

RULEMAKING NOTICE FORM

Notice Number 2020-71

Rule Number He-W 652.07 & He-W 852.07

<p>1. Agency Name & Address:</p> <p>Dept. of Health & Human Services Bureau of Family Assistance 129 Pleasant Street, Brown Bldg. Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 167:3-c, I and RSA 161:4-a, IX</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption <u>X</u></p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment _____</p>
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5. Short Title: **Developing Potential Sources of Income**

6. (a) Summary of what the rule says and of any proposed amendments:

He-W 652.07 requires that recipients of financial and medical assistance develop all potential sources of income for which a recipient may be eligible. He-W 652.07 was an interim rule and expired on January 16, 2020.

The Department of Health and Human Services (Department) is proposing to adopt He-W 652.07.

When compared to the expired rule, the proposed He-W 652.07:

- **Removes reference to terms of eligibility for medical assistance;**
- **Updates the definition of “finding of clinical eligibility”;**
- **Updates references to federal financial assistance benefits to federal cash benefits to clarify that both Supplemental Security Income and Social Security Disability Insurance are included; and**
- **Removes several paragraphs because Chapter 187 of the Laws of 2016 (SB 420) amended RSA 167:6, VI to render the paragraphs redundant.**

The Department also is proposing to adopt He-W 852.07 since rules regarding eligibility for medical assistance are being reorganized into Chapter He-W 800. He-W 852.07 requires that recipients of medical assistance develop all potential sources of income for which a recipient may be eligible.

He-W 652.07 and He-W 852.07 clarify the requirements in federal regulation 42 CFR 435.608 for medical assistance and 45 CFR 233.20(a)(3)(ix) for Temporary Assistance for Needy Families (TANF), and state law RSA 167:6, VI for adult cash assistance, by listing examples of sources of income that might be required to be applied for and when cash assistance can continue after a finding of clinical ineligibility pursuant to RSA 167:6, VI.

6. (b) Brief description of the groups affected:

The proposed rules affect applicants and recipients of adult cash, medical assistance, and FANF who may be eligible for disability, veteran, retirement, or other benefits.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Specific State Statute the Rule Implements
He-W 652.07	RSA 167:3-c, I; RSA 161:4-a, IX; 45 CFR 233.20(a)(3)(ix)
He-W 852.07	RSA 167:3-c, I; RSA 161:4-a, IX; 42 CFR 435.608

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Allyson Zinno** Title: **Administrative Rules Coordinator**
 Address: **Dept. of Health and Human Services** Phone #: **(603) 271-9604**
Administrative Rules Unit Fax#: **(603) 271-5590**
129 Pleasant Street, 2nd Floor E-mail: **allyson.zinno@dhhs.nh.gov**
Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Friday, September 11, 2020**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, September 3, 2020 at 1:30pm.**
 Place: **[DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH](#)**

This meeting can also be accessed via zoom using the below information:

Join Zoom Meeting: <https://nh-dhhs.zoom.us/j/2744551778?pwd=RnJxZFVPMlllOQ3pqQW5FZ09YR2xidz09>
 Meeting ID: **274 455 1778**
 Password: **866326**

One tap mobile: **+13126266799,,2744551778#,,1#,866326# US (Chicago)**
+16465588656,,2744551778#,,1#,866326# US (New York)

Dial by your location: **+1 312 626 6799 US (Chicago)**
+1 646 558 8656 US (New York)
+1 301 715 8592 US (Germantown)
+1 346 248 7799 US (Houston)
+1 669 900 9128 US (San Jose)
+1 253 215 8782 US (Tacoma)

The following email address will be monitored during the meeting if there is any public access or technical problems during the meeting: allyson.zinno@dhhs.nh.gov.

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 20:063, dated July 29, 2020

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable, as the existing interim rule He-W 652.07 expired in January 2020 and proposed He-W 852.07 is a new rule.

2. Cite the Federal mandate. Identify the impact on state funds:

Federal rules (42 CFR 435.608 and 45 CFR 233.20(a)(3)(ix)) require that applicants and recipients of TANF and Medicaid develop potential sources of income in order to be eligible for assistance. The proposed rule makes specific what potential sources the Department of Health and Human Services will consider when evaluating eligibility for Medicaid, TANF, and adult cash assistance. The Department states that the federal mandates do not have an impact on state funds.

