

106 CMR: DEPARTMENT OF TRANSITIONAL ASSISTANCE

106 CMR 320.000: EMERGENCY AID TO THE ELDERLY, DISABLED AND CHILDREN:
CATEGORICAL REQUIREMENTS

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320.000: Overview of Categorical Requirements

In order to receive EAEDC, an applicant or recipient must meet all of the applicable eligibility requirements. Only those persons identified in 106 CMR 320.000 may be eligible for assistance under EAEDC. These requirements are of two types: categorical and financial.

106 CMR 320.000 presents the categorical requirements for EAEDC eligibility under the following headings:

- (A) Elderly - 65 Years of Age or Older, 106 CMR 320.100;
- (B) Disabled, 106 CMR 320.200;
- (C) Participant in a Massachusetts Rehabilitation Commission Program, 106 CMR 320.250;
- (D) Caring for the Disabled, 106 CMR 320.300;
- (E) Caretaker Family, 106 CMR 320.400;
- (F) The General Appropriations Act for Fiscal Year 2004 (the state budget) removed the eligibility category of students from the EAEDC program effective July 1, 2003;
- (G) Age, Identity, Resident, Place of Residence, Temporary Absences, and Disqualifying Absences, 106 CMR 320.500;
- (H) Citizens, Aliens and Canadian-Born Indians, 106 CMR 320.600; and
- (I) Social Security Number, 106 CMR 701.230.

320.100: Elderly - 65 Years of Age or Older

- (A) The applicant or recipient is 65 years of age or older and is awaiting determination of Supplemental Security Income (SSI) benefits. If the person is found to be ineligible for SSI benefits, she or he may be eligible for EAEDC provided the eligibility requirements for EAEDC are met.

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(B) Verification that the applicant or recipient is awaiting SSI benefits will be established on a form prescribed by the Department. Ineligibility for SSI will be established by the applicant's or recipient's letter of denial from SSI.

320.200: Disabled

(A) An applicant or recipient of EAEDC under the age of 65 is disabled if he or she has an impairment or combination of impairments that is expected to last 60 days or more and that substantially reduces or eliminates the applicant's or recipient's ability to support himself or herself.

An applicant or recipient shall be considered as having such an impairment or combination of impairments if he or she:

(1) has an impairment or combination of impairments that is verified by a competent medical authority as defined in 106 CMR 701.600 on a medical report prescribed by the Department which meets the requirements of 106 CMR 320.200(D), and which the competent medical authority as defined in 106 CMR 701.600 and the agency or organization under contract/agreement with the Department to provide disability evaluation services, when required, determines:

(a) meets a standard specified in 106 CMR 320.210; or

(b) is included in the SSI Listing of Impairments as specified in 20 CFR, Part 404, Subpart P, Appendix 1; or

(c) substantially reduces or eliminates the applicant's or recipient's ability to support himself or herself when consideration is given to the vocational factors specified in 106 CMR 320.220; or

(2) has written notification from SSA or an administrative law judge that he or she is considered disabled for purposes of SSI or SSDI and/or that he or she is eligible for SSI or SSDI. However, this provision does not apply to an SSI or SSDI recipient or former recipient who is not currently receiving SSI or SSDI payments due to the recoupment of an overpayment by SSA. Such person is not eligible for EAEDC.

(B) An EAEDC applicant or recipient must apply for SSI and cooperate in the SSI application and/or appeal process when required by the Department or the agency or organization under contract/agreement with the Department to provide disability evaluation services.

(C) An EAEDC recipient must periodically submit verifications at times determined by the Department and/or the agency or organization under contract/agreement with the Department to provide disability evaluation services of his or her:

(1) disability as specified in 106 CMR 320.200(A)(1) from a competent medical authority as defined in 106 CMR 701.600; or

(2) being determined disabled for purposes of SSI or SSDI as specified in 106 CMR 320.200(A)(2).

(D) The medical report required by 106 CMR 320.200(A)(1) and (C)(1) must be completed within 30 days of its filing with the Department and must be based on an examination conducted within the preceding 30 days of the report's completion unless both of the following conditions are satisfied:

(1) the medical report is for an applicant; and

(2) the impairment(s) listed is chronic and no improvement could be expected.

(E) The agency or organization under contract/agreement with the Department to provide disability evaluation services shall make the determination of disability except when:

(1) a competent medical authority as defined in 106 CMR 701.600 verifies that the applicant or recipient has an impairment or combination of impairments that:

(a) is expected to last at least 60 days but not more than 90 days; and

(b) meets or is equivalent to a medical standard specified in 106 CMR 320.210 or an impairment included in the SSI Listing of Impairments; and

(c) the applicant or recipient has not received EAEDC as disabled in the immediately preceding 12 months; or

(2) the applicant's or recipient's medical report is not completed by a competent medical authority as defined in 106 CMR 701.600, is not completed within 30 days of filing with the Department, or is not based on an examination within 30 days of the completion of the medical report as required by 106 CMR 320.200(D); or

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(3) a competent medical authority as defined in 106 CMR 701.600 verifies that the EAEDC applicant or recipient does not have an impairment that affects his or her ability to work and/or that the applicant's or recipient's impairment or combination of impairments is not expected to last for 60 or more days; or

(4) the applicant or recipient verifies that he or she is eligible for SSI or SSDI or considered disabled for purposes of SSI or SSDI as specified in 106 CMR 320.200(A)(2).

(F) If a disability determination by the agency or organization under contract/agreement with the Department to provide disability evaluation services is:

(1) required and the competent medical authority as defined in 106 CMR 701.600 states that the applicant or recipient meets a medical standard, SSI Listing of Impairments, or has an impairment(s) that affects his or her ability to work, and if the applicant or recipient is otherwise eligible for EAEDC, applicant or recipient shall receive EAEDC benefits pending a review by the agency or organization providing disability evaluation services; or

(2) not required because 106 CMR 320.200(E) is applicable, the EAEDC applicant or recipient shall be considered disabled upon furnishing to the Department the necessary medical report or verification(s) and shall receive EAEDC benefits if he or she is otherwise eligible for EAEDC.

(G) When the agency or organization providing disability evaluation services is required to make a disability determination pursuant to 106 CMR 320.200(E), the agency or organization providing disability evaluation services shall determine in the order listed whether the applicant or recipient has an impairment or combination of impairments that:

(1) meets the MassHealth disability standards as specified by the Division of Medical Assistance; or

(2) meets or is equivalent to a medical standard specified in 106 CMR 320.210; or

(3) does not meet a medical standard specified in 106 CMR 320.210, but meets or is equivalent to an impairment included in the SSI Listing of Impairments; or

(4) neither meets nor is equivalent to a medical standard specified in 106 CMR 320.210 or an impairment included in the SSI Listing of Impairments, but the impairment, or combination of impairments, substantially reduces or eliminates the applicant's or recipient's ability to support himself or herself when consideration is given to the vocational factors specified in 106 CMR 320.220.

In making the determination of whether an impairment, or combination of impairments, substantially reduces or eliminates the applicant's or recipient's ability to support himself or herself, the impairment, or combination of impairments, shall not be compared to the medical standards specified in 106 CMR 320.210 or the SSI Listing of Impairments. The determination shall be based on the applicant's or recipient's functional capacity and his or her ability to do work in light of the vocational factors as specified in 106 CMR 320.220.

(H) The agency or organization under contract/agreement with the Department to provide disability evaluation services shall make a determination that an applicant or recipient is not disabled only if:

(1) the agency or organization has considered all clinical and/or vocational evidence submitted by the applicant or recipient and/or obtained by the Department pursuant to 106 CMR 702.315(B)(2). The Department shall consider a test and diagnosis done more than 30 days prior to the completion of the applicant's or recipient's medical report if such evidence is still relevant to the applicant's or recipient's current impairment(s); and

(2) the clinical information available establishes that one or more of the findings required to meet the applicable medical standard or the SSI Listed Impairment is not satisfied and additional clinical information would not enable the applicant or recipient to meet such medical standard and/or SSI Listed Impairment; and

(3) A vocational determination of not disabled is made pursuant to 106 CMR 320.220. In making this determination, the agency or organization providing disability evaluation services shall rely on the functional capacity assessment made by the competent medical authority as defined in 106 CMR 701.600 who completed the applicant's or recipient's medical report unless:

(a) the assessment is inconsistent with the clinical findings or the clinical findings as provided are not sufficient to make this determination; or

(b) the assessment is inconsistent with the statements made by the applicant or recipient.

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If either of these apply, the agency or organization providing disability evaluation services shall obtain whatever additional information is needed to determine the applicant's or recipient's functional capacity.

(I) If a claim of disability by an applicant has previously been denied by the agency or organization under contract/agreement with the Department to provide disability evaluation services and another claim of disability for a categorical requirement pursuant to 106 CMR 320.200 is made by the applicant within a continuous 60-month period, an eligibility determination shall be completed:

- (1) when the agency or organization providing disability evaluation services renders a decision on this disability claim; or
- (2) if such a determination is not made in time to allow initial benefits to be provided within 30 days of the date of application, a presumptive finding of eligibility based on the disability shall be made pending the decision from the agency or organization providing disability evaluation services.

(J) If a claim of disability by an applicant or recipient has previously been denied by the agency or organization under contract/agreement with the Department to provide disability evaluation services and another claim of disability for an exemption pursuant to 106 CMR 320.425 is made by the applicant or recipient within a continuous 60-month period, the eligibility determination shall be based on the applicant or recipient not being disabled, pending a decision by the agency or organization under contract/agreement with the Department to provide disability evaluation services.

(K) The decision of the agency or organization under contract/agreement with the Department to provide disability evaluation services as to whether an applicant or recipient is disabled shall be the decision of the Department. A Department hearings referee may affirm, modify or reverse the finding of the agency or organization providing disability evaluation services.

320.210: Medical Standards

(A) Musculoskeletal System.

(1) Arthritis of Any Major Joint. (hips, knees, hands or feet) Arthritis of any major joint must be substantiated by:

(a) the presence of three or more of the following clinical findings lasting for more than 15 days and expected to last for at least 60 days:

1. pain;
2. swelling;
3. tenderness;
4. warmth;
5. redness;
6. stiffness;
7. limitation of motion; and

(b) corroboration of the diagnosis by at least two of the following:

1. positive serologic test for rheumatoid factor; or anti-nuclear antibody or HLAB antigen;
2. elevated sedimentation rate;
3. positive joint fluid culture;
4. elevation of white blood count;
5. significant anatomical deformity; or
6. x-ray evidence of significant joint space narrowing or bony destruction.

(2) Disorders of the Spine. Disorders of the spine must be demonstrated by one of the following:

(a) x-ray evidence of significant arthritic changes manifested by ankylosis, or fixation, or motion limitation (objective);

(b) bone density evidence of significant osteoporosis manifested by pain and real motion limitation;

(c) evidence of other vertebra genic disorders (for example, herniated nucleus pulposus or spinal stenosis), with:

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1. pain and significant limitation of motion in the spine; and
 2. appropriate radicular distribution of significant sensory, motor, or flex abnormalities;
- or

(d) evidence of acute back strain with pain and significant limitation of motion lasting more than 15 days and expected to last for at least 60 days.

(3) Fracture of a Major Bone. When solid union has not occurred and incapacity is expected to last for at least 60 days.

(4) Soft Tissue Injuries or Loss. Soft tissue injuries or loss, including burns, must be demonstrated by one of the following, which lasts more than 15 days and can be expected to last for at least 60 days:

- (a) significant loss which prohibits function of an upper or lower extremity;
- (b) significant body surface involvement; or
- (c) involvement of critical areas such as hands and feet that prevents their use.

