provided when necessary for the participant to take part in work or training activities while the AU is receiving Families First/TANF cash assistance.
- (5) “Child Only caretaker” is a caretaker who is either a non-parental relative who is not included in the AU or a caretaker receiving SSI benefits.
- (6) “Conciliation” means a ten (10) calendar day period of time given to a Families First/TANF recipient to establish good cause for failure to comply with their work activities requirements

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following the issuance of a notice of adverse action, unless the tenth (10th) day falls on a weekend or holiday.

- (7) “Department” means the Department of Human Services.
- (8) “Employee” means the Families First/TANF recipient and/or caretaker, who works in the service of another person, private entity, or governmental entity.
- (9) “Employment” means the relationship between an employee and his/her employer consisting of the employee’s work responsibilities for the employer.
- (10) “Families First” refers to the temporary public assistance program provided under Temporary Assistance for Needy Families (“TANF”), administered by the Department pursuant to Title IV-A of the Social Security Act and title 71, chapter 5, part 3 of the Tennessee Code Annotated.
- (11) “Family Focused Solutions (“FFS”)” refers to a Families First/TANF support service whose purpose is to provide supportive assistance to Families First/TANF recipients who may have barriers to employment.
- (12) “Incapacity” is deemed to exist when one parent has a physical or mental defect, illness, or impairment. The incapacity shall be supported by competent medical testimony and must be of such a debilitating nature as to reduce substantially, or eliminate the parent’s ability to support or care for the otherwise eligible child and be expected to last for a period of at least thirty (30) days. Incapacity may be a reason for deprivation or may be a reason for a temporary exemption from a work activities requirement.
- (13) “Sanction” means the period of time during which a Families First/TANF case is closed due to lack of adequate participation in required work and/or educational activities.
- (14) “Support Services” means the transportation, optical, dental, and other services which are provided by the Families First/TANF work activity contractor when necessary for participation in work and/or educational activities.
- (15) “Work activities” means the work and/or educational activities performed in return for cash assistance benefits that provide a Families First/TANF recipient with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-1-105(12), 71-3-151 through 71-3-165, 71-3-154(d)(1)(B) and (C), 71-3-155; 71-3-157(c)(1), 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.

Administrative History: Original rule filed December 13, 2002; effective February 26, 2003. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

1240-01-49-.09 DIVERSION PROGRAM FOR FAMILIES WITH A ONE-TIME FINANCIAL NEED.

- (1) AGs who are eligible for Families First may receive the option of a one-time lump sum payment, if appropriate for the AG’s needs and situation. The one-time lump sum payment would be received in lieu of ongoing, recurring Families First benefits. The one-time lump sum payment is available to AGs:
- (a) Who meet residency and benefit history requirements, as defined by policy;
- (b) Who do not have major barriers to employment as defined by policy;

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- (c) Whose caretaker is job ready, as defined by policy; and
 - (d) Who need only a one-time financial assistance payment to prevent the need for ongoing Families First benefits.
- (2) Acceptance of the diversion one-time payment will make the AG ineligible for Families First for one year.
- (3) Employed diversion AGs may receive up to three (3) months of Families First child care.
- (4) Early Return. An AG who received a diversion lump-sum payment may be eligible to return to Families First before the one year period of ineligibility is finished if:
- (a) The caretaker becomes disabled or incapacitated.
 - (b) Receipt of Families First would prevent a child from being removed from the home by DCS.
 - (c) Receipt of Families First would prevent the Assistance Unit/AG from becoming homeless (as defined by policy).
 - (d) The caretaker begins caring for an in-home disabled relative who is not in school full-time.
 - (e) There is an immediate threat of domestic violence.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 45 C.F.R. § 233.90; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

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**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-54
CHILD CARE
FAMILIES FIRST PROGRAM**

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1240-01-54-.02 Transitional Child Care Coverage

1240-01-54-.01 FAMILIES FIRST CHILD CARE. If child care is required to enable a Families First recipient to accept or hold employment or to engage in employment-related activities, the Department can provide for the cost of child care in either of two ways. The recipient may choose the manner in which child care will be provided, as described in (1) and (2) below, whichever is most advantageous to the AG.

- (1) Deduct the cost of child care from earnings in accordance with 1240-1-50-.16(1)(c)5.(ii); or
- (2) Direct payment to a child care provider for the cost of care (up to established maxima).
- (3) When Families First eligibility is dependent on the deduction of child care from earnings, this will be the method used to provide child care for that individual.
- (4) Families First child care cannot be used for persons not included in the AG (e.g., a grandmother who is the caretaker of children in the AG, but is not herself included in the AG.)

Authority: T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, 45 CFR 255.2 and 255.3, and §1115 of the Social Security Act. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

1240-01-54-.02 TRANSITIONAL CHILD CARE COVERAGE.

(1) Transitional Child Care (TCC) ~~will~~ shall be provided following the effective date of the Families First/TANF case closure for a ~~total minimum of eighteen a twelve (12) months~~ after period of time, beginning with the month following the effective date of the Families First/TANF case closure, for any reason except for closures resulting from circumstances described in paragraphs (3) or (4). If the recipient does not request TCC at case closure and then later requests TCC, then TCC will only be provided when: for the remaining months in the twelve (12) month period of time that followed case closure.

(2) TCC for a minimum of twelve (12) months shall be provided when:

- (a) ~~¶~~The caretaker has a minimum of ~~forty~~ thirty (30) hours per week in allowable activities, as defined by policy; ~~and~~
- (b) ~~¶~~The individual's gross wages equal the current federal minimum wage when averaged over the number of hours worked per week; and
- (c) ~~¶~~Total family income is below the level established in State ~~¶~~Transitional ~~¶~~Child ~~¶~~Care policies.

~~¶~~—This income level will be set at ~~sixty (60)~~ percent (60%) of the state median income or higher.

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- (3) An Assistance Unit (AU) is ineligible for TCC beginning with the month after the Families First/TANF AU becomes ineligible when the case is closed due to:
- (a) TCC will be provided to such families regardless of the reason for case closure, except that TCC will not be provided for cases closed due to ~~n~~Non-cooperation with child support, establishment and enforcement requirements; or In addition, TCC will be provided even when an otherwise eligible family has not received Families First for three out of the prior six months.
 - (b) Non-compliance with work activity requirements.
- (4) Eligibility for Transitional Child Care (TCC) ends and does not begin again until re-application for Families First, when:
- (a) The AU moves out of state;
 - (b) The caretaker fails to pay required parent co-pay fees or to make acceptable payment arrangements;
 - (c) There is no eligible adult;
 - (d) The only child in the assistance unit leaves the home;
 - (e) The case has no minor parent (Eligible Child) in the AU who has signed a Personal Responsibility Plan;
 - (f) The case that was approved for interim benefits is later found to have been ineligible for Families First;
 - (g) The caretaker fails to cooperate with child support establishment and enforcement requirements as determined by the Department;
 - (h) The case is closed due to non-compliance with work activity requirements; or
 - (i) The established period of TCC eligibility ends.

Authority: T.C.A. §§4-5-201 et seq., 71-1-105, 71-3-154(b)(1), 71-3-158, and 42 USCA §1315(a).
Administrative History: Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Amendment filed November 24, 2003; effective February 7, 2004.