

ACT 200

H.B. NO. 1721

A Bill for an Act Relating to Eligibility for Payment Programs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘Minor dependents’ means dependents living in the home of a specified adult, as defined by rules, in which the adult is the primary caretaker and the dependent is under eighteen or if between eighteen and nineteen, enrolled full-time in a program of secondary or equivalent level vocational or technical school, and is expected to complete the program before reaching age nineteen.”

SECTION 2. Section 346-1, Hawaii Revised Statutes, is amended by amending the definition of “exempt household” to read:

“‘Exempt household’ means a household in which [the adult is:] all adult members or the minor parent who is head of a household, are exempt for one or more of the following reasons:

- (1) Ill, incapacitated, or disabled, as determined by the department on the basis of medical or other competent evidence;
- (2) [Sixty-five] Sixty years of age or older;
- (3) Needed in the household, as determined by the department, to care for another household member who is ill, incapacitated, or disabled;
- (4) [The] In a one adult household, the parent or other relative of a child who is not of school age and is personally providing care for the child, unless child care is provided by the department under this part;
- (5) Non-needy; or
- (6) A single parent responsible for the care and custody of a child under the age of [eight weeks.] six months.”

SECTION 3. Section 346-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of human services and its agents shall keep [such] records [as] that may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant or recipient shall be confidential. The use or disclosure of information concerning applicants and recipients shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when the official duties are directly connected with the administration of any form of public assistance, medical assistance, food stamps, or social services;

- (2) Purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any [and all forms] form of public assistance, food stamps, medical assistance, or social services, including [but not limited to] disclosure by the department, of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations regarding any [and all aspects] aspect of theft, fraud, deception, or overpayment in connection with any aspect of public assistance, food stamps, medical assistance, or social services; provided that disclosure by recipient agencies and personnel is permitted under this section to the extent reasonably necessary to carry out the functions for which the information was provided;
- (3) Disclosure to the extent necessary to provide services for applicants and recipients, to determine eligibility, or to determine the amount of public assistance, [such] the determination is to include [but not be limited to] verification of information provided by the recipient of public assistance, medical assistance, or food stamps, or to determine the type, kind, frequency, and amount of social services, including health and mental health related services needed;
- (4) Disclosure to banks, financial institutions, or any other payor of a public assistance warrant or check of any [and all] information indicating that a public assistance warrant or check honored by the bank, institution, or payor has been forged or otherwise wrongfully presented for payment;
- (5) Federal agencies responsible for the administration of federally assisted programs, [which] that provide assistance, in cash or in kind, for services, directly to individuals on the basis of need; and certification of receipt of [aid to families with dependent children] assistance to needy families with minor dependents to an employer for purposes of claiming tax credit under Public Law 94-12, the Tax Reduction Act of 1975, shall be permitted;
- (6) Employees acting within the scope and course of their employment of [such] recognized social welfare organizations as may be approved by the department;
- (7) Purposes directly connected with any investigation, prosecution, or criminal proceeding conducted in connection with the licensure or operation of an adult day care center, including [but not limited to] disclosure by the department, of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations;
- (8) Disclosure to the child support enforcement agency for obtaining or enforcing a child support order under chapter 576D; [and]
- (9) Purposes directly connected to and necessary for the career planning, job training, education, job placement, or employment of participants in the workfare program under part IX[.]; and
- (10) Disclosure of a recipient's residence and business address to law enforcement officers who request information if the information is needed for an official administrative, civil, or criminal law enforcement purpose to identify a recipient as a fugitive felon or parole violator, and in cases where the information is needed for an official purpose and

where the department has informed the recipient of the circumstances in which the recipient's address may be released under section 92F-19(a)(1), (3), or (4)."