(B) Special Senses and Speech.

(1) Impairment of Central Visual Acuity. Remaining vision in the better eye after best correction must be 20/100 or less and must be expected to last for at least 60 days.

(2) Contraction of Peripheral Visual Fields. Contraction of peripheral visual fields in the better eye must be:

- (a) to 20° or less from point of fixation;
- (b) so the widest diameter subtends an angle no greater than 25°; or
- (c) to 25% or less visual field efficiency; and must be expected to last at least 60 days.

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(3) Hearing Impairments. Hearing must not be restorable by a hearing aid, and the impairment must be manifested by one of the following:

- (a) average hearing threshold sensitivity for air conduction of 90 decibels or greater; and for bone conduction to corresponding maximal levels, in the better ear, determined by the simple average of hearing threshold levels at 500, 1000, and 2000 Hz; or
- (b) speech discrimination scores of 40% or less in the better ear; and must be expected to last for at least 60 days.

(4) Disturbance of Labyrinthine-Vestibular Function. Disturbance of labyrinthine- vestibular function (including Meniere's disease) must be demonstrated by one or more attacks of balance disturbance and tinnitus within the 30-day period immediately preceding application for Emergency Aid to the Elderly and Disabled assistance. The symptoms must persist for at least 60 days and affect daily functions and the diagnosis must be corroborated by:

- (a) hearing loss established by audiometry; or
- (b) standard vestibular test (ENG) with or without hearing loss established by audiometry

(C) Respiratory System.

(1) Chronic Obstructive Airway Disease. Spirometric evidence of airway obstruction must be demonstrated by maximum voluntary ventilation (MVV) and one-second forced expiratory volume (FEV1) with both values equal to or less than those specified in Table I, corresponding to height; and expected to last for at least 60 days.

Table I

<u>Height</u> <u>(inches)</u>	<u>MVV (MBC)</u> equal to or less than <u>(L/Min)</u>	And	<u>FEV1</u> equal to or less than <u>(L)</u>
57 or less	42		1.5
58	43		1.5
59	44		1.5
60	45		1.6
61	46		1.6
62	47		1.6
63	48		1.6
64	49		1.7
65	50		1.7
66	51		1.7
67	52		1.8
68	53		1.8
69	54		1.8
70	55		1.9
71	56		1.9
72	57		1.9
73 or more	58		1.9

(2) Diffuse Pulmonary Fibrosis. Diffuse pulmonary fibrosis due to any cause must be demonstrated by both of the following; and expected to last for at least 60 days.

- (a) Total vital capacity (VC) must be equal to or less than the values specified in Table II corresponding to height.

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Table II

Height (inches)	VC equal to or less than (L)
57 or less	1.7
58	1.8
59	1.8
60	1.9
61	1.9
62	2.0
63	2.0
64	2.1
65	2.1
66	2.2
67	2.2
68	2.3
69	2.3
70	2.4
71	2.4
72	2.5
73 or more	2.5

(b) Arterial oxygen tension (pO₂) at rest and simultaneously determined arterial carbon dioxide tension (pCO₂) values must be equal to or less than those specified in Table III.

Table III

Arterial pCO ₂ (mm Hg)	Arterial pO ₂ equal to or less than (mm Hg)
30 or below	75
31	74
32	73
33	72
34	71
35	70
36	69
37	68
38	67
39	66
40 or above	65

(3) Other Restrictive Ventilatory Disorders. Other restrictive ventilatory disorders (such as kyphoscoliosis, thoracoplasty, and pulmonary resection) must be substantiated by total vital capacity (VC) equal to or less than the values specified in Table IV, corresponding to height; and expected to last at least 60 days.

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Table IV

Height (inches)	VC equal to or less than (L)
59	1.5
60	1.6
61	1.6
62	1.6
63	1.6
64	1.7
65	1.7
66	1.7
67	1.8
68	1.8
69	1.8
70	1.9

(4) Active Pulmonary Tuberculosis. Active pulmonary tuberculosis must be corroborated by either:

- (a) positive culture; or
- (b) x-ray evidence of increasing lesions or cavitation; and expected to last at least 60 days.

(5) Other Respiratory Disorders. Other respiratory disorders must be shown by the presence of at least two of the following (106 CMR 310.210(C)(5)(a), (b), or (c)) for more than 15 days and expected to last at least 60 days:

- (a) shortness of breath, wheezing, rhonchi, rales, cough, or fever;
- (b) significant x-ray changes; or
- (c) significant laboratory abnormalities.

(D) Cardiovascular System.

(1) Open Heart Surgery. The period of incapacity will be expected to last at least 60 days and meet the criteria in 106 CMR 320.210(D)(3) or (4).

(2) Ischemic Heart Disease.

(a) Ischemic heart disease, with chest pain of cardiac origin, must be corroborated by one of the following:

- 1. significantly diminished exercise tolerance corroborated by results of ETT;
- 2. significant ischemic changes on resting EKG;
- 3. EKG evidence of myocardial infarction at some time and symptoms if EKG evidence is more than six months old;
- 4. development of significant arrhythmia;
- 5. angiographic evidence (obtained independently) of coronary artery disease; or
- 6. development of left bundle branch block.

(b) If ischemic heart disease is ruled out after an extensive work-up the period of incapacity will be 90 days if:

- 1. symptoms lasted at least 15 days; or
- 2. substantial work activity is precluded by a physician's orders for at least 90 days.

(3) Congestive Heart Failure. Congestive heart failure must be manifested by evidence of vascular congestion such as hepatomegaly, or peripheral or pulmonary edema; with either of the following present; and expected to last at least 60 days.

- (a) evidence of congestive heart failure on clinical examination; or
- (b) significant x-ray or EKG changes.

(4) Arteriosclerosis Obliterans or Thromboangiitis. Arteriosclerosis obliterans or thromboangiitis must be substantiated by both:

- (a) intermittent claudication; and
- (b) absence of peripheral arterial pulsations below the knee; and be expected to last for at least 60 days.

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(5) Venous Insufficiency of the Lower Extremity. Venous insufficiency of the lower extremity must be expected to last at least 60 days and be associated with two or more of the following:

- (a) varicosities;
- (b) brawny edema;
- (c) stasis dermatitis; or
- (d) ulceration.

(E) Digestive System. Impairments affecting the digestive system that are considered incapacitating are listed in 106 CMR 320.210(E)(1) through (3).

(1) Gastrointestinal Disorders.

(a) Gastrointestinal disorders must be substantiated by the presence of three or more of the following symptoms lasting more than seven days and expected to last at least 60 days:

1. pain;
2. nausea;
3. vomiting;
4. diarrhea;
5. bloody stools; or
6. abdominal distension.

(b) Gastrointestinal disorders expected to last more than 90 days must demonstrate the presence of clinical findings under 106 CMR 320.210(E)(1)(b)1. and 2.

1. significant pathology demonstrated by x-ray, endoscopy, barium enema, biopsy, or other objective criteria; or
2. the presence of one of the following:
 - a. abscess or fistula;
 - b. hematocrit of 30% or less;
 - c. serum albumin of 3.0 g per deciliter (100 ml) or less;
 - d. serum calcium of 8.0 mg per deciliter;
 - e. fat in stool of 7.0 m or greater per 24-hour specimen;
 - f. nitrogen in stool of 3.0 g or greater per 24-hour specimen;
 - g. evidence of pancreatic dysfunction; or
 - h. systemic manifestations such as arthritis, iritis, or liver dysfunction not attributable to other causes.

(2) Diseases of the Liver.

(a) Acute Hepatitis (Viral A, B, Non-A, Non-B). Incapacity expected to last more than 90 days must meet the criteria in 106 CMR 320.210(E)(2)(b).

(b) Chronic Liver Disease. Chronic liver diseases (portal, postnecrotic, or biliary cirrhosis, chronic active hepatitis, Wilson's disease) must be substantiated by a history of significant and unresolved hyperbilirubinemia, ascites due to hypoalbuminemia, or mental confusion lasting more than 15 days and expected to last at least 60 days; or if the impairment persists is expected to last more than 90 days and is accompanied by confirmation of liver disease by liver biopsy and demonstration (clinical) of two of 106 CMR 320.210(E)(2)(b)1. through 3.

1. bleeding from esophageal varices,
2. hepatic cell necrosis or inflammation, or
3. hepatic encephalopathy.

(3) Weight Loss. Weight loss due to any gastrointestinal disorder must be substantiated by weight equal to or less than the values specified in Table V (for men) or Table VI (for women), corresponding to height and expected to last at least 60 days.

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Table V -- Men

<u>Height</u> <u>(inches)</u>	<u>Weight</u> <u>(pounds)</u>
61	95
62	98
63	100
64	103
65	106
66	109
67	112
68	116
69	119
70	122
71	126
72	129
73	133
74	136
75	139
76	143

Table VI -- Women

<u>Height</u> <u>(inches)</u>	<u>Weight</u> <u>(pounds)</u>
61	82
62	84
63	87
64	89
65	92
66	94
67	97
68	100
69	104
70	107
71	111
72	114
73	117
74	121
75	124
76	128

Weight loss which continues for more than 90 days despite treatment and proper nutrition, must meet the criteria in 106 CMR 320.210(E)(1) or (2)(b).

(F) Genitourinary System.

(1) Impairment of Renal Function. Impairment of renal function due to any cause must be substantiated by one of the following, which lasts more than 15 days and can be expected to last at least 60 days:

- (a) elevation of serum creatinine;
- (b) hematocrit of 30% or less;
- (c) renal osteodystrophy manifested by bone pain and appropriate radiographic abnormalities;
- (d) documented fluid overload syndrome;
- (e) anorexia;
- (f) hemodialysis or peritoneal dialysis; or
- (g) proteinuria.

(G) Hemic and Lymphatic Systems.

(1) Anemia. Anemia must be substantiated by one of the following:

- (a) hematocrit of 30% or less if, acute or not tolerated or
- (b) one or more blood transfusions required within the 30-day period immediately preceding application for Emergency Aid to the Elderly and Disabled assistance; and the incapacity is expected to last at least 60 days.

(2) Sickle Cell Disease. Sickle cell disease or one of its variants must be substantiated by a documented painful (thrombotic) crisis within the 30 day period immediately preceding application for Emergency Aid to the Elderly and Disabled assistance; and expected to last for at least 60 days.

(3) Hemorrhage. Hemorrhage due to any traumatic or nontraumatic cause must be substantiated by one or more blood transfusions required within the 30-day period immediately preceding application for Emergency Aid to the Elderly and Disabled assistance.

(H) Skin. All skin disorders and infections that last more than 15 days and that can be expected to last for at least 60 days will possibly be considered incapacitating when one of the following is present.

- (1) Involvement of extensive body areas; or
- (2) Involvement of critical areas such as hands, feet, axillae, perineum, or face.

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- (I) Endocrine System. Diabetes mellitus must be substantiated by one of the following:
 - (1) Peripheral neuropathy manifested by decreased sensation and loss of vibration and positional sense;
 - (2) Significant visual impairment according to the criteria in 106 CMR 320.210(B)(1) and (2), Special Senses and Speech;
 - (3) Amputation due to diabetic necrosis or peripheral vascular disease; or
 - (4) a documented episode of acidosis within the 30-day period immediately preceding application for Emergency Aid to the Elderly and Disabled assistance; and the incapacity is expected to last for at least 60 days.

