
WEST VIRGINIA CODE CHAPTER 9

ARTICLE 3

WV Legislature

§9-3-1. Application for and granting of federal-state or federal assistance.

(a) Any person domiciled in this state, who shall make, or have made in his or her behalf, an application therefor and who is otherwise in all respects qualified to receive the same, shall be granted federal-state assistance or federal assistance in such form and amount, to such extent, and for such period, as authorized by applicable federal and state laws, rules and regulations and as determined by the department in accordance with such laws, rules and regulations and within limits of available funds.

(b) In conjunction with the Higher Education Policy Commission and Workforce West Virginia, the Bureau for Family Assistance must compile and maintain a list of those services available to assist and support individuals who are qualified to receive federal, federal-state, or state assistance and who want to obtain a degree, secure workforce training, or reenter the workforce. This document must be maintained on the Bureau for Family Assistance's website and any hard copy requested for this document must be supplied to the person requesting the information via first-class mail.

§9-3-2. Application for and granting of state assistance.

(a) Any indigent person domiciled in this state, who shall make, or have made in his or her behalf, an application therefor and who is otherwise in all respects qualified to receive the same, shall be granted state assistance in such form and amount, to such extent, and for such period, as authorized by applicable state laws, rules and regulations of the department and as determined by the department in accordance with such laws, rules and regulations and within limits of available funds.

(b) In conjunction with the Higher Education Policy Commission and Workforce West Virginia, the Bureau for Family Assistance must compile and maintain a list of those services available to assist and support individuals who are qualified to receive federal, federal-state, or state assistance and who want to obtain a degree, secure workforce training, or reenter the workforce. This document must be maintained on the Bureau for Family Assistance's website and any hard copy requested for this document must be supplied to the person requesting the information via first-class mail.

§9-3-3. Making application, investigation and grant.

All persons wishing to make application for any class of welfare assistance shall have an opportunity to do so. Upon receipt of an application for any class of welfare assistance, the department shall make such investigation as may be necessary and as the exigency of the case will permit to determine the eligibility of the applicant for, and the form, amount, extent, and period of, such assistance.

When the department approves an application for any class of welfare assistance, it shall fix the amount, form, extent and period of such assistance in accordance with applicable federal and state laws, rules and regulations and within the limits of available funds.

§9-3-4. Assignment of support obligations.

Any recipient of financial assistance under the program of state and federal assistance established by Title IV of the federal Social Security Act of 1965, as amended, or any successor act thereto, shall, as a condition of receiving assistance funded under this part, assign to the Department of Human Services any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so paid to the family, which accrues during the period that the family receives assistance under the program.

Each applicant for assistance subject to the assignment established in this section shall (during the application process) be informed in writing of the nature of the assignment.

Any payment of federal and state assistance made to or for the benefit of any child or children or the caretaker of a child or children creates a debt due and owing to the Department of Human Services by the person or persons responsible for the support and maintenance of the child, children or caretaker in an amount equal to the amount of assistance money paid: *Provided*, That the debt is limited by the amount established in any court order or final decree of divorce if the amount in the order or decree is less than the amount of assistance paid.

The assignment under this section shall subrogate the Department of Human Services to the rights of the child, children or caretaker to the prosecution or maintenance of any action or procedure existing under law providing a remedy whereby Department of Human Services may be reimbursed for moneys expended on behalf of the child, children or caretaker. The Department of Human Services shall further be subrogated to the debt created by any order or decree awarding support and maintenance to or for the benefit of any child, children or caretaker included within the assignment under this section and shall be empowered to receive money judgments and endorse any check, draft, note or other negotiable document in payment thereof.

The assignment created under this section shall be released upon closure of the assistance case and the termination of assistance payments except for support and maintenance obligations accrued and owing at the time of closure which are necessary to reimburse the department for any balance of assistance payments made.

The Department of Human Services may, at the election of the recipient, continue to receive support and maintenance moneys on behalf of the recipient following closure of the assistance case and shall distribute the moneys to the caretaker, child or children.

§9-3-5. Services to persons not otherwise eligible.

The department may make available the services established under the provisions of section four of this article, to any person not eligible for receipt of public assistance upon application by such person: *Provided*, That the department may not require such person to use its services. These services may include, but need not be limited to, the following: Location of the responsible parent whose whereabouts are unknown, collection of child support and maintenance moneys owed, and distribution of support and maintenance moneys paid.