SECTION 4. Section 346-29, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No applicant or recipient who is found guilty of fraudulently misrepresenting residence to obtain assistance in two or more states shall be entitled to public assistance under this chapter for ten years from date of conviction. No applicant or recipient shall be entitled to public assistance under this chapter who is a fugitive felon or who is in violation of a condition of probation or parole or has sufficient income or other resources to provide a standard above that provided in this chapter, or who is an inmate of any public institution [as long as the Social Security Act precludes the use of federal funds to provide public assistance to an inmate of such an institution], except that any inmate of a public institution who is otherwise eligible for medical assistance and who has been determined by the medical director of the institution as having a major illness or medical condition requiring the provision of medical care outside of the institution may receive assistance under this chapter. An inmate of [an] a public institution [mentioned in this section] or resident of a medical institution may apply for assistance to begin after the inmate's discharge from the institution. In determining the needs of an applicant or recipient for public assistance by the department, the department shall:

- (1) Disregard the amounts of earned or unearned income [and resources] as required or allowed by [the Social Security Act or other] federal acts[,] and other regulations, to receive federal [matching] funds and disregard from gross earned income twenty per cent plus \$200 and a percentage of the remaining balance of earned income consistent with federal regulations and other requirements;
- (2) Consider as net income in all cases the income as [the Social Security Act or other] federal acts [may] and other regulations require the department to consider for receipt of federal [matching] funds and may consider the additional income and resources as these acts [may] and regulations permit, now or in the future, to be considered;
- (3) [Disregard] For households with minor dependents, disregard a total of \$5,000 in assets and the value of one motor vehicle in determining the needs of persons for financial assistance; provided that the amount to be disregarded shall not exceed standards under the department's federally funded financial assistance programs. This paragraph shall not apply to persons eligible for Federal Supplemental Security Income benefits[.], aid to the aged, blind or disabled, or general assistance to households without minor dependents. In determining the needs of such persons, the department shall apply all the resource retention and exclusion requirements under the Federal Supplemental Security Income Program;
- (4) Apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a single person for medical assistance only;
- (5) Apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a family of two persons for medical assistance only and an additional \$250 for each additional person included in an application for medical assistance only;

- (6) Disregard amounts of emergency assistance granted under section 346-65;
- (7) Not consider as income or resources any payment for services to or on behalf of, or any benefit received by, a participant under the [JOBS] first to work program of part XI, other than wages. Wages earned by a participant while participating in the [JOBS] first to work program shall be considered income of the participant, unless the wages are excluded or disregarded under any other law;
- (8) Not consider as income or resources payment made to eligible individuals, eligible surviving spouses, surviving children or surviving parents as specified under Title I of the Civil Liberties Act of 1988, Public Law 100-383, which made restitution to individuals of Japanese ancestry who were interned during World War II;
- (9) Allow the community spouse of an individual residing in a medical institution to maintain countable resources to the maximum allowed by federal statutes or regulations with provisions for increases, as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree, without jeopardizing the eligibility of the institutionalized spouse for medical assistance;
- (10) Allow an individual residing in a medical institution to contribute toward the support of the individual's community spouse, thereby enabling the community spouse to maintain the monthly maximum income allowed by federal statutes or regulations, with provisions for increases as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree; and
- (11) Consider the transfer of assets from the applicant's name to another name within the specified time period as required by federal regulations, known as the "lookback" period, prior to the application for medical assistance for care in a nursing home or other long-term care facility. Pursuant to rules adopted under chapter 91, the director may attribute any assets that have been transferred within the required federal "lookback" period from the applicant if the director determines that transfer of certain assets was made solely to make the applicant eligible for assistance under this chapter."

SECTION 5. Section 346-53, Hawaii Revised Statutes, is amended to read as follows:

"§346-53 Determination of amount of assistance. (a) This subsection does not apply to general assistance[.] to households without minor dependents. The standard of need for families of given sizes shall equal the poverty level established by the federal government in 1993, prorated over a twelve-month period.

The assistance allowance provided shall be based on a percentage of the standard of need. For exempt households[.] and households in which all caretaker relatives are minors, living independently with minor dependents and attending school, the assistance allowance shall be set at sixty-two and one-half per cent of the standard of need. For all other households, the assistance allowance shall be set no higher than sixty-two and one-half per cent of the standard of need and set no lower than fifty per cent of the standard of need. The standard of need shall be determined by dividing the 1993 federal poverty level by twelve and rounding down the quotient. The remaining quotient shall be multiplied by the per cent as set by the director by rules pursuant to chapter 91 and the final product shall be rounded down to determine the assistance allowance[:]; provided that:

- (1) The department may reduce the assistance allowance as determined in this subsection for non-exempt households for the purpose of providing work incentives or services under part XI of this chapter;
- (2) No reduction shall be allowed that jeopardizes eligibility for or receipt of federal [matching] funds [under the Social Security Act; and];
- (3) Reductions in the assistance allowance shall be limited to no more than one per year[.]; and
- (4) No non-exempt household, which includes an adult who has received sixty cumulative months of temporary assistance to needy families with minor dependents, shall be eligible for an assistance allowance, unless authorized by federal regulations.

