

**Document:** Proposed Rule, **Register Page Number:** 28 IR 1846

**Source:** March 1, 2005, Indiana Register, Volume 28, Number 6

**Disclaimer:** This document was created from the files used to produce the official CD-ROM Indiana Register.

**TITLE 405 OFFICE OF THE SECRETARY OF  
FAMILY AND SOCIAL SERVICES**

**Proposed Rule**  
LSA Document #04-319

DIGEST

Amends 405 IAC 2-2-3 to require that a person have a disabling condition that has lasted or is expected to last for at least 12 months in order to qualify for Medicaid under the disabled category. Amends 405 IAC 2-9-5 to require that an individual have earned income that exceeds the \$65 per month earned income disregard in order to be considered employed for purposes of the Medicaid for Employees with Disabilities program. Effective 30 days after filing with the secretary of state.

**405 IAC 2-2-3**

**405 IAC 2-9-5**

SECTION 1. 405 IAC 2-2-3 IS AMENDED TO READ AS FOLLOWS:

**405 IAC 2-2-3 Disability determination**

**Authority:** IC 12-8-6-5; IC 12-15-1-10

**Affected:** IC 12-13-7-3; IC 12-14-15-1; IC 12-15

Sec. 3. (a) The determination of whether an applicant or recipient is disabled according to the definition of disability prescribed in IC 12-14-15-1(2) is made by the Medicaid medical review team (MMRT) based upon the following principles:

(1) The determination of whether a condition appears reasonably certain to result in death or that has lasted or appears reasonably certain to last for a continuous period of at least ~~four (4) years~~ **twelve (12) months** without significant improvement is made on the basis of the expected duration of the condition. A condition ~~which that~~ is temporary (less than ~~four (4) years~~) **twelve (12) months**) or transient does not fulfill this requirement. The expected duration of the condition does not preclude the possibility of future medical advances, changed diagnosis or prognosis, unforeseen recovery, or successful treatment subsequent to the initial prognosis.

(2) The determination of whether a condition substantially impairs the applicant's ability to perform labor or services or to engage in a useful occupation will be made based upon a consideration of the following:

(A) The applicant's functional limitations, as follows:

(i) Consideration is given to the applicant's significant physical functions and capacity ~~which that~~ affect vocational capacity, such as standing, walking, lifting, range of motion, strength, agility, and stamina.

(ii) Consideration is given to the individual's intellectual and sensory functions ~~which that~~ affect vocational capacity, such as sight, speech, hearing, reasoning, and following directions.

(iii) Consideration is given to the applicant's capacity for sustained activity on a regular basis.

(B) The applicant's age, as follows:

(i) An individual who is not engaged in a useful occupation solely because of age cannot be found disabled if the individual's impairment, education, and work experience would enable the individual to function in a useful capacity.

(ii) If the applicant is over fifty-five (55) years of age, the applicant's age may be considered a significant factor in the applicant's ability to engage in or adapt to a useful occupation.

(iii) If the applicant is under eighteen (18) years of age, the applicant's condition is evaluated in terms of how it affects the applicant's activities and restricts the applicant's physical, mental, emotional, and social growth, learning, and development.

(iv) A condition ~~which that~~ is likely to substantially impair a child's ability to become an independent and self-supporting adult is a basis for a finding of disability.

(C) The applicant's education and training, as follows:

(i) Consideration is given to the applicant's formal schooling and other training that contributes to the applicant's ability to meet vocational requirements.

(ii) Past work experience, daily activities, and hobbies are considered in determining and evaluating skills not acquired in a formal setting.

(iii) In determining whether these factors are vocationally significant, consideration is given to the time elapsed since the completion of education, training, or the exercise of acquired skills.

(iv) Lack of education and training is not of itself a basis for a finding of disability.

(D) The applicant's work experience, as follows:

(i) The applicant's inability to engage in the applicant's former occupation is not, in itself, a basis for a finding of disability.

(ii) Work performed fifteen (15) or more years **prior to before** an application is not considered vocationally relevant. Similarly, an individual who has no work experience or only sporadic work experience in the previous fifteen (15) years is considered to have no work experience relevant to the determination of disability.

(iii) The absence of work experience is not in itself a basis for a finding of disability.

(iv) If an applicant is physically or mentally unable to engage in any previous occupation but the applicant's remaining functional capacity and vocational capabilities are sufficient to meet the demands and adjustments required by a different occupation, the applicant is not considered disabled.