The department may charge a reasonable fee to nonpublic assistance persons for the provision of services and, when the department has provided services for the collection of support and maintenance, may charge a reasonable fee to the person responsible for the support and maintenance. The commissioner shall establish by regulations the amount of such fees, not in excess of maximum amounts permitted by applicable federal law, which regulations may be amended and supplemented from time to time.

§9-3-6. Program for drug screening of applicants for cash assistance.

(a) As used in this section:

(1) "Applicant" means a person who is applying for benefits from the Temporary Assistance for Needy Families Program.

(2) "Board of Review" means the board established in §9-2-6(13) of this code.

(3) "Caseworker" means a person employed by the department with responsibility for making a reasonable suspicion determination during the application process for Temporary Assistance for Needy Families Program.

(4) "Child Protective Services" means the agency within the department responsible for investigating reports of child abuse and neglect as required in §49-2-802 of this code.

(5) "Department" means the Department of Human Services.

(6) "Drug screen" or "drug screening" means any analysis regarding substance abuse conducted by the Department of Human Services on applicants for assistance from the Temporary Assistance for Needy Families Program.

(7) "Drug test" or "drug testing" means a drug test which tests urine for amphetamines (amphetamine and methamphetamine) cocaine, marijuana, opiates (codeine and morphine), phencyclidine, barbiturates, benzodiazepines, methadone, propoxyphene, and expanded opiates (oxycodone, hydromorphone, hydrocodone, oxymorphone).

(8) "Secretary" means the secretary of the department or his or her designee.

(9) "Temporary Assistance for Needy Families Program" means assistance provided through ongoing cash benefits pursuant to 42 U. S. C. § 601 *et seq.* operated in West Virginia as the West Virginia Works Program pursuant to §9-9-1 *et seq.* of this code.

(b) Subject to federal approval, the secretary shall implement and administer a program to drug screen any adult applying for assistance from the Temporary Assistance for Needy Families Program. The secretary shall administer this program until December 31, 2026.

(c) Reasonable suspicion exists if:

(1) A case worker determines, based upon the result of the drug screen, that the applicant demonstrates qualities indicative of substance abuse based upon the indicators of the drug screen; or

(2) An applicant has been convicted of a drug-related offense within the three years immediately prior to an application for Temporary Assistance for Needy Families Program and whose conviction becomes known as a result of a drug screen as set forth in this section.

(d) Presentation of a valid prescription for a detected substance that is prescribed by a health care provider authorized to prescribe a controlled substance is an absolute defense for failure of any drug test administered under the provisions of this section.

(e) Upon a determination by the case worker of reasonable suspicion as set forth in this section an applicant shall be required to complete a drug test. The cost of administering the drug test and initial substance abuse testing program is the responsibility of the Department of Human Services. Any applicant whose drug test results are positive may request that the drug test specimen be sent to an alternative drug-testing facility for additional drug testing. Any applicant who requests an additional drug test at an alternative drug-testing facility shall be required to pay the cost of the alternative drug test.

(f) Any applicant who has a positive drug test shall complete a substance abuse treatment and counseling program and a job skills program approved by the secretary. An applicant may continue to receive benefits from the Temporary Assistance for Needy Families Program while participating in the substance abuse treatment and counseling program or job skills program. Upon completion of both a substance abuse treatment and counseling program and a job skills program, the applicant is subject to periodic drug screening and testing as determined by the secretary in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for Needy Families Program who fails to complete, or refuses to participate in, the substance abuse treatment and counseling program or job skills program as required under this subsection is ineligible to receive Temporary Assistance for Needy Families benefits until he or she is successfully enrolled in substance abuse treatment and counseling and job skills programs. Upon a second positive drug test, an applicant shall be ordered to complete a second substance abuse treatment and counseling program and job skills program. He or she shall be suspended from the Temporary Assistance for Needy Families Program for a period of 12 months, or until he or she completes both a substance abuse treatment and counseling program and a job skills program. Upon a third positive drug test an applicant shall be permanently terminated from the Temporary Assistance for Needy Families Program subject to applicable federal law.

(g) Any applicant who refuses a drug screen or a drug test is ineligible for assistance.

