

**CHAPTER 75-02-01.3
CHILD CARE ASSISTANCE**

Section	
75-02-01.3-01	Definitions
75-02-01.3-02	Decision and Notice
75-02-01.3-03	Closing a Case
75-02-01.3-04	Available Benefits
75-02-01.3-05	Approved Relative Provider's Background Check Information
75-02-01.3-06	Payments to Providers - Child Care Certificate
75-02-01.3-07	Treatment of Income
75-02-01.3-08	Disregarded Income
75-02-01.3-09	Deduction for Child Support and Spousal Support
75-02-01.3-10	Parental-Caretaker Choice - Contract Between Parent of Caretaker and Provider
75-02-01.3-11	Limitations
75-02-01.3-12	Intentional Program Violation - Disqualification Penalties
75-02-01.3-13	Reconsideration and Appeal Requests

SECTION 1. Section 75-02-01.3-01 is amended as follows:

75-02-01.3-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-33. In addition, as used in this chapter unless the context or subject matter otherwise requires:

1. "Applicant" means an individual who is seeking assistance under this program.
2. "Eligible child" means a child member of a child care assistance unit eligible for payment under the child care and development state plan.
23. "Intentional program violation" means an individual's intentional action or failure to act which consists of:
 - a. Making a false or misleading statement or misrepresenting, concealing, or withholding facts; or
 - b. Being convicted in federal or state court of having made a fraudulent statement or representation with respect to child care assistance.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33

SECTION 2. Section 75-02-01.3-02 is amended as follows:

75-02-01.3-02. Decision and notice.

1. The county agency shall notify the applicant or recipient in writing of any determination of eligibility or ineligibility the approval, denial, or termination. If an applicant's application is denied or a recipient's eligibility is terminated, the written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and
 - c. An explanation of the applicant's or recipient's right to request reconsideration or appeal, or both.
2. The effective date a case is closed or suspended is the last calendar day of the month identified in the notice.
3. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

SECTION 3. Section 75-02-01.3-03 is amended as follows:

75-02-01.3-03. Closing a case. A case must be closed when:

1. The ~~parent or other caretaker~~ is not participating in an allowable activity.
2. The child care assistance unit includes no eligible child.
3. The ~~redetermination~~ review form:
 - a. Is not submitted timely;
 - b. Is incomplete so further eligibility cannot be determined; or
 - c. Indicates the family's income exceeds the upper income limit for the family size.
4. The family moves out of state.

5. ~~For four consecutive months the payment share of the child care assistance program has been less than ten dollars and the child care assistance program has issued no payment.~~
6. The client recipient requests that the case be closed.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

SECTION 4. Section 75-02-01.3-05 is amended as follows:

75-02-01.3-05. Approved relative provider's background check information.

1. Before approving an individual as an approved relative provider, the department shall review available public records.
2. The department periodically may review available public records on an approved relative provider.
3. Based on information from public records, a relative provider applicant's request will be approved or denied; and an approved relative provider will be terminated at the end of the month written notification is given; if he or she has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

- c. An offense other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on the relative provider applicant's or approved relative provider's ability to serve as an approved relative provider.
5. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
6. The department shall notify the relative provider applicant and approved relative provider in writing of the approval, denial, or termination. If a relative provider applicant's request is denied or an approved relative provider's certificate is terminated, the written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and
 - c. An explanation of the applicant's or provider's right to request reconsideration or appeal, or both.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

SECTION 5. Section 75-02-01.3-06 is amended as follows:

75-02-01.3-06. Payments to providers - Child care certificate.

1. Unless a provider otherwise elects in a signed and dated writing, all payments of child care assistance must be made to a provider.

2. No payment may be made except on presentation of a claim in a form and manner required by the department for periods during which all ~~parents or other~~ caretakers in the child care assistance unit were engaged in an allowable activity.
3. No payment to a provider may be made at a rate in excess of that charged by the provider for services to individuals who do not receive child care assistance.
4. The department will issue to the eligible caretaker a child care certificate.
5. When a caretaker fails to pay the provider, the family is ineligible for child care assistance until:
 - a. The payment is made; or
 - b. The family reaches an agreement for payment with the provider and the family continues to comply with the payment agreement.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-06-06.1, 50-09-02, 50-33

SECTION 6. Section 75-02-01.3-07 is amended as follows:

75-02-01.3-07. Treatment of income.