- (J) Multiple Body Systems.
 - (1) Lupus Erythematosus. Disseminated lupus erythematosus must be established by a positive LE preparation or biopsy or positive ANA test. Exacerbation (involving renal, cardiac, pulmonary, gastrointestinal, or central nervous systems) must have occurred within the 30-day period immediately preceding application for Emergency Aid to the Elderly and Disabled assistance, and have lasted more than 15 days and be expected to last for at least 60 days.
 - (2) Obesity. Obesity must be substantiated by weight equal to or greater than the values specified in Table VII for males or Table VIII for females and one of the following:
 - (a) a history of significant pain and limitation of motion in any weight-bearing joint or the spine;
 - (b) significant hypertension;
 - (c) a history of significant cardiovascular difficulties;
 - (d) chronic venous insufficiency with pain or superficial varicosities; or
 - (e) significant respiratory difficulties; and
 The incapacity is expected to last for at least 60 days.

Table VII - Men Table VIII - Women

Height (inches)	Weight (pounds)	Height (inches)	Weight (pounds)
60	246	56	208
61	252	57	212
62	258	58	218
63	264	59	224
64	270	60	230
65	276	61	236
66	284	62	242
67	294	63	250
68	302	64	258
69	310	65	266
70	318	66	274
71	328	67	282
72	336	68	290
73	346	69	298
74	356	70	306
75	364	71	314
76	374	72	322

- (K) Neurological System.
 - (1) Central Nervous System Vascular Accident. The period of incapacity is expected to last for at least 60 days and two of the following persists:
 - (a) ineffective speech or communication;
 - (b) significant disorganization of motor function in one or more extremities interfering with locomotion or use of fingers, hands and arms; and
 - (c) significant mental status abnormalities.
 - (2) Epilepsy - major motor seizures (or partial complex), documented by EEG and by clinically detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least one month of prescribed treatment; expected to last at least 60 days with:

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- (a) Daytime episodes (loss of consciousness and convulsive seizures) or
 - (b) Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.
- (3) Epilepsy - Minor seizures (petit mal, psychomotor, or focal), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least one month of prescribed treatment: with alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day; and expected to last for at least 60 days.
- (4) Parkinsonian Syndrome with the following signs: significant rigidity, bradykinesia, or tremor in two extremities or one, if in dominant hand with significant loss of dexterity which, singly or in combination, result in sustained disturbance of gross and dexterous movements, or gait and station; and expected to last for at least 60 days.
- (5) Spinal Cord or Nerve Root Lesions, due to any course with disorganization of motor function expected to last for at least 60 days with significant and persistent disorganization of motor function in a single extremity, resulting in sustained disturbance of gross and dexterous movements, or gait and station.
- (6) Multiple Sclerosis. With disorganization of motor function expected to last for at least 60 days with:
- (a) significant and persistent disorganization of motor function in two extremities, or one dominant upper extremity, resulting in sustained disturbance of gross and dexterous movements, or gait and station; or marked motor fatiguability;
 - (b) impairment of central visual acuity. Remaining vision in the better eye after best correction must be 20/100 or less and must be expected to last at least 60 days.
 - (c) contraction of peripheral visual fields. Contraction of peripheral vision fields in the better eye that is expected to last at least 60 days must be:
 - 1. To 20° or less from the point of fixation; or
 - 2. So the widest diameter subtends an angle no greater than 25°; or
 - 3. To 25% or less visual field efficiency; or
- (7) Myasthenia Gravis expected to last for at least 60 days with:
- (a) significant difficulty with speaking, swallowing, or breathing while on prescribed therapy; or
 - (b) significant motor weakness of muscles of extremities on repetitive activity against resistance while on prescribed therapy.
- (8) Myotonic Muscular Dystrophy with disorganization of motor function expected to last for at least 60 days with significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station.
- (9) Peripheral Neuropathies with disorganization of motor function in spite of prescribed treatment expected to last for at least 60 days with significant and persistent disorganization of motor function in one extremity, resulting in sustained disturbance of gross and dexterous movements, or gait and station.
- (10) Subacute Combined Cord Degeneration (pernicious anemia) with disorganization of motor function as described in 106 CMR 320.210(K)(10)(a) and (b) not significantly improved by prescribed treatment and expected to last for at least 60 days with:
- (a) significant and persistent disorganization of motor function in one extremity, resulting in sustained disturbance of gross and dexterous movements, or gait and station; and
 - (b) unsteady, broad-based or ataxic gait causing significant restriction of mobility substantiated by appropriate posterior column signs.
- (11) Cerebral Trauma: Evaluate under the provisions for epilepsy - major motor, epilepsy - minor motor, cerebral nervous system vascular accident or organic mental disorders.

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(L) Mental Disorders.

(1) The following definitions should be used when referencing 106 CMR 320.210(L).

(a) Need for Medical Evidence: The existence of a medically determinable impairment must be established by medical evidence consisting of clinical signs, symptoms and/or laboratory test findings. These findings may be intermittent or persistent depending on the nature of the disorder. Clinical signs are medically demonstrable phenomena which reflect specific abnormalities of behavior, affect thought, memory, orientation or contact with reality. These signs are typically assessed by a psychiatrist. Symptoms or complaints are presented by the individual. Signs and symptoms generally cluster together to constitute recognizable clinical syndromes (mental disorders). Both symptoms and signs which are part of any diagnosed mental disorder must be considered in evaluating severity.

(b) Assessment of Severity: For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Where "marked" is used as a standard for measuring the degree of limitation, it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively.

1. Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. In the context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness and effectiveness. It is necessary to define the extent to which the individual is capable of initiating and participating in activities independent of supervision or direction.

"Marked" is not the number of activities which are restricted but the overall degree of restriction or combination of restrictions which must be judged.

2. Social functioning refers to an individual's capacity to interact appropriately and communicate effectively with other individuals. "Marked" is not the number of areas in which social functioning is impaired, but the overall degree of interference in a particular area or combination of areas of functioning.

3. Concentration, persistence and pace refer to the ability to sustain focused attention sufficiently long to permit the timely completion of tasks commonly found in work settings. In activities of daily living, concentration may be reflected in terms of ability to complete tasks in everyday household routines. Deficiencies in concentration, persistence and pace are best observed in work and work-like settings.

4. Documentation: The presence of a mental disorder should be documented primarily on the basis of reports from individual providers, such as psychiatrists, and facilities such as hospitals and clinics. Adequate descriptions of functional limitations must be obtained from these or other sources which may include programs and facilities where the individual has been observed over a considerable period of time.

Information from both medical and nonmedical sources may be used to obtain detailed descriptions of the individual's activities of daily living; social functioning; concentration, persistence and pace; or ability to tolerate increased mental demands (stress). This information can be provided by programs such as community mental health centers, day care centers, sheltered workshops, *etc.* It can also be provided by others, including family members, who have knowledge of the individual's functioning. In some cases descriptions of activities of daily living or social functioning given by individuals or treating sources may be insufficiently detailed and/or may be in conflict with the clinical picture otherwise observed or described in the examination or reports. Evidence may include treatment notes, hospital discharge summaries, and work evaluation or rehabilitation progress notes if these are available. It is necessary to resolve any inconsistencies or gaps that may exist in order to obtain a proper understanding of the individual's functional restrictions.

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Some individuals may have attempted to work or may actually have worked during the period of time pertinent to the determination of disability. This may have been an independent attempt at work, or it may have been in conjunction with a community mental health or other sheltered program which may have been of either short or long duration. Information concerning the individual's behavior during any attempt to work and the circumstances surrounding termination of the work effort are particularly useful in determining the individual's ability or inability to function in a work setting.

5. **Chronic Mental Impairments:** Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. Individuals with chronic psychotic disorders commonly have their lives structured in such a way to minimize stress and reduce their signs and symptoms. Such individuals may be much more impaired for work than their signs and symptoms would indicate. The results of a single examination may not adequately describe these individuals' sustained ability to function. It is therefore vital to include all pertinent and available information relative to the individual's condition, especially at times of increased stress.

6. **Effect of Medication.** Attention must be given to the effect of medication on the individual's signs, symptoms and ability to function. While psychotropic medications may control certain primary manifestations of a mental disorder, *e.g.*, hallucinations, such treatment may or may not affect the functional limitations imposed by the mental disorder. In such cases where overt symptomatology is attenuated by the psychotropic medications, particular attention should be included on the functional restrictions which may persist. These functional restrictions are important for the measure of impairment severity.

Neuroleptics, the medicines used in the treatment of some mental illnesses, may cause drowsiness, blunted affect, or other side effects involving other body systems. Such side effects must be considered in evaluating overall impairment severity. Where adverse effects of medications contribute to the impairment severity and the impairment does not meet the listings but is nonetheless severe, such adverse effects must be considered in the assessment of the disability.

7. **Effect of Treatment:** It must be remembered that with adequate treatment some individuals suffering with chronic mental disorders not only have their symptoms and signs ameliorated but also return to a level of function close to that of their premorbid status.

(2) **Dementia with or without Delirium.** Psychological, cognitive or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities.

The required level of severity for these disorders is met when the requirements in both 106 CMR 320.210(L)(2)(a) and (b) are satisfied: and they are expected to last for at least 60 days.

(a) Demonstration of loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

1. disorientation to time and place; or
2. substantial memory loss impairment;
3. perceptual or thinking disturbances (*e.g.*, hallucinations, delusions);
4. change in personality;
5. disturbance in mood;
6. emotional lability (*e.g.*, explosive temper outbursts, sudden crying, etc.) and impairment in impulse control;
7. loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the moderately to severely impaired range on neuropsychological testing, *e.g.*, the Luria-Nebraska, Halstead-Reitan, *etc.*; and

(b) Resulting in at least one of the following:

1. marked restriction of activities of daily living; or
2. marked difficulties in maintaining social functioning; or

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3. deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. repeated episodes of deterioration or decompensation in work or work-like setting which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

(3) Schizophrenic, Paranoid and Other Psychotic Disorders. Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

The required level of severity for these disorders is met when the requirements in both 106 CMR 320.210(L)(3)(a) and (b) are satisfied, or when the requirements in 106 CMR 320.210(L)(3)(c) are satisfied; and they are expected to last for at least 60 days.

(a) Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. delusions or hallucinations; or
2. catatonic or other grossly disorganized behavior; or
3. incoherence, loosening of associations, illogical thinking, or poverty or content of speech if associated with one of the following:
 - a. blunt affect; or
 - b. flat affect; or
 - c. inappropriate affect; or
4. emotional withdrawal and/or isolation; and

(b) Resulting in at least one of the following:

1. marked restriction of activities of daily living; or
2. marked difficulties in maintaining social functioning; or
3. deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors); or

(c) Medically documented history of one or more episodes of acute symptoms, signs and functional limitations which at the time met the requirements in 106 CMR 320.210(L)(3)(a) and (b) of this listing, although these symptoms or signs are currently attenuated by medication or psychosocial support, and one of the following:

1. repeated episodes of deterioration or decompensation in situations which cause the individual to withdraw from the situation or to experience exacerbation of signs or symptoms (which may include deterioration of adaptive behaviors); or
2. documented current history of two or more years inability to function outside of a highly supportive living situation.

(4) Affective Disorders. Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; generally involving either depression or elation.

The required level of severity for these disorders is met when the requirements in both 106 CMR 320.210(L)(4)(a) and (b) are satisfied; and they are expected to last at least 60 days.