(b) The director shall determine the allowance for general assistance to households without minor dependents based upon the total amount appropriated for general assistance[,] to households without minor dependents, among other relevant factors.

(c) The director, pursuant to chapter 91, shall determine the rate of payment for the different levels of domiciliary care provided to recipients eligible either for Federal Supplemental Security Income, or public assistance in accordance with state standards, or both. The director shall provide for level of care payments as follows:

- (1) For those adult residential care homes classified as facility type I and type II the state supplemental payments shall be: [not]
 - (A) Not less than \$79.90 for level of care (LOC) I; [not]
 - (B) Not less than \$129.90 for LOC II; and [not]
 - (C) Not less than \$191.90 for LOC III;
- (2) For those adult residential care homes classified as facility type I, the state supplemental payment shall not exceed:
 - (A) \$284.90 for LOC I;
 - (B) \$369.90 for LOC II; and
 - (C) \$471.90 for LOC III;
 and
- (3) For those adult residential care homes classified¹ facility type II, the state supplemental payment shall not exceed:
 - (A) \$338.90 for LOC I;
 - (B) \$477.90 for LOC II; and
 - (C) \$579.90 for LOC III.

(d) The rate of payment at which level a recipient enters an adult residential care home licensed pursuant to section 321-15.6 shall remain the same for as long as the recipient resides in that adult residential care home. The rate of payment may be raised if the recipient's condition so requires, or by rule of the department in accordance with [this] subsection[;] (c); provided that:

- (1) Notwithstanding the rate of payment at the time of entry, the department shall ensure that the recipient shall receive the quality of care consistent with the level of care as determined by the department; and
- (2) If the operator does not provide the quality of care consistent with the needs of the individual as determined by and to the satisfaction of the department, the department may reduce the rate of payment, or adjust the level of care, or remove the recipient to another facility.

The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection [shall allow] allows the director to remove a recipient from an adult residential care home or other similar institution if the recipient does not desire to be removed and the operator [thereof] is agreeable to the recipient remaining [therein], except where the recipient requires a higher level of

care than provided [thereby], or where the recipient no longer requires any domiciliary care.

[(d)] (e) The department shall pay rental and utility (to include gas, electricity, and water only) deposits once only for any person eligible for financial assistance by the department. However, under extraordinary circumstances as determined by the department, an additional rental deposit, utility deposit, or both, may be granted.

[(e)] (f) Any recipient may petition the department for additional assistance when the recipient's need is due to emergencies caused by seismic wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, flood, or fire determined by the director to have caused losses as to require and justify additional assistance from the State. In addition, any recipient may petition the department for additional assistance for the replacement or repair of household appliances. Such additional assistance shall be paid on an emergency basis, as determined by the department, to meet the cost of replacing or repairing household appliances. If the cost of repairs of household appliances is less than one-half the unit cost of the item, the department shall pay for the cost of repairs. If the cost of repairs of household appliances is more than one-half the unit cost of the item, the department shall replace the household appliance; provided that the replacement cost shall not exceed \$350. For the purposes of this subsection "household appliances" means a refrigerator or a range.

The department shall establish an emergency fund, not to exceed one per cent of total financial assistance from state funds required by this chapter in the previous fiscal year. The director shall adopt rules pursuant to chapter 91 for determining in which cases to grant lump sum payments to recipients petitioning for additional assistance.

[(f)] (g) The department shall include protective child care payment as a special needs item in the financial assistance standard for cases of child neglect or abuse requiring placement of a child in child care. The referral for protective child care payment shall be from the department's child welfare program and the rate of payment shall be set by the department.

[(g)] Notwithstanding any other law to the contrary, the director, subject to the availability of funds, shall develop and implement rules adopted pursuant to chapter 91 that allow the department to subtract income from the standard of need. The department may ratably reduce the difference between countable income and the standard of need to determine the assistance allowance.]

(h) The director shall adopt rules pursuant to chapter 91 to implement this section."

