

**Maine Department of Labor
Bureau of Unemployment Compensation**

**Basis Statement
and
Summary of Comments and Responses**

Chapter 8: Payments for Dependents

This chapter amends the criteria for determining when a claimant is eligible for a dependency allowance, in accordance with recent statutory changes to 26 M.R.S. § 1191(6) made by Public Law 2021, Chapter 456 § 16. The amended Rule clarifies that a claimant who supports a dependent is eligible for a dependency allowance, removing the requirement that the claimant be “wholly or mainly” supporting the dependent. The amended Rule sets forth the procedure for determining which parent is eligible for the dependency allowance when both parents qualify for unemployment benefits for the same week. The Rule establishes that the parent who files for unemployment benefits first will be eligible for the dependency allowance, except in situations in which one parent has primary custody, in which case, the custodial parent will be eligible for the dependency allowance.

This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. § 1082. The proposed Rules were posted on October 4, 2023. A public hearing was held on Tuesday, October 24 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330. No public comments were received at the public hearings, but written comments were submitted by:

Commenter # 1: Maine Equal Justice
Commenter # 2: Peer Workforce Navigator Project
Commenter 3 3: Maine AFL-CIO

Summary of Public Comments and Responses

1. **Generally.** We are pleased to see these proposed regulatory changes accurately and thoughtfully implementing the statutory amendments to 26 MRSA 1191(6) included in PL 2021, CH. 456 (Sec. 16). (Commenters 1, 2 and 3).

Response: Thank you for the comments.

2. **Meaning of terms—“child” (1)(A) (1):** In accordance with 26 MRS §1191(6) we urge that you include within the definition of “child” any individual “who is 18 years of age or over and incapable of earning wages because of mental or physical incapacity, or who is a full-time student under the age of 23 as defined in [Title 39-A, section 102, subsection 8, paragraph C.](#)” This is required by Maine law and should be included in the final rule as well.

With regard to the provision for individuals 18 or older incapable of earning wages because of mental or physical incapacity, we ask that you include language making clear that while a disability determination under another program, e.g. SSI or SSDI will be considered conclusive evidence that this standard is met, receipt of such a benefit is not the required standard under this rule. For example, an individual may be *temporarily* incapable of earning wages and thus dependent on another for support. In this case the individual would likely not be eligible for another disability benefit, like SSI, while still being genuinely incapable of earning wages at the time the dependent benefit is claimed.

Similarly, we request that you add the following group also required by §1191(6): any individual “who is in that individual's custody pending the adjudication of a petition filed by the individual for the adoption of the child in a court of competent jurisdiction and for each such child for whom that individual is under a decree or order from a court of competent jurisdiction to contribute to that child's support and for whom no other person is receiving allowances hereunder.” (Commenters 1, 2 and 3).

Response: The proposed amendments include an adopted child. An adjudicated parent is eligible for the dependency allowance for a natural-born child. The Bureau has added language from the worker’s compensation statute to clarify that a child is under the age of 18 years or under the age of 23 years if a student, or over the age of 18 years if physically and mentally incapacitated from earning and dependent upon the claimant.

1(A) (4). “Supported”. We largely support the changes proposed in this section. We do ask, however, that the final rule include language making clear that “support” also includes providing non-cash caretaking responsibility for a child or other dependent in considering whether any support provided is greater than *de minimis*. (Commenters 1, 2 and 3).

Response: The BUC finds that by considering the custodial arrangements between parents not living in the same household, the proposed concept is already covered by the Rule to the extent appropriate. No further change will be made to the rule in response to this comment.

(1)(B): Required documentation. We urge you to add two provisions to this paragraph to ensure that claimants unable to provide requested documentation within the required time frame do not suffer any inequitable penalty such as the denial or delay of needed benefits.

First, we request that you require notice to anyone unable to provide requested documentation within the allotted time that they may provide alternative verification along with suggestions for what might be considered as an acceptable alternative form of verification.

Second, we request that you supplement the definition of good cause in Chapter 1 (1)(T) of the Bureau’s UI rules here in this Chapter to capture those circumstances more likely to occur in this context. To achieve that you could add language like this: "In addition to good cause found in

Chapter 1(1)(T), good cause shall also include failure to provide requested documentation due to delays in obtaining records in the hands of another person, organization or agency, for example, a birth certificate, medical records or similar required documentation, when the primary delay is caused by the other person, organization or agency.” (Commenters 1 and 2).

Response: The Rule specifies that complete documentation is not required in every case. When requested, claimants will have the standard 14 days under the agency rules, chapter 3, to provide the documentation. If not provided, a due process decision will be rendered with appeal rights. The process outlined and associated timeframes are necessary for program integrity and performance. No changes will be made to the Rule as a result of this comment.

1(C) When both parents are eligible. To make this paragraph consistent with Maine domestic relations law, 19-A MRSA § 1653(2)(D)(1). we recommend that the term “joint custody” be replaced with “shared primary residential care” in paragraph 1(C)(2), and the term primary custody be replaced with “primary residential care” in paragraph 1(C)(3). (Commenters 1, 2 and 3).

Response: This change will be made to the final Rule.

1(D) Proposed removal of provision related to the impact of receipt of public assistance. We strongly support the proposal to repeal the paragraph at (1)(D) of the existing rule prohibiting an individual from receiving a dependency allowance “for a dependent child for whom such individual is receiving assistance which provides the whole or main support of such dependent child”. As you know, most public assistance benefits still leave families well below the federal poverty level and in many cases unable to meet their most basic needs. The Temporary Assistance for Needy Families Program (TANF) provides a family of three with a benefit equal to only 32% of the federal poverty level. Furthermore, In the case of SNAP (formerly Food Stamps) federal law prohibits deeming this assistance as income or resources and prohibits any state or political subdivision from decreasing assistance that would otherwise be provided because of receipt of SNAP benefits. (Commenters 1 and 2).

Response: This provision in the current Rule was removed in the proposed amendment.

Additional Non-substantive Changes from Proposed Rules

After posting the proposed Rule, the Bureau made two minor changes to the final. The Bureau changed the agency responsible for the Rule to the Bureau of Unemployment Compensation in accordance with Public Law 2021, Chapter 456, § 8, which moved rulemaking authority from the Unemployment Insurance Commission to the Commissioner of MDOL. The Bureau also added the specific citation for section of the Employment Security Act applicable to this Rule.