(a) Medically documented persistence, either at least one of the following:

1. depressive syndrome characterized by at least three of the following:
 - a. anhedonia or pervasive loss of interest in almost all activities; or
 - b. appetite disturbance with change in weight; or
 - c. sleep disturbance; or
 - d. psychomotor agitation or retardation; or
 - e. decreased energy; or
 - f. feelings of guilt or worthlessness; or
 - g. difficulty concentrating or thinking; or
 - h. thoughts of suicide; or
 - i. hallucinations, delusions or paranoid thinking; or
2. Manic syndrome characterized by at least two of the following:
 - a. hyperactivity; or
 - b. pressure of speech; or
 - c. flight of ideas; or

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- d. inflated self-esteem; or
- e. decreased need for sleep; or
- f. easy distractibility; or
- g. involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. hallucinations, delusions or paranoid thinking; or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes); and

(b) Resulting in at least one of the following:

- 1. marked restriction of activities of daily living; or
- 2. marked difficulties in maintaining social functioning; or
- 3. deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in working settings or elsewhere); or
- 4. repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

(5) Mental Retardation and Autism. Mental retardation refers to a significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period (before age 22). (Note: The scores specified below refer to those obtained on the WAIS, and are used only for reference purposes. Scores obtained on other standardized and individually administered tests are acceptable, but the numerical values obtained must indicate a similar level of intellectual functioning.) Autism is a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period.

The required level of severity for this disorder is met when the requirements in 106 CMR 320.210(L)(5)(a), (b), (c), or (d) are satisfied.

(a) Mental incapacity evidenced by dependence upon others for personal needs *e.g.*, toileting, eating, dressing, or bathing, an inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded; or

(b) A valid verbal, performance, or full scale IQ of 59 or less;

(c) A valid verbal, performance, or full scale IQ of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function; or

(d) A valid verbal, performance, or full scale IQ of 60 to 69 inclusive or in the case of autism, gross deficits of social and communicative skills with one of the following:

- 1. marked restriction of activities of daily living; or
- 2. marked difficulties in maintaining social functioning; or
- 3. deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
- 4. repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

(6) Anxiety Related Disorders. In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both 106 CMR 320.210(L)(6)(a) and (b) are satisfied, or when the requirements in both 106 CMR 320.210(L)(6)(a) and (c) are satisfied; and the incapacity is expected to last at least 60 days.

(a) Medically documented findings of at least one of the following:

- 1. generalized persistent anxiety accompanied by two out of four of the following signs or symptoms:
 - a. motor tension; or
 - b. autonomic hyperactivity; or
 - c. apprehensive expectation; or
 - d. vigilance and scanning; or

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2. a persistent irrational fear of a specific object, activity, or situation; or
3. recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. recurrent obsessions or compulsions which are a source of marked distress; or
5. recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress; and

(b) Resulting in at least one of the following:

1. marked restriction of activities of daily living; or
2. marked difficulties in maintain social functioning; or
3. deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors); or

(c) resulting in complete inability to function independently outside the area of one's home.

(7) Psychophysiological Disorders. Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms.

The required level of severity for these disorders is met when the requirements in both 106 CMR 320.210(L)(7)(a) and (b) are satisfied; and the incapacity is expected to last for at least 60 days.

(a) Medically documented by evidence of one of the following:

1. a history of multiple physical symptoms of several years duration, beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly; or
2. persistent nonorganic disturbance of one of the following:
 - a. vision; or
 - b. speech; or
 - c. hearing; or
 - d. use of a limb; or
 - e. movement and its control (*e.g.*, coordination disturbance, psychogenic seizures, akinesia, dyskinesia; or
 - f. sensation (*e.g.*, diminished or heightened).
3. Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury; and

(b) Resulting in two of the following:

1. marked restriction of activities of daily living; or
2. marked difficulties in maintaining social functioning; or
3. deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behavior).

(8) Personality Disorders. A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both 106 CMR 320.210(L)(8)(a) and (b) are satisfied; and the incapacity is expected to last at least 60 days.

(a) Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. seclusiveness or autistic thinking; or
2. pathologically inappropriate suspiciousness or hostility; or
3. oddities of thought, perception, speech and behavior; or
4. persistent disturbances of mood or affect; or

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5. pathological dependence, passivity, or aggressivity; or
 6. intense and unstable interpersonal relationships and impulsive and damaging behavior;
- and

(b) Resulting in two of the following:

1. marked restriction of activities of daily living; or
2. marked difficulties in maintaining social functioning; or
3. deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behavior).

(9) Substance Addiction Disorders. Physical changes or behavioral changes associated with the regular use of substances that affect the central nervous system when accompanied by an impairment listed elsewhere in these standards.

The required level of severity for these substance addiction disorders is met when the requirements in any of the following disorders (106 CMR 320.210(L)(9)(a) through (i)) are satisfied; and the incapacity is expected to last for at least 60 days.

(a) Organic Mental Disorders. Evaluate under Dementia with or without Delirium (106 CMR 320.210(L)(2)).(b) Depressive Syndrome. Evaluate under Affective Disorders (106 CMR 320.210(L)(4)).(c) Anxiety Disorders. Evaluate under Anxiety Related Disorders (106 CMR 320.210(L)(6)).(d) Personality Disorders. Evaluate under Personality Disorders (106 CMR 320.210(L)(8)).(e) Peripheral Neuropathies. Evaluate under Neurological System Impairments (106 CMR 320.210(K)).(f) Liver Damage. Evaluate under Digestive System Impairments (Diseases of the Liver) (106 CMR 320.210(E)(2)).(g) Gastritis. Evaluate under Digestive System Impairments (Diseases of the Liver) (106 CMR 320.210(E)(2)).(h) Pancreatitis. Evaluate under Digestive System Impairments (Gastrointestinal Disorders) (106 CMR 320.210(E)(1)).(i) Seizures. Evaluate under Neurological System Impairments (Epilepsy - Major Motor Seizure and Epilepsy - Minor Motor Seizure) (106 CMR 320.210(K)(2) and (3)).(M) Immuno-suppressive Disorders

(1) Indicator Diseases Diagnosed Definitively: The required level of incapacity associated with the following is met when the incapacity is expected to last for at least 60 days.

(a) Candidiasis of the esophagus, trachea, bronchi, or lungs.(b) Coccidioidomycosis, disseminated (at a site other than or in addition to lungs or cervical or hilar lymph nodes).(c) Cryptococcoses, extrapulmonary.(d) Cryptosporidiosis with diarrhea persisting over one month.(e) Cytomegalovirus disease of an organ other than liver, spleen, lymph nodes in an individual over one month of age.(f) Genital Herpes, chronic, recurrent, wide spread, resistant to therapy.(g) Herpes Simplex virus infection causing a mucocutaneous ulcer that persists longer than one month, or bronchitis, pneumonitis, or esophagitis for any duration affecting an individual over one month of age.(h) HIV Encephalopathy (also called "HIV dementia," AIDS dementia", or "subacute encephalitis due to HIV")(i) Histoplasmosis, disseminated (at a site other than or in addition to lungs or cervical or hilar lymph nodes).(j) Isoporiasis with diarrhea persisting over one month.(k) Kaposi's Sarcoma at any age.(l) Leukoencephalopathy, progressive multifocal leukoencephalopathy.

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- (m) Lymphoma of the Brain (primary) at any age.
 - (n) Lymphoid Interstitial Pneumonia and/or Pulmonary Lymphoid Hyperplasia (LIP/PLH complex) affecting a child less than 13 years of age.
 - (o) Any Mycobacterial Disease caused by mycobacteria other than M. Tuberculosis, disseminated (at a site other than or in addition to lungs, skin, or cervical or hilar lymph nodes).
 - (p) Pneumocystis Carinii Pneumonia.
 - (q) Pelvic inflammatory disease, chronic, recurrent, resistant to therapy.
 - (r) Salmonella (nontyphoid) septicemia, recurrent.
 - (s) Systemic Toxoplasmosis.
 - (t) Toxoplasmosis, of the brain.
 - (u) One of the Following with Documented HIV Infection:
 1. Anal Squamous Cell Carcinoma.
 2. Invasive Carcinoma of Cervix, FIGO stage II or more.
 3. Nocardiosis.
 4. Non-hodgkins Lymphoma.
 5. Strongyloidiasis, extra-intestinal.
- (2) Individuals should be considered to have an impairment that equals the severity of the listings with or without documented evidence of HIV infection and the following laboratory and clinical features:
- (a) A T4 lymphocyte count of less than or equal to 200 cells/mm³ (or 25% or less T4 lymphocytes); OR
 - (b) One or more of the following persisting over a two-month period:
 1. Anemia (Hematocrit value less than 30%);
 2. Granulocytopenia (absolute neutrophil count less than or equal to 1000/mm³);
 3. Thrombocytopenia (platelet count less than or equal to 40,000/mm³);
 4. Documented Fever (daily greater than or equal to 100.4/F or 38/C);
 5. Undesired Weight Loss greater than or equal to 10% of baseline;
 6. Oral Recurrent Candidiasis;
 7. Oral Hairy Leukoplakia;
 8. Recurrent Herpes Zoster;
 9. Persistent, unresponsive diarrhea;
 10. Mucosal (including vulvovaginal candidiasis other than listed in 106 CMR 320.210(M)(1)(a) or new added vulvovaginal conditions);
 11. Persistent dermatological conditions such as eczema or psoriasis.
 12. Persistent or recurrent radiographically documented sinusitis; AND
 - (c) Interference with activities of daily living resulting in marked restriction of activities of daily living such that the individual needs help with most activity including climbing stairs, shopping, cooking and housework.

(N) Neoplastic Diseases - Malignant. Intractable pain, and/or ongoing therapy side effects, disease process or treatment which has caused a disability covered elsewhere in these standards.

(O) Medically Equivalent Impairment(s) and Combinations of Impairments.

- (1) If an applicant or recipient has an anatomical, physiological or psychological impairment(s) that is not specifically included in the medical standards specified in 106 CMR 320.210(A) through (N) or the SSI Listing of Impairments specified in 106 CMR 320.200(A)(1)(b) but is documented by medically acceptable clinical and/or diagnostic techniques and is medically equal in severity to a medical standard or an SSI Listed Impairment, the applicant or recipient shall be considered as having an impairment that meets a medical standard or an SSI Listed Impairment for purposes of 106 CMR 320.200(A)(1). For purposes of determining if an impairment is medically equal in severity to a medical standard or an SSI Listed Impairment, the medical standard or SSI Listed Impairment that is most closely analogous to the impairment shall be used.
- (2) In making the determination required by 106 CMR 320.210(O), the applicant's or recipient's description of his or her symptoms (including pain) shall be taken into consideration to the extent that:

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(a) such symptoms are the result of a physical or mental impairment(s) as defined in 106 CMR 320.220 that is confirmed by acceptable clinical and/or laboratory diagnostic techniques; and

(b) such physical or mental impairment(s) could reasonably produce such symptoms.

An applicant or recipient must have a physical or mental impairment to be determined disabled. Symptoms alone are not sufficient.

(3) If a specific medical finding required to meet a medical standard specified in 106 CMR 320.210(A) through (N) or an SSI Listed Impairment specified in 106 CMR 320.200(A)(1)(b) is not indicated by the competent medical authority as defined in 106 CMR 701.600 on the medical report but a medical finding of equal clinical significance is indicated, the latter medical finding may be substituted for the required medical finding.

(4) If an applicant or recipient has more than one impairment and none of the impairments separately are medically equivalent to a medical standard specified in 106 CMR 320.210(A) through (N) or an SSI Listed Impairment as specified in 106 CMR 320.200(A)(1)(b), the impairments shall be considered to meet a medical standard or an SSI Listed Impairment if they in combination with each other are medically equivalent to a medical standard or an SSI Listed Impairment. For purposes of determining if an impairment is medically equal in severity to a medical standard or an SSI Listed Impairment, the medical standard or SSI Listed Impairment that is most closely analogous to the combined impairments shall be used.

