

**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 Providers
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 Choice
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. Chapter 75-02-01.3 is created 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:

1. "Eligible child" means a child member of a child care assistance unit eligible for payment under the child care and development state plan.
2. "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.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33

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

1. The county agency shall notify the applicant of any determination of eligibility or ineligibility.
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.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.2-03. 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 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 requests that the case be closed.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-04. Available benefits.

1. The child care assistance program shall pay child care costs related to allowable activities of the eligible caretaker in a temporary assistance for needy families household or diversion assistance house-hold.
2. The child care assistance program shall pay a portion of child care costs related to allowable activities of the caretaker based on family size and countable income by applying a sliding fee schedule established by the department which is based on household size and income.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-05. Approved relative providers background check information.

Before approving an individual as an approved relative provider, the department shall review available public records .

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

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.

General Authority: NDCC 50-33-02

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

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

1. A caretaker'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 earned income from self-employment is computed by use of 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 federal tax return. Depreciation and other costs of doing business that do not require outlays during the period covered by the tax return must be added to the net income.
3. A caretaker'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.
4. Expenses necessarily incurred to maintain the source of the caretaker'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.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

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;
7. A loan from any source that is subject to a written agreement requiring repayment by the caretaker;
8. A caretaker's income tax refunds and earned income credits;
9. A caretaker'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.], vocational rehabilitation payments, job service payments, and work study received by a caretaker who is an allowable post-secondary student in allowable vocational training.
10. Any fellowship or gift (or portion of a gift) used to pay the cost of a caretaker's tuition and fees at any educational institution;
11. Training funds received by a caretaker from vocational rehabilitation;
12. Training allowances of up to thirty dollars per week provided to a caretaker through a tribal native employment works program;
13. Needs-based payments, support services, and relocation expenses provided to a caretaker through programs established under the Workforce Investment Act of 1998 [Public Law 105-220 – Aug. 7, 1998; 112 Stat. 936];
14. Training stipends provided to a caretaker who is a victim of domestic violence by private, charitable organizations, for the caretaker 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;
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;
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 that do not require work as a condition of receipt;
21. Nonrecurring lump sum payments to a caretaker;
22. Irregular income from sale of craft items and rummage sales;
23. Payments made by cafeteria or flex compensation plans to a caretaker;
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;
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 bi-weekly wage.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

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

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-10. Parental 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, registered, 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.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-01

75-02-01.3-11. Limitations.

1. No caretaker in child care assistance unit that includes two or more caretakers may be provided a benefit under this chapter for any time another caretaker is available, or is treated under this chapter as available, to meet the needs of the child for whom assistance is sought.
2. If other eligibility criteria is met, a caretaker who is attending school in a one or two year post-secondary vocational program that will lead to a certificate or a degree, high school or, a program leading to a general equivalence degree may be eligible to receive assistance under this program.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33

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. 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.
3. The duration of the penalty described in this section is:
 - a. One year for the first offense;
 - b. Two years for the second offense; and
 - c. Permanently for the third offense.
4. 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.
5. 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.
6. The department shall issue a written notice informing the individual of the period of disqualification.
7. 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.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

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

1. An applicant or recipient 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. A 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 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.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02