SECTION 6. Chapter 346, Part III, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**"PART III. GENERAL ASSISTANCE
TO HOUSEHOLDS WITHOUT MINOR DEPENDENTS"**

SECTION 7. Section 346-71, Hawaii Revised Statutes, is amended to read as follows:

"§346-71 General assistance[.] to households without minor dependents.
(a) The department of human services is authorized to administer and provide public assistance to eligible persons who are disabled, [or have dependent children in the home] who are not otherwise provided for under this chapter, and who are unable to provide sufficient support for themselves or those dependent upon them; provided that such persons:

- (1) Have first been determined ineligible for a comparable federally funded financial assistance program;
- (2) Are bona fide residents of this State; and
- (3) Have furnished to the department a social security account number for each member of the assistance unit or verification that an application was made with the Social Security Administration for a social security account number for each member of the assistance unit.

[In family groups in which there are children, income and resources of both parents shall be considered available for each other and the support of their children.]

Persons who meet the categorical criteria for eligibility, but fail to satisfy income and resource criteria adopted by the department [for eligibility under the comparable federally funded financial assistance program] shall not be eligible for general assistance[.] to household without minor dependents. The failure of any adult member of the assistance unit to comply with the requirements or conditions of general assistance to households without minor dependents shall exclude the entire assistance unit from receiving financial assistance. However, when the adult member is disqualified for not meeting the work requirement, the assistance unit shall not be disqualified if the assistance unit was formed after the failure to meet the work requirement occurred. "Assistance unit" as the term is used in this section means persons whose needs, income, and assets are considered in the financial assistance payment and their dependents.

For purposes of determining whether persons seeking assistance are bona fide residents of this State, the department of human services shall consider, but is not limited to considering, the following factors: [enrollment]

- (1) Enrollment and receipt of welfare benefits from another jurisdiction; [physical]
- (2) Physical presence in the State; [maintenance]
- (3) Maintenance of a place of residence in the State; [the]
- (4) The availability of furnishings and household and personal effects sufficient to lead a reasonable person to conclude that the place of residence is more than a public accommodation; [qualification]
- (5) Qualification as to residence for purposes of voting in the State; [change]
- (6) Change in vehicle operation license; [vehicle]
- (7) Vehicle registration; [enrollment]
- (8) Enrollment of children in local schools; [bank] and
- (9) Bank accounts in this State or any other jurisdiction.

(b) A person between eighteen and sixty-five years of age with a disability shall be eligible for general [for not more than twenty-four months,] assistance to households without minor dependents if the person:

- (1) Is determined to be needy in accordance with standards established by this chapter and the rules adopted under subsection [(f);] (d);
- (2) Is unable to meet the disability requirements established by the [Federal] federal Supplemental Security Income Program or its successor agency; and
- (3) [(A)] Is unable to engage in any substantial gainful employment because of a determined and certified physical or mental disability.
 - (A) A determination and certification of physical disability shall only be made by a board of licensed [physician.] physicians designated and paid for by the department.
 - (B) A determination and certification of mental disability shall be made by a board of licensed psychologists or licensed [physician] physicians whose specialty is in psychiatry [or by a licensed

psychologist. The department may require that such determination and certification be by a psychiatrist or a psychologist designated and paid by the department;]. This board shall also be designated and paid for by the department;

- [(B) When] (C) If a determination of mental disability is made, the person shall accept and pursue appropriate medical treatment from a provider of the person's choice;
- [(C) When] (D) If a determination of physical disability is made, the person shall accept and pursue appropriate medical treatment from a provider of the person's choice; and
- [(D)] (E) Any person, to continue to be certified as mentally or physically disabled, shall be reevaluated annually as provided by this section and more frequently as required by the department.

As used in this subsection:

“Substantial” [as the term is used herein] means at least [thirty] twenty hours of work per week.

“With a disability” or “having a disability” [as the terms are used in this section] means a disability which extends for a period of over [thirty] sixty days.

Any person determined to be eligible under this subsection may be referred to any appropriate state agency for vocational rehabilitation services and shall be required to accept the services as a further condition of eligibility for the receipt of general assistance to households without minor dependents under this section. An assistance unit shall be determined ineligible for general assistance to households without minor dependents if any adult member of the assistance unit fails to cooperate with any appropriate state agency for vocational rehabilitation services after being referred for services. Any person found eligible under this subsection may also be required to seek employment, and participate in public work projects as described in section 346-31, and in public employment projects as described in section 346-102.