320.220: Vocational Factors

(A) Basic Work Activity.

(1) If the agency or organization under contract/agreement with the Department to provide disability evaluation services determines that an applicant or recipient does not have an impairment or combination of impairments that either meets or is equivalent to a medical standard specified in 106 CMR 320.210 or an impairment that is included in the SSI Listing of Impairments as specified in 106 CMR 320.200(A)(1)(b), the agency or organization providing disability evaluation services shall determine if the applicant or recipient has an anatomical, physiological, or psychological (or combination thereof) impairment(s) that:

- (a) is documented by medically acceptable clinical and/or laboratory diagnostic techniques;
- (b) is expected to last for at least 60 days; and
- (c) has more than a nominal effect on the applicant's or recipient's physical and/or mental capacity to perform on a sustained basis one or more basic work activities.

(2) If the applicant or recipient has an impairment, or combination of impairments, that meets the requirements of 106 CMR 320.220(A)(1) and the impairment(s) is a physical impairment(s), as defined in 106 CMR 320.220(B)(5), the agency or organization providing the disability evaluation services shall use the vocational factors specified in 106 CMR 320.220(C) to determine if the applicant or recipient has an impairment or combination of impairments that substantially reduces or eliminates the applicant's or recipient's ability to support himself or herself for purposes of 106 CMR 320.200(A)(1)(c). If the impairment(s) is a mental impairment(s) as defined in 106 CMR 320.220(B)(4), the agency or organization providing the disability evaluation services shall use the vocational factors specified in 106 CMR 320.220(D) to determine if the applicant or recipient has an impairment or combination of impairments that substantially reduces or eliminates the applicant's or recipient's ability to support himself or herself for purposes of 106 CMR 320.200(A)(1)(c).

(3) If an applicant or recipient does not have an impairment, or combination of impairments, that meets the requirements of 106 CMR 320.220(A)(1), the applicant or recipient shall not be considered as having an impairment or combination of impairments that substantially reduces or eliminates the applicant's or recipient's ability to support himself or herself for purposes of 106 CMR 320.200(A)(1)(c).

(4) If the applicant or recipient has more than one impairment, the agency or organization providing the disability evaluation services shall determine if the impairments in combination with each other satisfy the requirements of 106 CMR 320.220(A)(1).

(5) For purpose of 106 CMR 320.220(A)(1), basic work activities mean those activities that are required to do most jobs. Basic work activities include walking, standing, sitting, lifting, pushing, pulling, reaching, seeing, hearing, speaking, understanding, carrying out and remembering simple instructions; use of judgment, responding appropriately to supervision and coworkers, and dealing with changes in a routine work setting.

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(B) Definitions. The following definitions shall apply to 106 CMR 320.220.

Direct entry means a person has the education and/or vocational training or past work experience to enter a job without further formal training beyond basic orientation.

Education means formal schooling, other training, and/or work experience which contributes to an ability to meet an educational requirement for a job; for example, reasoning ability, communication skills, and arithmetic ability.

Illiterate means an inability to read and write a simple message such as instructions or inventory lists in spite of an ability to sign one's name.

Mental Impairment means a psychological impairment documented by medically acceptable clinical and/or laboratory diagnostic techniques.

Physical Impairment means an anatomical or physiological impairment or combination of anatomical and/or physiological impairments documented by medically acceptable clinical and/or laboratory diagnostic techniques.

Previous Work Experience means work experience which occurred within the past five years.

Sedentary Work means work activity that may involve occasional lifting, but no more than ten pounds at a time, and carrying articles like docket files, ledgers and small tools and frequently (from a to b of the time) requires an individual to exert a negligible amount of force by lifting, carrying, pushing, pulling or otherwise moving objects.

Sedentary work involves walking and/or standing a minimum of two hours per day and sitting up to six hours per day with normal breaks.

Semi-skilled means work requiring some skills but does not require doing more complex job duties; may require alertness and attention to watching machine processes, inspecting, testing or looking for irregularities; tending or guarding equipment, property or persons; requiring dexterity and coordination.

Skilled means work requiring judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality or quantity of material to be produced; may require laying out work, estimating quality, determining suitability and quantity of materials, making precise measurements; dealing with people, facts or figures or abstract ideas at a high level of complexity.

Transferable Skills means skilled or semi-skilled work activities that were done in past work and that can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work.

Unable to Communicate in English means the inability to understand English and give simple oral or written instructions in English.

Unskilled means work requiring little or no judgment to do simple duties that can be learned by rote or by demonstration on the job in a short period of time; it may or may not require considerable strength; a person can usually learn to do the job in 30 days and little specific vocational preparation and judgment are needed.

(C) Physical Impairment.

(1) An applicant or recipient who has a physical impairment as defined in 106 CMR 320.220(B)(5) that meets the requirements of 106 CMR 320.220(A)(1) shall be considered as having an impairment or combination of impairments that substantially reduces or eliminates the applicant's or recipient's ability to support himself or herself for purposes of 106 CMR 320.200(A)(1)(c):

(a) he or she cannot do the full range of sedentary work; or

(b) he or she can do the full range of sedentary work but not more and is determined disabled under 106 CMR 320.220(C)(4); or

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(c) he or she can do more than the full range of sedentary work and is determined disabled under 106 CMR 320.220(C)(6).

(2) If an applicant or recipient has both a physical and a mental impairment, the agency or organization under contract/agreement with the Department to provide disability evaluation services shall first determine if based on the applicant's or recipient's physical impairment alone he or she has an impairment that substantially reduces or eliminates the applicant's or recipient's ability to support himself or herself pursuant to 106 CMR 320.220(C). If the applicant or recipient is determined not to have such a physical impairment, the agency or organization providing the disability evaluation services shall proceed to make the determination required by 106 CMR 320.220(D) for mental impairments.

(3) The determination of whether or not an applicant or recipient can do the full range of sedentary work and/or more will be made solely on the applicant's or recipient's functional capacity. In determining an applicant's or recipient's functional capacity, the agency or organization under contract/agreement with the Department to provide disability evaluation services shall consider if the statements of the competent medical authority as defined in 106 CMR 701.600 are consistent with the diagnoses, clinical findings and the statements of the applicant or recipient, including statements as to symptoms as set forth in 106 CMR 320.210(O).

(4) If an applicant or recipient can do the full range of sedentary work but not more, the grid specified in 106 CMR 320.220(C)(5) shall be used in determining if an applicant or recipient is or is not disabled for purposes of 106 CMR 320.200(A)(1)(c):

(5) Grid.

<u>Age</u>	<u>Education</u>	<u>Previous Work Experience</u>	<u>Decision</u>
55 & over	Illiterate or unable to communicate in English	Unskilled or none	Disabled
55 & over	Less than 12 th grade - at least literate	Unskilled or none	Disabled
55 & over	Less than 12 th grade	Skilled or semiskilled - skills not transferable	Disabled
55 & over	Less than 12 th grade	Skilled or semiskilled - skills transferable	Not Disabled
55 & over	High school graduate or more - does not provide for direct entry into skilled work	Unskilled or none	Disabled
55 & over	High school graduate or more - provides for direct entry into skilled work	Unskilled or none	Not Disabled
55 & over	High school graduate or more - does not provide for direct entry into skilled work	Skilled or semiskilled - skills not transferable	Disabled
55 & over	High school graduate or more - does not provide for direct entry into skilled work	Skilled or semiskilled - skills transferable	Not Disabled
55 & over	High school graduate or more - provides for direct entry into skilled work	Skilled or semiskilled - skills transferable	Not Disabled
50 - 54	Illiterate or unable to communicate in English	Unskilled or none	Disabled
50 - 54	Less than 12 th grade - at least literate	Unskilled or none	Disabled

106 CMR: DEPARTMENT OF TRANSITIONAL ASSISTANCE

320.220: continued

<u>Age</u>	<u>Education</u>	<u>Previous Work Experience</u>	<u>Decision (cont)</u>
50 - 54	Less than 12 th grade	Skilled or semiskilled - skills not transferable	Disabled
50 - 54	Less than 12 th grade	Skilled or semiskilled - skills transferable	Not Disabled
50 - 54	High school graduate or more - does not provide for direct entry into skilled work	Unskilled or none	Disabled
50 - 54	High school graduate or more - provides for direct entry into skilled work	Unskilled or none	Not Disabled
50 - 54	High school graduate or more - does not provide for direct entry into skilled work	Skilled or semiskilled - skills not transferable	Disabled
50 - 54	High school graduate or more - does not provide for direct entry into skilled work	Skilled or semiskilled - skills transferable	Not Disabled
50 - 54	High school graduate or more - provides for direct entry into skilled work	Skilled or semiskilled - skills not transferable	Not Disabled
Younger Individual			
Age 45-49	Illiterate or unable to communicate in English	Unskilled or none	Disabled
Age 45-49	Less than 12 th grade - at least literate	Unskilled or none	Not Disabled
Age 45-49	Less than 12 th grade	Skilled or semiskilled - skills not transferable	Not Disabled
Age 45-49	Less than 12 th grade	Skilled or semiskilled - skills transferable	Not Disabled
Age 45-49	High school graduate or more -	Unskilled or none	Not Disabled
Age 45-49	High school graduate or more -	Skilled or semiskilled - skills not transferable	Not Disabled
Age 45-49	High school graduate or more -	Skilled or semiskilled - skills transferable	Not Disabled
Younger Individual			
Age 18-44	Illiterate or unable to communicate in English	Unskilled or none	Not Disabled
Age 18-44	Less than 12 th grade at least literate	Unskilled or none	Not Disabled
Age 18-44	Less than 12 th grade	Skilled or semiskilled - skills not transferable	Not Disabled

106 CMR: DEPARTMENT OF TRANSITIONAL ASSISTANCE

320.220: continued

<u>Age</u>	<u>Education</u>	<u>Previous Work Experience</u>	<u>Decision (cont)</u>
Age 18-44	Less than 12 th grade	Skilled or semiskilled - skills transferable	Not Disabled
Age 18-44	High school graduate or more	Unskilled or none	Not Disabled
Age 18-44	High school graduate or more	Skilled or semiskilled - skills not transferable	Not Disabled
Age 18-44	High school graduate or more	Skilled or semiskilled - skills transferable	Not Disabled

(6) If an applicant or recipient can do more than the full range of sedentary work, the vocational factors as set forth in the grid at 106 CMR 320.220(C)(5) shall be applied to the applicant or recipient. If under the grid, the applicant or recipient is determined to be "not disabled", the applicant or recipient shall not be considered disabled for purposes of 106 CMR 320.200(A)(1)(c).

In all other cases, the agency or organization under contract/agreement with the Department to provide disability evaluation services shall do a further review, based on the applicant's or recipient's functional capacity and the factors set forth in 106 CMR 320.220, to determine if there is a significant amount of full-time work in the northeast regional economy that the applicant or recipient could do. If a significant amount of such full-time work does not exist, the applicant or recipient shall be considered disabled for purposes of 106 CMR 320.200(A)(1)(c). The vocational factors that are to be considered in this further review are as follows:

(a) Physical Activity.

1. the kinds and amount of physical activity the applicant or recipient can perform with his or her impairment(s) on a regular and sustained basis; and
2. whether such physical activity is consistent with the applicant's or recipient's physical impairment(s); and
3. the kinds and amount of non-exertional limitations on the applicant's or recipient's physical activity, including, but not limited to, vision, hearing, speaking, posture, reaching and feeling; and
4. the possible effects, if any, the applicant's or recipient's medication(s) may have on his or her work capacity.