(b) Except as provided below, a redetermination of disability is required annually of each recipient at the time the county office does its complete redetermination of all factors of eligibility. Redeterminations of disability may be required more frequently or may be waived at the discretion of the MMRT based upon the condition of the recipient. (*Office of the Secretary of Family and Social Services; 405 IAC 2-2-3; filed Mar 1, 1984, 2:31 p.m.: 7 IR 1015, eff Apr 1, 1984; errata, 7 IR 1254; filed Dec 21, 2000, 2:06 p.m.: 24 IR 1342; errata filed Apr 30, 2001, 3:27 p.m.: 24 IR 2709; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822*) **NOTE: Transferred from the Division of Family and Children (470 IAC 9.1-2-3) to the Office of the Secretary of Family and Social Services (405 IAC 2-2-3) by P.L.9-1991, SECTION 131, effective January 1, 1992.**

SECTION 2. 405 IAC 2-9-5 IS AMENDED TO READ AS FOLLOWS:

#### **405 IAC 2-9-5 Employment requirements; continuing eligibility when employment ends**

**Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-41-15**

**Affected: IC 12-15-2-6.5; IC 12-15-41**

Sec. 5. (a) In order for an individual to be eligible for Medicaid for employees with disabilities, the individual must be engaged in a substantial and reasonable work effort. This means that the person must be either employed or self-employed, with the intent of such work activity being ongoing. **The individual's monthly earned income must exceed the sixty-five dollar (\$65) earned income disregard described in section 2 of this rule.** Employment must be verifiable by pay stubs or other verification from an employer documenting that the income is subject to income tax and FICA withholding. Self-employment must be verified by the individual's income tax return or, in the case of a new business for which a tax return has not yet been filed, the personal business records of the individual.

(b) In order for a recipient of Medicaid for employees with disabilities to remain eligible when the definition of medically improved disability in section 7 of this rule is met, the recipient must be employed as defined in subsection (a) and must have monthly earnings as calculated under 405 IAC 2-5-1 that are equal to or greater than the federal minimum wage times forty (40), unless the provisions in subsection (c) are met.

(c) A recipient who is involuntarily not working can remain eligible for the Medicaid for employees with disabilities program for up to twelve (12) months if he or she meets all other program requirements and ~~is~~ either:

(1) **is** on temporary medical leave from his or her employment as defined in subsection (d); or

(2) maintains a connection to the workforce by participating in at least one (1) of the following activities:

(A) Enrollment in a vocational rehabilitation program.

(B) Enrollment or registration with the department of workforce development.

(C) Participation in a transition from school to work program.

(D) Participation with an approved provider of employment services.

(d) As used in this section, "temporary medical leave" means a leave from the place of employment due to health reasons when the employer is keeping a position open for the individual to return. If the employer is no longer holding a position open, the recipient must maintain a connection to the workforce as defined in subsection (c)(2) in order for coverage to continue under Medicaid for employees with disabilities.

(e) In order to remain eligible upon becoming unemployed, the recipient or his or her authorized representative must submit a written request for continued coverage to the local office of family and children no later than sixty (60) days after termination of employment. Attached to this written request must be verification that the recipient meets the requirements in subsection (c). On a quarterly basis thereafter, as long as the recipient continues to be unemployed and wishes coverage to continue, verification of his or her medical leave or workforce connection status must be provided to the local office of family and children. The quarterly verification must consist of a statement from the agency or service provider that documents the recipient's continued participation in an activity that constitutes connection to the workforce, or from the recipient's employer stating he or she remains on a temporary involuntary medical leave.

(f) A recipient who voluntarily terminates his or her employment for any reason is not eligible for Medicaid for employees with disabilities. Eligibility for the other Medicaid categories will be pursued.

(g) A recipient who fails to submit the initial request for coverage continuation within the required sixty (60) day period or who fails to submit the quarterly verification report is no longer eligible for Medicaid for employees with disabilities. Eligibility for other Medicaid categories will be pursued. (*Office of the Secretary of Family and Social Services; 405 IAC 2-9-5; filed Jun 10, 2002, 2:21 p.m.: 25 IR 3119; errata filed Jun 28, 2002, 10:17 a.m.: 25 IR 3769; errata filed Aug 22, 2002, 3:14 p.m.: 26 IR 35*)

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on March 29, 2005 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments concerning eligibility for Medicaid for employees with disabilities and Medicaid for persons with disabilities. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

E. Mitchell Roob, Jr.  
Secretary  
Office of the Secretary of Family and Social Services