[(c) A person with dependent children in the home shall be eligible for general assistance if the person:

- (1) Is determined to be eligible in accordance with rules adopted under subsection (f);
- (2) Is unemployed for reasons other than voluntary separation without good cause or for misconduct within twelve months prior to application;
- (3) Is actively and diligently seeking gainful employment;
- (4) Has not refused to accept employment when offered;
- (5) Has registered and is available for work as required by section 383-29; and
- (6) (A) Has exhausted all of the person's benefits under chapter 383; provided that if the benefits of any person under chapter 383 be less than those for which the person would be eligible under this section, the person shall be eligible for supplementary general assistance; and provided further that this provision of exhaustion shall not apply to those persons not entitled by law to such benefits; or
- (B) Is employed but without sufficient income or other resources to provide sufficient support to maintain the person or those dependent upon the person consistent with the standards of this chapter.

“Children” as used in this section means persons who:

- (1) Are ineligible for and are unable to obtain aid under a federal assistance program;

- (2) Are in need, and do not have sufficient income or other resources to provide health care and support to maintain a standard consistent with this chapter;
- (3) Have not attained the age of eighteen years; provided that a child between the ages of eighteen and nineteen years shall be eligible for assistance under this section, if the child is a full-time student enrolled in a public or private secondary school, or equivalent level of vocational or technical school; and further provided that the child is expected to complete the program of the secondary school or vocational or technical school before reaching age nineteen; and
- (4) Are living in a home with their father, mother, or hanai parents in a place of residence maintained by such relative as the relative's own home.

A child for the purposes of this section does not include an unborn child or fetus.

(d) The department shall further require in addition to the conditions and requirements stated in subsection (c), that persons who are physically fit, able to work, and employable shall as a condition to receiving general assistance, register for work on public work projects and accept an assignment to work under section 346-31 or accept such employment as may be offered to them by the department under section 346-102 or by an employer. The term "public work projects" includes any kind of labor under the department of accounting and general services of the State or the department of public works of any county, or under any other department, board, commission, or agency of the State or any county. All such agencies may employ persons registering under this section. Payment for the work shall not be made from the funds of the agency employing such persons but shall be made from the funds of the department. The department shall promulgate such rules and regulations as it deems necessary to enforce and carry out this section.

(e) (c) Applicants and recipients shall be required to satisfy all applicable provisions of this section. Recipients disqualified for failure to comply with any of the requirements under [the provisions of] this section shall be excluded from general assistance to households without minor dependents for a period not to exceed twelve months.

(d) The allowance for general assistance to households without minor dependents shall not exceed sixty-two and one-half per cent of the standard of need.

[(f)] (e) Within the limitations of this section, the department shall by rules adopted pursuant to chapter 91, determine:

- (1) The allowance for general assistance to households without minor dependents based upon the total amount appropriated for general assistance[;] to households without minor dependents;
- (2) A method for determining assistance amounts; and
- (3) Other necessary provisions to implement general assistance[.] to households without minor dependents."

SECTION 8. Section 346-72, Hawaii Revised Statutes, is amended to read as follows:

"§346-72 Applications. Applications for general assistance to households without minor dependents shall be made by the applicant or by someone acting in the applicant's behalf in the manner, place, and form prescribed by the department of human services."

SECTION 9. Act 300, Session Laws of Hawaii 1996, is amended by amending section 6 to read as follows:

ACT 200

“SECTION 6. This Act shall take effect upon its approval, and shall be repealed on June 30, 1998[.]; provided that sections 346-29(b) and 346-53(a), Hawaii Revised Statutes, shall be reenacted in the form in which they read on July 2, 1996.”

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 1997, and except for section 7, shall be repealed on June 30, 1998; provided that:

- (1) The definition of “exempt household” in section 346-1, Hawaii Revised Statutes;
- (2) The title to part III, chapter 346, Hawaii Revised Statutes; and
- (3) Section 346-10, Hawaii Revised Statutes;

shall be reenacted in the form in which they read on the day before the approval of this Act; and provided further that sections 346-29 and 346-53 shall be reenacted in the form in which they read on July 2, 1996.

(Approved June 16, 1997.)

Note

1. Prior to amendment “as” appeared here.