(h) The secretary shall order an investigation and home visit from Child Protective Services on any applicant whose benefits are suspended and who has not designated a protective payee or whose benefits are terminated due to failure to pass a drug test. This investigation and home visit may include a face-to-face interview with the child, if appropriate; the development of a protection plan; and, if necessary for the health and well-being of the child, may also involve law enforcement. This investigation and home visit shall be followed by a report detailing recommended action which Child Protective Services shall undertake. Child Protective Services is responsible for providing, directing, or coordinating the appropriate and timely delivery of services to any child who is the subject of any investigation and home visit conducted pursuant to this section. In cases where Child Protective Services determines that the best interests of the child require court action, it shall initiate the appropriate legal proceeding.

(i) Any other adult members of a household that includes a person declared ineligible for the Temporary Assistance for Needy Families Program pursuant to this section shall, if otherwise eligible, continue to receive Temporary Assistance for Needy Families benefits.

(j)(1) No dependent child's eligibility for benefits under the Temporary Assistance for Needy Families Program may be affected by a parent's failure to pass a drug test.

(2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance for Needy Families Program, the dependent child's eligibility is not affected and an appropriate protective payee shall be designated to receive benefits on behalf of the child.

(3) The parent may choose to designate another person as a protective payee to receive benefits for the minor child. The designated person shall be an immediate family member, or if an immediate family member is not available or declines the option, another person may be designated.

(4) The secretary shall screen and approve the designated person.

(k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits pursuant to subsection (f) of this section due to a failure to participate in a substance abuse treatment and counseling program or a job skills program who can later document successful completion of a drug treatment program approved by the secretary may reapply for benefits six months after the completion of the substance abuse treatment and counseling program or job skills program. An applicant who has met the requirements of this subdivision and reapplies is also required to submit to a drug test and is subject to the provisions of subsection (f) of this section.

(2) An applicant may reapply only once pursuant to the exceptions contained in this subsection.

(3) The cost of any drug screen or test and drug treatment provided under this subsection is the responsibility of the individual being screened and receiving treatment.

(l) An applicant who is denied assistance under this section may request a review of the denial by the Board of Review. The results of a drug screen or test are admissible without further authentication or qualification in the review of denial by the Board of Review and in any appeal. The Board of Review shall provide a fair, impartial, and expeditious grievance and appeal process to applicants who have been denied Temporary Assistance for Needy Families benefits pursuant to the provisions of this section. The Board of Review shall make findings regarding the denial of benefits and issue a decision which either verifies the denial or reverses the decision to deny benefits. Any applicant adversely affected or aggrieved by a final decision or order of the Board of Review may seek judicial review of that decision.

(m) The secretary shall ensure the confidentiality of all drug screen and drug test results administered as part of this program. Drug screen and test results shall be used only for the

purpose of determining eligibility for the Temporary Assistance for Needy Families Program. At no time may drug screen or test results be released to any public or private person or entity or any law-enforcement agency, except as otherwise authorized by this section.

(n) The secretary shall promulgate emergency rules pursuant to the provisions of §29A-3-1 *et seq.* of this code to prescribe the design, operation, and standards for the implementation of this section.

(o) A person who intentionally misrepresents any material fact in an application filed under the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$1,000 or by confinement in jail not to exceed six months, or by both fine and confinement.

(p) The secretary shall report to the Joint Committee on Government and Finance by December 31, 2016, and annually after that until the conclusion of the program on the status of the federal approval and program described in this section. The report shall include, but is not limited to:

(1) The total number of applicants who were deemed ineligible to receive benefits under the program due to a positive drug test for controlled substances;

(2) The number of applicants for whom there was a reasonable suspicion due to a conviction of a drug-related offense within the five years prior to an application for assistance;

(3) The number of those applicants that receive benefits after successful completion of a drug treatment program as specified in this section; and

(4) The total cost to operate the program.

(q) Should federal approval not be given for any portion of the program as set forth in this section, the secretary shall implement the program to meet the federal objections and continue to operate a program consistent with the purposes of this section.

(r) For the purposes of the program contained in this section, pursuant to the authority and option granted by 21 U. S. C. § 862a(d)(1)(A) to the states, West Virginia exempts all persons domiciled within the state from the application of 21 U. S. C. § 862a(a).