3. Cost and benefits of the proposed rule(s):

The Department states that any cost or benefit is the result not of the proposed rules, but the federal mandates that instigate them. (See response to (2) above.) When compared to the expired interim rule, the proposed He-W 652.07: (1) removes referenced to terms of eligibility for financial assistance, (2) updates the definition of “finding of clinical eligibility”, and (3) replaces references to federal financial assistance benefits with federal cash benefits to clarify that both Supplemental Security Income and Social Security Disability Income are included.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules modify an existing program or responsibility, but do not mandate any fees, duties, or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

Adopt He-W 652.07, previously effective 7-20-19 (Document #12829, Interim), and expired 1-16-20, to read as follows:

He-W 652.07 Developing Potential Sources of Income.

- (a) “Finding of clinical ineligibility” means any denial or termination of federal cash benefits:
- (1) Due to not meeting the medical disability criteria; and
 - (2) In response to an application, reapplication, or appeal filed for federal cash benefits.
- (b) To be eligible for FANF or adult category financial assistance an individual shall have applied for all potential sources of income or benefits including, but not limited to:
- (1) Benefits described under Title XVI of the Social Security Act;
 - (2) Benefits described under Title II of the Social Security Act;
 - (3) Veteran's benefits, including the veteran's affairs aid and attendance allowance;
 - (4) Retirement benefits or pensions;
 - (5) Disability benefits or pensions;
 - (6) Unemployment or worker's compensation;
 - (7) Contributions from any liable third-party; and
 - (8) Third-party medical coverage.
- (c) The application for other benefits described in (b) above, shall be made:
- (1) Prior to the department initiating a determination of eligibility for the adult category financial assistance program; or
 - (2) If applying for FANF, no later than 30 days after the referral for those benefits were made.
- (d) If the individual is incapable of applying for the aid and attendance allowance pursuant to (b)(3) above, does not have an authorized representative to apply on the individual's behalf, and the nursing facility will not apply on the individual's behalf, the eligibility worker shall initiate the application for the aid and attendance allowance on the individual's behalf.
- (e) When applying for the benefits described in (b) above, applicants and recipients of FANF or adult category financial assistance shall:
- (1) Provide all required information and verification and complete all forms as required in the application process for the other benefit;
 - (2) Cooperate in taking all necessary steps to obtain the other income or benefit;
 - (3) Accept the other income or benefit if eligible; and
 - (4) Pursue all appeal options within the timeframes set by the eligibility-determining agencies or individuals responsible for the other benefits described in (b) above, up to, but not including, court action, if found ineligible for the benefit due to medical reasons.

(f) Financial assistance for the entire assistance group shall be terminated or denied if an individual is ineligible for the other benefits described in (b) above, due to refusal or failure to:

- (1) Complete the application process for the other benefit;
- (2) Provide information or verification to obtain the benefits described in (b) above;
- (3) Cooperate with the eligibility-determining agencies or individuals responsible for the other benefits described in (b) above;
- (4) Meet the application timeframes described in (c) above or set by the eligibility-determining agencies or individuals responsible for the other benefits described in (b) above;
- (5) Pursue all appeal options in accordance with (f)(2) above; or
- (6) Accept the benefit if eligible.

(g) To be eligible for APTD financial assistance and pursuant to RSA 167:6,VI, APTD financial assistance applicants and recipients who have received a finding of clinical ineligibility shall provide the department with the following:

- (1) Written notification from the federal agency which indicates the date and reason the individual was denied federal cash benefits within:
 - a. Thirty calendar days from the date of application for adult category financial assistance for any finding of clinical ineligibility received prior to the APTD financial assistance application, provided the finding of clinical ineligibility was made not more than 12 months prior to the date of application; and
 - b. Ten calendar days from the date on the notice of any finding of clinical ineligibility after the date of APTD financial application; and
- (2) Written notification from the federal agency that denied the benefits which verifies that the APTD applicant or recipient is appealing the denial or has reapplied for federal benefits within 30 calendar days of having received a finding of clinical ineligibility for federal benefits.

(h) To be eligible for APTD financial assistance once APTD financial assistance has been terminated or denied due to a finding of clinical ineligibility, the individual shall:

- (1) File a new application;
 - (2) Meet all APTD program eligibility requirements; and
 - (3) Meet all the requirements in (i) below.
- (i) If APTD financial benefits were terminated or denied:
- (1) Due to being denied federal cash benefits due to a finding of clinical ineligibility, the individual shall provide proof that the individual is now approved for federal cash benefits; or
 - (2) Due to failure to provide notification of clinical ineligibility decision or appeal of clinical ineligibility decision pursuant to (g) above, the individual shall:
 - a. Provide all the required proof; and

b. Demonstrate via the proof provided that the federal financial cash benefits denials and subsequent appeals of the denials, were not due to a finding of clinical ineligibility.