(b) Age. The extent to which the applicant's or recipient's age may affect his or her ability to adjust to changes in work routine or work environment.

(c) Education/vocational skills.

1. the years of formal education, if any, that the applicant or recipient has completed; and
2. training and past work experience of the applicant or recipient; and
3. whether the applicant or recipient has transferable skills; and
4. if the applicant or recipient is literate and able to communicate in English; and
5. the period of time that has lapsed between the applicant's or recipient's education, training or past work experience and the beginning of his or her impairment(s).

(d) Work in the Regional Economy

1. For purposes of determining the amount of full-time work that exists in the northeast regional economy of the United States within the range of work ("sedentary", "light", "medium", "heavy" and "very heavy") as those terms are defined in the Dictionary of Occupational Titles that the applicant or recipient can perform, the agency or organization under contract/agreement with the Department to provide disability evaluation services may rely on the Dictionary of Occupational Titles, Occupational Outlook Handbook and Labor Market Surveys.

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2. A significant amount of such work exists in the northeast regional economy if there is a significant number of full-time jobs in one or more occupations that the applicant or recipient could do with his or her functional capacity and vocational qualifications. It is not necessary (a) for such work to exist in the immediate area where the applicant or recipient lives; (b) for job vacancies to exist; or (c) for the applicant or recipient to be hired if he or she applied for such work.

(D) Mental Impairment. For an applicant or recipient who has a mental impairment as defined in 106 CMR 320.220(B)(4), including the combination of mental and physical impairments, the agency or organization under contract/agreement with the Department to provide disability evaluation services shall consider in combination with the applicant's or recipient's functional capacity the factors specified in 106 CMR 320.220(C)(6) and the following factors in determining whether there is a significant amount of full-time work in the northeast regional economy that the applicant or recipient could do. If a significant amount of such full-time work does not exist, the applicant or recipient shall be considered disabled for purposes of 106 CMR 320.200(A)(1)(c). The factors are:

- (1) whether there is any impairment to memory, concentration, pace and persistence, social functioning, independence, and anhedonia, and
- (2) whether the applicant's or recipient's medication may have side effects that may limit those abilities specified in 106 CMR 320.220(D)(1); and
- (3) the applicant's or recipient's ability to:
 - (a) understand, remember and carry out simple instructions; and
 - (b) make simple work-related decisions; and
 - (c) accept supervision and to ask questions or request assistance; and
 - (d) complete tasks in a timely manner; and
 - (e) adjust to changes in work routine or work environment; and
- (4) the applicant's or recipient's past work experience.

320.250: Participant in a Massachusetts Rehabilitation Commission Program

(A) An applicant or recipient who is actively participating in a Massachusetts Rehabilitation Commission (MRC) training and/or rehabilitation program(s) (including post-secondary education) shall be considered to have a physical or mental disability without application of the medical standards specified in 106 CMR 320.210, provided the applicant or recipient meets all other categorical and financial requirements of the EAEDC program.

(B) Verification of active participation in an MRC program must be provided by the applicant or recipient as specified below at application, redetermination, or when there is a change in his or her active participation status.

- (1) At application, the applicant must provide 106 CMR 320.250(B)(1)(a) and (b) to verify that the EAEDC applicant is an active MRC participant:
 - (a) MRC's medical or psychiatric reports that are the basis of eligibility for MRC services. MRC shall provide these reports to the local welfare office at the request of the applicant; and
 - (b) a written statement, signed by the MRC counselor, that the individual is vocationally disabled and would continue to be so without completion of the specific rehabilitation program. The statement shall:
 1. certify that the applicant is currently actively participating in a training or rehabilitation program; and
 2. explain what the program is and its anticipated length.
- (2) At redetermination, the recipient must provide a current statement from his or her MRC counselor as specified in 106 CMR 320.250(B)(1)(b) verifying his or her continued active MRC participation.
- (3) At the time of a change in his or her active participation status in an MRC program, the applicant or recipient must provide a written statement from his or her MRC counselor that explains the change in his or her active participation status. To be considered timely, such statement must be provided within ten days as specified in 106 CMR 701.420.

320.300: Caring for the Disabled

An applicant or recipient is required to care for a person in the home who is disabled and in need of constant care. Such disabled person is in need of constant care and if such constant care was not provided, the disabled person would be required to be institutionalized. All three elements must exist for an applicant or recipient of EAEDC to be categorically eligible.

The applicant or recipient must provide verification of the disabled person's disability, the need for constant care, and the risk of institutionalization without such constant care. This must be verified at application, redetermination or time of any change by a written statement from the disabled person's physician on the physician's letterhead that verifies the disability, the need for constant care and that the disabled person would be at risk of institutionalization without such care.

The income and assets of the disabled person shall be considered in the determination of eligibility as specified in 106 CMR 321.235. If the income and/or assets of the disabled person exceed the limits specified in 106 CMR 321.235, the applicant or recipient of EAEDC is ineligible for EAEDC.

The EAEDC applicant or recipient must meet all other categorical and financial requirements of the EAEDC program as specified in 106 CMR 320.00 and 321.00

320.400: Caretaker Family

To be eligible for EAEDC, a caretaker family must meet all of the requirements specified in 106 CMR 320.400.

(1) A caretaker family is defined as:

- (a) a dependent child(ren) under 18 years of age, and
- (b) the dependent child's siblings or half-siblings, if any, and
- (c) a caretaker who:

- 1. is 18 years of age or older,
- 2. does not meet the relationship requirement specified in 106 CMR 203.585,
- 3. is living in the same home as the dependent child(ren), and
- 4. has legal custody or guardianship of the dependent child(ren) unless good cause exists. Good cause shall exist if obtaining legal custody or guardianship may place the caretaker or the dependent child at risk of serious harm or emotional impairment. A serious emotional impairment is one of such severity that it would significantly reduce the caretaker's or the child's capacity to care for himself or herself or significantly reduce his or her capacity to perform essential activities of daily living.

If the caretaker does not have legal custody or guardianship of the dependent child(ren), the caretaker shall obtain legal custody or guardianship or provide verification of good cause at the end of six months from the date assistance begins or six months from the date of the next eligibility review, whichever is later.

Good cause is verified by the following documentary evidence:

- a. a statement, signed by the caretaker, which must include the reason he or she believes obtaining legal custody or guardianship places him or her or the dependent child at risk of serious harm or emotional impairment, and a detailed description of any incidents which may have led him or her to believe this is true, and the approximate dates of such incidents; and
- b. court, medical, criminal, child protective service, psychological, law enforcement, or school records, or other official documentation that demonstrate that there is a risk of serious harm or emotional impairment to either the caretaker or the dependent child(ren).

If the requirements in 106 CMR 320.400(1)(a) through (c) are not available or inconclusive, a sworn statement from the caretaker and at least one other individual with knowledge of the circumstances that sets forth with specificity a factual history which supports his or her good cause claim.

- (2) The filing unit as specified in 106 CMR 321.320 must include the dependent child(ren) and his or her siblings or half-siblings living in the same home, but it shall not include foster child(ren).
- (3) The assistance unit must include all the individuals specified in 106 CMR 320.400(1)(a) and (b) unless one or more of these persons:

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- (a) is eligible for and/or receiving TAFDC or SSI; or
 - (b) does not meet the EAEDC citizenship and alienage requirements specified in 106 CMR 320.600 through 320.620. There must be at least one dependent child in an assistance unit unless all the dependent child(ren) and his or her siblings or half-siblings living in the same home are eligible for and/or receiving SSI.
- (4) The assistance unit as specified in 106 CMR 321.310 may include the caretaker unless the only dependent child(ren) is a foster child(ren). The caretaker is not prohibited from applying for or receiving EAEDC pursuant to 106 CMR 320.100, 320.200, 320.250 or 320.300.
- (5) The assistance unit shall have been determined ineligible for TAFDC solely because the caretaker did not meet the relationship to the dependent child(ren) requirement as specified in 106 CMR 203.585.
- (6) There is no option to exclude the dependent child(ren) and/or any of the siblings or half-siblings of the dependent child(ren) living in the same home except as specified in 106 CMR 320.400(3).
- (7) If the caretaker chooses to be included in the assistance unit, is between the ages of 18 and 59 and is not in school, training, nor gainfully employed, he or she must register for work with the Division of Career Services (DCS) as a condition of initial and continuing eligibility; and must
- (a) actively seek employment; and
 - (b) maintain his or her registration with DCS; and
 - (c) accept a referral to or offer of suitable employment; and
 - (d) report to the Department on the results of any job referral; and
 - (e) provide verification from DCS of his or her record of attempts to find employment through DCS and verification of other efforts to obtain employment. Such verification must be provided by the applicant or recipient at least once every three months or more frequently as required by the Department.

For purposes of 106 CMR 320.400(7), the following shall apply. To be considered in school, the caretaker must be regularly attending school full-time, a minimum of 20 hours per week. To be considered gainfully employed, the caretaker must be employed 30 or more hours per week earning at least the federal or state minimum wage, whichever is less.

To be considered in training, the caretaker must be regularly attending a full-time training program for 80% of the full-time scheduled hours as specified by the training provider.

- (8) If the caretaker chooses to be included in the assistance unit and the youngest dependent child in the household is 15 years of age or older, the caretaker must meet the TEMP requirements as specified in 106 CMR 320.420: *Transitional Employment for Massachusetts Parents*.

The Department shall determine whether the individual who has failed to comply with the requirements of 106 CMR 320.400(7) and (8) has an exemption as specified in 106 CMR 320.425 or has good cause as specified in 106 CMR 701.380.

320.410: Hurricane Katrina Evacuees

“Hurricane Katrina Evacuees” is a temporary category of assistance that will continue for a time period to be determined by the Department. Standards of eligibility and financial benefit levels will also be determined by the Department.

320.420: Transitional Employment for Massachusetts Parents (TEMP)

(A) As a condition of EAEDC eligibility an individual must participate in Transitional Employment for Massachusetts Parents (TEMP) when he or she is the caretaker, as specified in 106 CMR 320.400, included in the assistance unit, and whose youngest dependent child in the household is 15 years of age or older, unless the individual meets the criteria of 106 CMR 320.425 or has good cause as specified in 106 CMR 701.380.

(B) Activities. Activities may include, but are not limited to:

- (1) employment of 20 hours or more per week;
- (2) an uncompensated volunteer community service placement(s) in a public, quasi-public or nonprofit organization, except that such a placement cannot be in the office of an individual candidate's campaign for public office;

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- (3) a combination of participation in employment search or education or training requirements as specified in 106 CMR 320.400(7) and a volunteer community service placement(s); and/or
- (4) a combination of employment of fewer than 20 hours per week and a volunteer community service placement(s).

A participant's TEMP Community Service Program placement(s) may be changed at the Department's discretion. The Director or his or her designee must approve any change in TEMP Community Service Program placement(s).

(C) Participation Criteria. The following are the criteria for participants in TEMP:

- (1) the caretaker must be a member of the assistance unit;
- (2) the caretaker must participate in a volunteer community service placement(s) for 30 hours per week except when he or she is:
 - (a) meeting the employment search, education or training requirements as specified in 106 CMR 320.400(7); or
 - (b) employed fewer than 20 hours per week;then this same caretaker is required to participate in a voluntary community service placement(s) for 16 hours per week; and
- (3) the caretaker can fulfill TEMP participation requirements by:
 - (a) being employed for 20 hours or more per week; or
 - (b) self-arranging a volunteer community service placement(s) approved by the Department; or
 - (c) selecting a volunteer community service placement(s) identified by the Department; or
 - (d) accepting a Department-assigned volunteer community service placement(s) when he or she has not selected one of the participation options specified in 106 CMR 320.420(C)(5)(b) or (c) within 30 days.