1. A ~~caretaker's child care assistance unit's~~ earned income from wages or any other source must be considered received in the month it is normally received or available.
2. A ~~caretaker's child care assistance unit's~~ earned income from self-employment is computed ~~by use of:~~
 - a. From information in the following order of priority by:
 - (1) Using a federal income tax return and must be prorated over a twelve-month period that coincides with either the calendar year or the fiscal year used on the ~~caretaker's child care assistance unit member's~~ federal tax return;
 - (2) Annualizing the income for the period of time the business has been in operation;
 - (3) Using income and costs of good ledgers; or

- (4) Estimating the effect on the annual income based on the best information available from the child care assistance unit.
- b. By considering the type of business activity, expenses, and income.
3. Depreciation and other costs of doing business associated with a child care assistance unit's self-employment that do not require outlays during the period covered by the tax return must be added to the net income.
34. A ~~caretaker's~~ child care assistance unit's earned income that is received on a contractual basis must be prorated over the period of the contract, regardless of when it is actually received.
45. Expenses necessarily incurred to maintain the source of the ~~caretaker's~~ child care assistance unit's unearned income may be deducted to determine countable unearned income. All countable unearned income must be considered received in the month in which it is normally received or normally available.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

SECTION 7. Section 75-02-01.3-08 is amended as follows:

75-02-01.3-08. Disregarded income. The following types of income must be disregarded in determining child care assistance eligibility and benefits.

1. Money payments made by the department in connection with foster care, subsidized guardianship, family subsidy, or the subsidized adoption program;
2. Temporary assistance for needy families' benefits and support services payments;
3. Benefits received through the low-income home energy assistance program;
4. County general assistance;
5. Bureau of Indian affairs general assistance;
6. Irregular cash gifts received by a ~~caretaker~~ child care assistance unit;
7. A loan from any source that is subject to a written agreement requiring repayment by the ~~caretaker~~ child care assistance unit;

8. A ~~caretaker's~~ child care assistance unit's income tax refunds and earned income credits;
9. A ~~caretaker's~~ child care assistance unit's educational loans, scholarships, grants, and awards; educational assistance provided under the Montgomery GI Bill, Public Law No. 95-525 [98 Stat. 2553; 38 U.S.C. 101 et seq.]; and vocational rehabilitation payments; ~~job service payments;~~ and work study received by a caretaker who is an allowable postsecondary student in allowable vocational training;
10. Any fellowship or gift or portion of a gift used to pay the cost of a ~~caretaker's~~ child care assistance unit's tuition and fees at any educational institution;
11. Training funds received by a ~~caretaker~~ child care assistance unit from vocational rehabilitation;
12. Training allowances of up to thirty dollars per week provided to a ~~caretaker~~ child care assistance unit member through a tribal native employment works program;
13. Needs-based payments, support services, and relocation expenses provided to a ~~caretaker~~ child care assistance unit through programs established under the Workforce Investment Act of 1998 [Pub. L. 105-220, August 7, 1998; 112 Stat. 936];
14. Training stipends provided by private, charitable organizations to a ~~caretaker~~ child care assistance unit member who is a victim of domestic violence for the ~~caretaker~~ member of the child care assistance unit to attend educational programs;
15. The first two thousand dollars per year of lease payments deposited in an individual Indian monies account for a ~~caretaker~~ child care assistance unit member;
16. Any income required by federal law to be disregarded;
17. Earned income of all children in the child care assistance unit;
18. A one-time bonus incentive payment or commission to a ~~caretaker~~ child care assistance unit member;
19. Vendor payments or other payments made to a third party on behalf of the child care assistance unit;