(j) If an individual is eligible for APTD financial assistance pursuant to (h) above, APTD financial assistance shall begin the next semi-monthly payment period following the date all the requirements in (i) are met.

(k) To be eligible for continued receipt of APTD financial assistance pending the decision on the administrative appeal after an individual's APTD financial assistance is terminated due to a finding of clinical ineligibility the individual shall:

(1) Appeal the decision within 10 days from the date on the notice of decision; and

(2) Provide documentation:

a. Dated and signed by a physician, physician's assistant (PA), advanced practice registered nurse (APRN), or psychologist which includes:

1. The printed name of the health professional signing the documentation;
2. The specialty of the health professional; and
3. The address and phone number of the health professional; and

b. That states the individual's medical condition and that the medical condition:

1. Has increased in severity within the last 12 months; or
2. That was used when applying for or appealing the federal benefits is unrelated to the medical condition for which the individual applied for APTD financial assistance.

(l) Applicants denied cash assistance due to a finding of clinical ineligibility that have not started receiving cash benefits are not eligible for continued receipt of benefits pending appeal pursuant to (k) above.

(m) If the department's termination of APTD financial assistance is overturned at the appeals hearing due to the circumstances described in (k) above, the individual shall provide the department with written notification from the federal agency that the individual has:

(1) Appealed the federal denial received if the individual appealed the department's decision based on (k)(2)b.1. above; or

(2) Reapplied for federal benefits for the same medical condition for which the individual applied for APTD financial assistance if the individual appealed the department's decision based on (k)(2)b.2. above.

(n) The amount of all APTD financial assistance provided to the individual during the pendency of the appeal is subject to recoupment, in accordance with He-W 692, if the administrative appeal does not find in favor of the individual.

Adopt He-W 852.07 to read as follows:

He-W 852.07 Developing Potential Sources of Income or Benefits.

(a) To be eligible for adult category medical assistance, an individual shall apply for all potential sources of income or benefits, including, but not limited to:

- (1) Benefits described under Title II of the Social Security Act;
- (2) Veteran's benefits, including the veteran's affairs aid and attendance allowance;
- (3) Retirement benefits or pensions;
- (4) Disability benefits or pensions;
- (5) Unemployment or worker's compensation;
- (6) Contributions from any liable third-party; and
- (7) Third-party medical coverage.

(b) The application for other income or benefits described in (a) above shall be made no later than 30 days after the referral for those benefits.

(c) If the individual is incapable of applying for the aid and attendance allowance pursuant to (a)(2) above, does not have an authorized representative to apply on the individual's behalf, and the nursing facility will not apply on the individual's behalf, the eligibility worker shall initiate the application for the aid and attendance allowance on the individual's behalf.

(d) When applying for the other income or benefits described in (a) above, applicants and recipients of adult category medical assistance shall:

- (1) Provide all required information and verification and complete all forms as required in the application process for the other income or benefits;
- (2) Cooperate with the eligibility-determining agencies or the sources of the other income or benefits in taking all necessary steps to obtain the other income or benefits, subject to the limitations in (d)(4) below;
- (3) Accept the other income or benefits, if eligible;
- (4) Pursue all appeal options within the timeframes set by the eligibility-determining agencies or the sources of the other income or benefits described in (a) above, up to, but not including, court action, if found ineligible for the benefit due to medical reasons; and
- (5) Be exempt from developing potential sources of other income or benefits if good cause exists in accordance with (f) and (g) below.

(e) Medical assistance for all the adults in the assistance group shall be denied or terminated if an individual is ineligible for the other income or benefits described in (a) above due to refusal or failure to comply with the requirements of (d) above.

(f) If determined to have good cause pursuant to (g) below, an adult category medical assistance applicant or recipient shall be exempt from developing potential sources of other income or benefits until the individual's next redetermination, at which time the exemption shall be reviewed and, if the individual

continues to have good cause pursuant to (g) below, the exemption shall be extended until the next regularly scheduled redetermination.

(g) An adult category medical assistance applicant or recipient shall be determined to have good cause if the individual verifies that a physical, mental, educational, or linguistic limitation prevented the individual from:

- (1) Applying for the other income or benefits described in (a) above; or
- (2) Taking other necessary steps to obtain the other income or benefits, as described in (d) above.

APPENDIX

Rule	Specific State Statute the Rule Implements
He-W 652.07	RSA 167:3-c, I; RSA 161:4-a, IX; 45 CFR 233.20(a)(3)(ix)
He-W 852.07	RSA 167:3-c, I; RSA 161:4-a, IX; 42 CFR 435.608