For EAEDC eligibility purposes, a caretaker meeting the TEMP requirements as specified in 106 CMR 320.420(C)(2) or (C)(3)(a) shall be considered to have also met the applicable EAEDC requirements as specified in 106 CMR 320.400(7) through such participation in TEMP.

(D) Participation Requirements. The TEMP participant must:

- (1) attend the actual scheduled hours per week as specified in 106 CMR 320.420; and
- (2) be performing satisfactorily in TEMP, as defined by the provider; and
- (3) provide verification of placement and/or participation at time periods determined by the Department on a form prescribed by the Department.

(E) Failure to Meet Participation Requirements

- (1) If the caretaker as specified in 106 CMR 320.420(A) fails to participate in TEMP, he or she shall be ineligible for assistance until he or she begins participation in TEMP in accordance with 106 CMR 320.420(C) for a period of two consecutive weeks or is determined exempt from participation in TEMP.
- (2) Assistance to the remaining member(s) of the assistance unit shall be in the form of vendor payments to the extent possible.

320.425: Exemptions

(A) Requirements.

- (1) A grantee is exempt from registering for work with the Department of Employment and Training (DET) as specified in 106 CMR 320.400 and from participating in Transitional Employment for Massachusetts Parents (TEMP) as specified in 106 CMR 320.420 if the grantee meets one of the following exemptions.
 - (a) a disabled grantee;
 - (b) a grantee who is essential to the care of one of the following disabled persons living in the home:
 - 1. a child,
 - 2. the grantee's spouse,
 - 3. the child's other parent, or
 - 4. the parent(s) or grandparent(s) of the grantee, the grantee's spouse, or the child's other parent;

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- (c) a grantee who is age 60 or older.
 - (2) A grantee who is determined to be exempt shall remain exempt until the grantee no longer meets the criteria for an exemption. A grantee must inform the Department as soon as his or her circumstances change in a way that may affect his or her exemption status.
 - (3) A grantee who is determined to be nonexempt may appeal this nonexempt status determination.
- (B) Verification. A grantee who is claiming an exemption pursuant to 106 CMR 320.425(A)(1)(a) through (c) must provide the appropriate exemption verification specified in 106 CMR 320.425(B)(1) through (4):
- (1) A disabled grantee must meet the requirements of 106 CMR 320.200 with the following exception. The grantee meets the disabled exemption when the competent medical authority as defined in 106 CMR 701.600 states the disability duration is less than 60 days.
 - (2) A grantee who claims to be essential to the care of a disabled child must provide:
 - (a) verification that the disabled child is in receipt of SSI; and
 - (b) written documentation from a competent medical authority as defined in 106 CMR 701.600 that specifies the severity of the child's disability, the reason that the grantee is essential to the care of the disabled child and that the grantee is unable to be employed because he or she must be in the home.
 - (3) A grantee who claims to be essential to the care of one of the persons listed in 106 CMR 320.425(A)(1)(b)2., 3., or 4. must provide the verifications required in both 106 CMR 320.425(B)(3)(a) and (b):
 - (a) verification that the disabled person:
 - 1. is a recipient of Supplemental Security Income for disability, or Social Security for disability, or
 - 2. if a recipient of TAFDC, meets the requirements for disability as specified in 106 CMR 203.530, or
 - 3. if a recipient of EAEDC, meets the requirements for disability as specified in 106 CMR 320.200, or
 - 4. if not a recipient of TAFDC or EAEDC, has written verification of the disability from the disabled person's competent medical authority as defined in 106 CMR 701.600; and
 - (b) written documentation from a competent medical authority as defined in 106 CMR 701.600 that specifies the severity of the disability, the reason that the caretaker is essential to the care of the disabled person, and that the caretaker is unable to be employed because he or she must be in the home to care for the disabled person.
 - (4) Verification that the caretaker is age 60 or older shall be in accordance with 106 CMR 320.500.

320.500: Age

The age of the applicant or recipient must be verified. Age shall be verified by one of the following documents provided the document contains evidence of the individual's age:

- (A) birth certificate;
- (B) hospital birth record;
- (C) court records (*e.g.*, adoption, separate support, adjudication of paternity);
- (D) Notification of Birth (NOB-1) signed by appropriate hospital official;
- (E) Social Security (RSDI) benefit records;
- (F) Immigration and Naturalization records;
- (G) baptismal certificate;
- (H) school records;

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- (I) church records or a family bible;
- (J) insurance policies;
- (K) employment records;
- (L) newspaper records and local histories;
- (M) Indian agency records;
- (N) child welfare service records;
- (O) voluntary social service records;
- (P) day care center records;
- (Q) Head Start Program records;
- (R) passport;
- (S) United States Census records;
- (T) driver's license;
- (U) other governmental records; or
- (V) an affidavit of a knowledgeable third person, if the applicant or recipient has demonstrated that he or she has tried unsuccessfully to obtain appropriate documents.

NON-TEXT PAGE

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The applicant or recipient has the primary responsibility for obtaining verification. If the applicant or recipient is unable to provide the verifications, the worker shall assist the applicant or recipient in obtaining needed information.

320.510: Identification of the Applicant

The worker shall establish the identity of the applicant. Proof of identity shall be by any one of the following:

- (A) a birth certificate,
- (B) a hospital birth record,
- (C) a Social Security Card,
- (D) a driver's license,
- (E) a voter registration card,
- (F) military service papers,
- (G) a marriage license,
- (H) court records,
- (I) employment papers,
- (J) a passport,
- (K) a baptismal certificate,
- (L) other official government document(s), or
- (M) in the event that none of the above are available at the time of application, identity may be temporarily verified by a signed and dated third-party, sworn statement from an authorized person from one of the following organizations:
 - (1) educational,
 - (2) emergency shelter,
 - (3) medical,
 - (4) rehabilitational,
 - (5) religious, or
 - (6) social services.

An applicant or recipient who has established identity in a temporary manner must take the necessary steps to obtain permanent verification of identity as specified in 106 CMR 320.510(A) through (M) within the application time frames. Unreasonable failure to so shall result in the denial or termination of assistance; and furthermore, no additional periods of eligibility may be established until such permanent identity verification is provided.

320.520: Resident

The term "resident" means any person living within the Commonwealth, notwithstanding the lack of a present abode, and having no present intention of definite and early removal, but no necessarily with the intention of remaining permanently.

Any person(s) who enters the Commonwealth for the purpose of obtaining EAEDC shall not be considered a resident. There is a rebuttable presumption that a person is not a resident when he or she enters and resides in the Commonwealth for the purpose of school attendance.

320.530: Place of Residence

An applicant or recipient and his or her dependents must reside in the Commonwealth of Massachusetts, but there is no durational residence requirement in the Commonwealth.

Confinement of a person in a nursing home, hospital, or other medical institution in the Commonwealth shall not, in and of itself, be sufficient evidence to qualify such person as a resident under 106 CMR 320.000.

An applicant or recipient who resides in a public nonmedical institution (*e.g.*, a municipal infirmary), public psychiatric institutions, or who temporarily enters a nursing home, public medical institution, or chronic hospital approved or licensed by the Department of Public Health may be eligible for assistance under 106 CMR 320.530.

320.540: Temporary Absence

It is not necessary that an applicant or recipient be physically present at all times in the place of residence.

(A) Absence from Residence. Temporary absences, including absences from the Commonwealth with subsequent returns to the residence or intent to return when the purpose of the absence is accomplished, do not interrupt continuity of residence. Temporary absences include those for such reasons as illness, business, school, or family commitments. In order for an absence to be temporary, there shall be an intent to retain the permanent residence.

Temporary absence for a recipient shall also include admission to a private or public psychiatric institution for a period of up to two months from the date of admission.

(B) Duration. Temporary absences shall not exceed 60 days.

(C) Exceptions. Exceptions to the 60-day limit may be granted with the approval of the local office director when the applicant or recipient continues to maintain his or her permanent residence and

(1) the absence is due to death or illness of a friend or family member or illness of the applicant or recipient; and

(2) failure to continue assistance will result in a severe hardship such as homelessness. The temporary absence shall in no event exceed six months. However, no exceptions to the two-month limit shall be granted for a recipient who is a patient in a private or public psychiatric institution.

If an absence exceeds 60 days, verification of the reason for the absence and verification of intent to retain residency must be submitted.

(D) Verifications. Acceptable verification of the cause of the temporary absence includes medical documentation, a short-term business contract or school documents. Verification of intent to retain residency includes any one of the following provided it bears the name and address of the recipient:

(1) a current rent or mortgage receipt; or

(2) a current utility bill; or

(3) a current telephone bill; or

(4) any other form of documentation which the supervisor has determined verifies the continued residence or intent to retain residency, as appropriate, of the recipient.

(E) Amount of Assistance. Assistance shall be continued at the grant level received immediately prior to the temporary absence during such absence unless circumstances unrelated to the temporary absence warrant a change.

(F) Address. During a period of temporary absence checks shall be mailed to the address of the recipient's choice.

320.550: Disqualifying Absences

An applicant or recipient is not eligible while:

(A) a patient in a private psychiatric institution unless the patient is a recipient whose absence meets the definition of temporary absence specified in 106 CMR 320.540;

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- (B) an inmate of a penal institution;
- (C) absent from the United States and such absence does not qualify as a temporary absence as specified in 106 CMR 320.540;
- (D) permanently residing outside the Commonwealth; or
- (E) placed in family foster care or a group care facility by a Department of the Commonwealth or a private agency.

320.600: Citizens, Aliens, and Canadian-Born Indians

To be eligible for assistance, the applicant or recipient must be either a citizen of the United States, an alien lawfully admitted for permanent residence or permanently residing in the United States under color of law, or an American Indian born in Canada. Verification of citizenship and/or alien status must be provided for each applicant and recipient required to be included in the assistance unit.

320.610: Citizens

(A) Person Born in the United States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands or Guam. For a person born in the United States, citizenship is verified by a source that indicates the place of birth or one of the verifications specified for age in 106 CMR 320.500 that is a public governmental record and indicates citizenship or place of birth.

(B) Person Born outside the United States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands or Guam. Citizenship is verified by one of the following:

- (1) U.S. Passport;
- (2) Naturalization certificate;
- (3) Military service papers;
- (4) U.S. Citizen Identity Card (Form I-179);
- (5) U.S. Citizen Resident's Card (Form I-197);
- (6) Proof that at least one natural or adoptive parent was a U.S. citizen at the time of the person's birth, and that the parent had been a resident of the United States prior to the birth of this person;
- (7) Proof that both parents became naturalized citizens prior to this person marrying or turning age 18; provided that at the time of the second parent's or surviving parent's naturalization, the person was residing in the U.S. pursuant to a lawful admission for permanent resident status, or thereafter begins to reside permanently in the U.S. while under the age of 18;
- (8) Proof that at least one parent is a U.S. citizen by birth or naturalization and the foreign-born child, including an adopted child:
 - (a) is under 18 years of age;
 - (b) is currently residing permanently in the U. S. in the legal and physical custody of the United States citizen parent; and
 - (c) is a lawful permanent resident; or
- (9) Proof that one parent was a citizen of the U.S. at the time of the person's birth and proof that such parent resided in the U.S. for more than five years, two years of which were after the age of 14.