20. Stipend payments to a ~~caretaker~~ child care assistance unit that do not require work as a condition of receipt;
21. Nonrecurring lump sum payments to a ~~caretaker~~ child care assistance unit;
22. Irregular income from sale of craft items and rummage sales;
23. Payments made by cafeteria or flex compensation plans to a ~~caretaker~~ child care assistance unit member;
24. Funds raised on behalf of the child care assistance unit, or any member of that unit, if the child care assistance unit does not have access to the funds; and
25. Income from contracts for deed; ~~and~~
26. ~~A fifth paycheck received in a single month by an individual who is paid a weekly wage or a third paycheck received in a single month by an individual who is paid a biweekly wage.~~

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

SECTION 8. Section 75-02-01.3-09 is amended as follows:

75-02-01.3-09. Deduction for child support and spousal support.

~~Child~~ Court-ordered child support and court-ordered spousal support, including arrearages, interest, and fees charged for income withholding, paid by or collected from a child care assistance unit member, whose income is counted in determining eligibility and benefit amounts, may be deducted from the child care assistance unit's income.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

SECTION 9. Section 75-02-01.3-10 is amended as follows:

75-02-01.3-10. Parental Caretaker choice - Contract between ~~parent or caretaker~~ and provider. The ~~parent or caretaker~~ of each eligible child who receives or is offered child care services for which financial assistance is provided through the child care and development fund may choose the approved relative provider, registered registrant, holder of a self-declaration, or licensed provider of services to that child. The department is not bound by or responsible for either party's compliance with the terms of any contract entered between a provider and a caretaker.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

SECTION 10. Section 75-02-01.3-12 is amended as follows:

75-02-01.3-12. Intentional program violation - Disqualification penalties.

1. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court is subject to the penalties provided in this section. An individual who waives the individual's right to appear at an intentional program violation hearing is subject to the penalties provided in this section.
2. The county agency shall notify an individual in writing of an intentional program violation. The written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and
 - c. An explanation of the individual's right to request an administrative hearing under chapter 75-01-03.
3. During any period of disqualification, if a disqualified individual:
 - a. Is a provider, the individual may not receive any child care assistance payment;
 - b. Is employed by a provider, that provider may not receive any child care assistance payment; and
 - c. Is a member of a child care assistance unit, that child care assistance unit is ineligible for child care assistance benefits.
34. The duration of the penalty described in this section is:
 - a. ~~One year~~ Six months for the first offense;
 - b. ~~Two years~~ One year for the second offense; and
 - c. Permanently for the third offense.

45. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until a court of appropriate jurisdiction subsequently reverses the finding upon which the penalty was based.
56. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
67. The department shall issue a written notice informing the individual of the period of disqualification.
78. Overpayments may be recovered from:
 - a. The child care assistance unit that includes the disqualified individual;
 - b. Any child care assistance unit of which the disqualified individual subsequently becomes a member;
 - c. Any individual members of the child care assistance unit that included the disqualified individual;
 - d. The provider who was disqualified; and
 - e. The provider who employed the disqualified individual.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

SECTION 11. Section 75-02-01.3-13 is amended as follows:

75-02-01.3-13. Reconsideration and appeal requests.

1. An applicant-~~or~~, recipient, relative provider applicant, or approved relative provider of child care assistance aggrieved by a determination made under this chapter may request reconsideration of that decision by the department, and must request reconsideration before appealing that decision unless the decision is based on an intentional program violation. ~~A-An applicant, recipient, relative provider applicant, or approved relative provider-or member of a child care assistance unit~~ aggrieved by a decision issued after a request for reconsideration must appeal in writing and include documentation of all of the following information:
 - a. A copy of the letter received from the department advising of the department's decision on the request for reconsideration;

- b. A statement of disputed facts, if any;
 - c. The authority in statute or rule upon which the applicant for or recipient of, relative provider applicant, or approved relative provider of child care assistance relies for each disputed item; and
 - d. The name, address, and telephone number of the individual to whom the department will send all notices and information regarding the appeal.
2. A request for reconsideration must be made within thirty days after notice of a determination made under this chapter. An appeal must be filed within thirty days after the date of mailing of a decision issued pursuant to a request for reconsideration.
 3. Chapter 75-01-03 governs an appeal made under this chapter.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02