320.620: Noncitizens

A noncitizen must verify that he or she is present in the United States under one of the eligible noncitizen statuses as described below. The status of a noncitizen must be verified at application, at eligibility reviews or whenever the status of the noncitizen changes or is questionable. Verification of an eligible noncitizen status must be presented prior to the determination of EAEDC eligibility. A noncitizen unwilling or unable to provide acceptable verification of an eligible noncitizen status is ineligible.

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(A) Eligible Noncitizen Status. A noncitizen's eligibility for EAEDC depends on the section of the Immigration and Nationality Act (INA) under which the noncitizen is present in the United States, and meeting additional noncitizen requirements. Eligible noncitizen statuses for EAEDC are:

- (1) Legal Permanent Resident - A noncitizen present in the U.S. as a legal permanent resident.
- (2) Refugee - A noncitizen present in the U.S. as a refugee under section 207 of the INA.
- (3) Asylee - A noncitizen present in the U.S. as an asylee under section 208 of the INA.
- (4) Withholding of Deportation Noncitizen - A noncitizen whose deportation is being withheld under section 243(h) or 241(b)(3) of the INA.
- (5) Parolee - A noncitizen present in the United States as a parolee under section 212(d)(5) of the INA whose parolee status was granted for a period of at least one year.
- (6) Conditional Entrant - A noncitizen present in the United States as a conditional entrant under section 203(a)(7) of the INA as in effect prior to April 1, 1980.
- (7) PRUCOL: Permanently Residing Under Color of Law - A noncitizen permanently residing in the United States under color of law.
- (8) Cuban/Haitian Entrant - A noncitizen present in the United States as a Cuban/Haitian Entrant as defined under section 501(e) of the Refugee Education Assistance Act of 1980 or under section 212(d)(5) of the INA.
- (9) Amerasian - A noncitizen from Vietnam present in the United States as an Amerasian Immigrant as defined in section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988.
- (10) Victims of Severe Forms of Trafficking. A noncitizen who is present in the United States having been issued a letter of certification by the United States Department of Health and Human Services (HHS) as proof of the victim of severe form of trafficking status (as defined in the Trafficking Victims Protection Act of 2000).

(B) (1) Additional Noncitizen Requirements. A noncitizen described above applying for EAEDC benefits on or after July 1, 1997 must meet the following criteria, unless a good cause exception exists:

- (a) not be eligible for or not have unreasonably failed to apply for SSI, TAFDC, Unemployment Compensation and Veterans' Services benefits. SSI ineligibility includes noncitizens terminated from SSI on or after July 1, 1997 due to the noncitizen provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); and
- (b) be engaged in efforts to become a citizen of the United States, to the extent he or she is physically and mentally able to do so, if he or she is eligible to become a citizen (naturalization) within the next three years. An individual must be a legal permanent resident to be eligible for United States citizenship as only legal permanent residents are eligible for United States citizenship.

(2) Verification. The noncitizen must provide acceptable verification of the INS status. Noncitizens status shall be verified in accordance with Department procedures.

Acceptable verification of the noncitizen's efforts to become a citizen of the United States will be one of the following:

- (a) a statement from a community based organization which provides citizenship services, or an attorney representing the noncitizen, indicating that the noncitizen is either engaged in efforts to become a United States citizen or is not eligible for United States citizenship within the next three years;
- (b) a written statement from a competent medical authority as defined in 106 CMR 701.600 indicating the noncitizen's disability prevents engaging in efforts to become a United States citizen;
- (c) a document from INS showing that an application for naturalization or a waiver of the naturalization requirements has been filed with INS;
- (d) a statement from an attorney or an agency that has filed any formal or preliminary documents with INS; or
- (e) a copy of a money order paid to INS.

(3) Good Cause Exceptions. A noncitizen may claim good cause for not meeting the requirements above when:

- (a) at application, there is an immediate need for assistance in accordance with 106 CMR 702.125; or

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(b) a serious family situation or illness of another immediate family member prevents the legal permanent resident from engaging in efforts to become a United States citizen for the next 30 days.

(C) Verification of Noncitizen Status. The applicant or recipient must submit verification of his or her noncitizen status for each member of the assistance unit at application, at eligibility reviews or whenever the status of the noncitizen changes or is questionable. NoncitizenINS status shall be verified in accordance with Department procedure.

(D) Ineligible Noncitizen Status. An individual present in the United States under conditions or sections of the INA not described in 106 CMR 320.620 is ineligible for EAEDC.

320.640: American Indian Born in Canada

(A) Requirements. A person with at least 50% Indian blood who was born in Canada and who has maintained residence in the United States since his or her entry must be regarded as having been lawfully admitted for permanent residence.

Persons with less than 50% Indian blood must satisfy the requirements of 106 CMR 320.620: *Aliens*.

(B) Verifications. This status must be verified. Canada-born Indian status is verified by one of the following:

- (1) a "band card" issued by the band council of a Canadian Indian reserve;
- (2) birth or baptism records;
- (3) a provincial Union of Indians card (such as a Union of Nova Scotia Indians card); or
- (4) an affidavit from a tribal official or other person knowledgeable about the applicant's or recipient's family ancestry.

320.650: Decision of Alien to Apply for Assistance

An alien who does not have immigrant status must be informed that receipt of public assistance may result in an adverse decision by INS when the person is eligible to apply for a change of status to permanently admitted alien. It is important that an individual fully understand the implications of his or her immigration status before deciding whether or not to apply for or to receive public assistance.

320.660: Disclosure of Information to INS

The worker is prohibited from disclosing information regarding persons on EAEDC without their consent. The alien may request information from his or her own record and make a voluntary disclosure to INS.

REGULATORY AUTHORITY

106 CMR 320.000: M.G.L. c. 18, § 10.

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(2) Except as provided in 106 CMR 320.700(A)(4), any member of the assistance unit who is unable to verify an SSN, or for whom more than one SSN is verified, must provide verification from the SSA, in accordance with 106 CMR 320.700(B)(2), stating that he or she:

- (a) has applied for a number;
- (b) has applied to have an already-existing number validated; or
- (c) is unable to obtain an SSN because of his or her particular PRUCOL status.

(3) Assistance may not be denied, delayed, or decreased pending the issuance or verification of an SSN if the applicant or recipient has complied with the requirements specified in 106 CMR 320.700(A) and/or (B).

(4) An applicant or recipient who does not provide such verification of an SSN that the Department can verify by computer match with the SSA must be excluded from the assistance unit. The applicant or recipient may, however, be the grantee-relative for those children for whom an SSN has been furnished or an application initiated.

The only exception to this requirement shall be an EAEDC applicant or recipient whose particular PRUCOL status (*see* 106 CMR 320.620) precludes issuance of an SSN by SSA regulations. Such person shall either provide the verification(s) required by 106 CMR 320.700(B) or otherwise prove to the satisfaction of the Department that he or she is unable to obtain an SSN because of his or her particular PRUCOL status.

(B) Verification Requirements and Acceptable Verifications.

(1) Requirements. The worker shall refer the applicant or recipient to the nearest SSA office when the applicant or recipient cannot verify the necessary SSN(s) because:

- (a) it has never been assigned;
- (b) the applicant or recipient has no verification of the SSN;
- (c) it is necessary to validate an existing number when two or more numbers are verified for a person; or
- (d) the applicant or recipient claims he or she is unable to obtain an SSN because of his or her particular PRUCOL status.

Except as provided in 106 CMR 320.700(A)(4), the applicant or recipient must obtain verification from the SSA, as specified in 106 CMR 320.700(B)(2), stating that:

- (e) he or she has applied for an SSN;
- (f) he or she has applied to have an already-existing number validated; or
- (g) issuance of an SSN to a person in his or her particular PRUCOL status is prohibited by SSA regulations.

Upon delivery of such verification to the worker, the applicant or recipient shall be considered eligible to receive assistance, providing that he or she meets all other eligibility requirements.

The worker shall inform the applicant or recipient that the SSA office may require verification of age, identity, and citizenship or alien status. The worker shall provide the applicant or recipient upon request with any documents existing in the EAEDC case record that provide the verifications necessary to apply for an SSN or to apply to have an already-existing number validated. The worker shall retain a copy of any document(s) given to the applicant or recipient in the case record.

(2) Verifications. Verification that the applicant or recipient has applied for an SSN or has applied to have an already-existing number validated or that he or she cannot obtain an SSN because of his or her particular PRUCOL status based on SSA's regulations for the issuance of an SSN shall be provided at the following times:

- (a) at application, when the applicant or recipient cannot verify the SSN for any of the reasons listed in 106 CMR 320.700(B)(1);
- (b) when there is a match discrepancy, as specified in 106 CMR 320.700(C);
- (c) when there is a question as to the validity of the number and/or the identity of the applicant or recipient; or
- (d) when the status of an alien changes such that SSA regulations would permit the issuance of an SSN to this person.

The signature of an SSA employee on the ENUM-2 form is the preferred verification that an applicant or recipient has applied for an SSN or has applied to have an already-existing number validated. In the absence of the ENUM-2 form, one of the following shall be sufficient:

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- (e) form 5028 from SSA;
- (f) form SSA 2853;
- (g) any other written communication from an SSA office verifying that the applicant or recipient has applied for an SSN or has applied to have an already-existing number validated; or
- (h) any written communication from an SSA office verifying that the applicant or recipient cannot be issued an SSN by the SSA because of his or her particular PRUCOL status.

(C) Match Discrepancies. When an applicant or recipient verifies a number that cannot also be verified by computer match with the SSA, in accordance with 106 CMR 320.700(A), the worker shall refer the applicant or recipient to the nearest SSA office.

An applicant or recipient whose SSN produces a match discrepancy must obtain verification from the SSA, as specified in 106 CMR 320.700(B)(2), stating that he or she:

- (1) has applied for an SSN;
- (2) has applied to have an already-existing number validated; or
- (3) is unable to be issued an SSN because of his or her particular PRUCOL status.

Upon delivery of such verification to the worker, the applicant or recipient shall be considered eligible to receive assistance, provided that he or she meets all other eligibility requirements.

The worker shall inform the applicant or recipient that the SSA office may require verification of age, identity, and citizenship or alien status. The worker shall provide the applicant or recipient, upon request, with any documents existing in the EAEDC case record that provide the verifications necessary to apply for an SSN or to apply to have an already-existing number validated. The worker shall retain a copy in the case record of any document(s) given to the applicant or recipient.

An applicant or recipient whose SSN produces a match discrepancy shall only be referred to SSA once to obtain verification that he or she has applied for an SSN or has applied to have an existing number validated or that he or she is unable to obtain an SSN because of his or her particular PRUCOL status. Should a second match discrepancy occur after the applicant or recipient has provided the SSA verifications necessary to rectify the original match discrepancy, it will be assumed that the SSN furnished is valid and has been verified for purposes of eligibility, unless the identity of the applicant or recipient and/or the validity of the SSN become questionable.

(D) Right to Know Uses of Social Security Numbers. The applicant or recipient has the right to know how the Department will use his or her SSN and the numbers of all members of the assistance unit. At the time the applicant is given the application form, he or she will also be given written notice on a form prescribed by the Department explaining the following:

- (1) the purposes for which the numbers are sought;
- (2) that the SSN(s) will be computer cross-checked with SSNs appearing in other personal data files;
- (3) what those files are, whether within the Department, in other governmental agencies or elsewhere; and
- (4) that failure to meet Department requirements for verifying an SSN shall result in denial or termination of benefits.

REGULATORY AUTHORITY

106 CMR 320.000: M.G.L. c. 18, § 10.

(PAGES 559 AND 560 ARE RESERVED FOR FUTURE USE.)