

Regulations and other acts

Gouvernement du Québec

O.C. 1047-2004, 9 November 2004

An Act respecting income support, employment assistance and social solidarity (R.S.Q., c. S-32.001)

Income support — Amendments

Regulation to amend the Regulation respecting income support

WHEREAS, in accordance with the Act respecting income support, employment assistance and social solidarity (R.S.Q., c. S-32.001), the Government made the Regulation respecting income support by Order in Council 1011-99 dated 1 September 1999;

WHEREAS it is expedient to amend the Regulation;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation to amend the Regulation respecting income support was published on page 2645A of Part 2 of the *Gazette officielle du Québec* of 22 September 2004 with a notice that it could be made on the expiry of 45 days following that publication;

WHEREAS that 45-day period has expired;

WHEREAS it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister of Employment, Social Solidarity and Family Welfare:

THAT the Regulation to amend the Regulation respecting income support, attached to this Order in Council, be made.

ANDRÉ DICAIRE,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting income support*

An Act respecting income support, employment assistance and social solidarity (R.S.Q., c. S-32.001, s. 154, par. 2, s. 155, pars. 1 to 3, 5 and 8, s. 156, pars. 1, 6, 8, 11.1, 12, 15, 17, 21 to 23, s. 158, 1st par., subpars. 8 and 9, 2nd and 3rd pars., s. 159, pars. 1 and 8 and s. 160; 2002, c. 51, ss. 28, 29 and 31)

1. The Regulation respecting income support is amended by inserting the following after section 1:

“**1.1.** For the purposes of this Regulation, any reference to financial assistance granted to a Native person as an employment-assistance allowance or reimbursement of additional expenses refers to financial assistance granted as such under a manpower and employment agreement entered into with the Government of Canada within the framework of its Aboriginal Human Resources Development Strategy.”

2. Section 3 is amended by replacing the first paragraph by the following:

“**3.** The provisions of the Labour Code (R.S.Q., c. C-27), the Act respecting collective agreement decrees (R.S.Q., c. D-2), the Public Service Act (R.S.Q., c. F-3.1.1) and the Act respecting labour standards (R.S.Q., c. N-1.1) do not apply to a work activity that is not governed by that Code or those Acts.

Those provisions also do not apply to a work activity carried out under an employment-assistance measure or program

(1) that is focused on training or the acquisition of skills; or

(2) that includes workplace exploration practicums intended to clarify vocational orientation or support job integration or preparation, for the first four weeks of each practicum.”

* The Regulation respecting income support, made by Order in Council 1011-99 dated 1 September 1999 (1999, *G.O.* 2, 2881), was last amended by the regulation made by Order in Council 562-2004 dated 9 June 2004 (2004, *G.O.* 2, 1832). For previous amendments, refer to the *Tableau des modifications et Index sommaire*, Québec Official Publisher, 2004, updated to 1 September 2004.

3. The following is inserted after the heading of Division I of Chapter III:

3.1. For the purposes of the second paragraph of section 14 of the Act respecting income support, employment assistance and social solidarity, the residence of an adult is the place where the adult is ordinarily resident.

However, an adult ceases to be resident in Québec as soon as the adult has been absent for a full calendar month, which is a period extending from the first day to the last day of the month.”

4. Section 4 is amended

(1) by replacing the part preceding subparagraph 1 of the first paragraph by the following:

“**4.** Despite the second paragraph of section 3.1, an adult is resident in Québec even if the adult must be temporarily absent for one of the following reasons:”;

(2) by replacing “is also eligible for the program” in the second paragraph by “is also resident in Québec”;

(3) by replacing the third paragraph by the following:

“An adult who is retained outside Québec by reason of a superior force for a period of no more than 6 months is also resident in Québec.”

5. Section 5 is replaced by the following:

“**5.** An adult who belongs to any class of persons other than those referred to in subparagraphs 1 to 4 of the second paragraph of section 14 of that Act and who is in any of the following situations is eligible under the Employment-Assistance Program:

(1) the adult claims refugee protection in Canada from the competent Canadian authorities, in accordance with the Immigration and Refugee Protection Act (Statutes of Canada, 2001, c. 27);

(2) the claim for refugee protection has been rejected, but the adult’s presence on the territory is allowed, in accordance with that Act; or

(3) the adult is the subject of an application to become a permanent resident based on humanitarian or public interest considerations made in accordance with that Act, has a selection certificate issued under section 3.1 of the Act respecting immigration to Québec (R.S.Q., c. I-0.2) and the adult’s spouse is a person referred to in

subparagraphs 1 to 4 of the second paragraph of section 14 of the Act respecting income support, employment assistance and social solidarity.”

6. Section 7 is amended by replacing the second paragraph by the following:

“Except for the purposes of sections 22.1 to 23, 56, 102 and 104 to 121, the spouse of a student ceases to be part of the family from the month in which the student becomes ineligible for the program.”

7. Section 12 is amended by inserting “, or to financial assistance granted as such to a Native person” after “measure or program” in subparagraph 4 of the first paragraph;

8. Section 16 is amended by replacing “does not reside in Québec” by “is not resident in Québec, within the meaning of section 3.1.”

9. The following is inserted after section 22:

“**22.1.** For the purposes of this Chapter, monthly lodging expenses are

(1) in the case of an owner, property taxes, fire insurance premiums, payments on a hypothec or any other dwelling-related loan, \$35 for maintenance and repairs, \$35 for heating and \$25 for electricity or any other form of energy; and

(2) in the case of a lessee, the monthly rent, rental taxes and, if not already included in the rent, \$35 for heating and \$25 for electricity or any other form of energy.

22.2. For the purposes of paragraph 1 of section 22.1,

(1) “hypothec” means a hypothec granted to purchase, build, repair or renovate a dwelling;

(2) “dwelling-related loan” means

(a) a borrowed amount used to purchase, set in place, renovate or repair a mobile home that serves as a principal residence; and

(b) the repayment of a loan granted by a financial institution, a municipality or the Government to purchase, build, repair or renovate a dwelling.

The owner’s expenses are in proportion to the space that the owner occupies in a building consisting of two or more dwellings.

22.3. A housing facility is a dwelling unit if it has a separate exit leading to the outside or to a common corridor, self-contained sanitary facilities and a separate area for the preparation of meals.

22.4. An independent adult or a family shares a dwelling unit if the dwelling unit is occupied with

(1) a co-lessee or co-owner; or

(2) an independent adult or a family where fewer than three rooms are rented or offered for rent to different lessees.

Where at least three rooms in a dwelling unit are rented or offered for rent to different lessees, an independent adult or a family shares the dwelling unit if it is occupied with a recipient with whom the adult or family does not form a family and who is an ascendant or descendant in the direct line, a brother or a sister.

In cases not otherwise referred to in the first paragraph, an independent adult or a family shares a dwelling unit if the independent adult or family occupies a room with an independent adult or a family.

A dwelling unit is shared even if the housing expenses are not actually shared.

22.5. Despite section 22.4, a dwelling unit is not shared in respect of

(1) a recipient in charge of a foster family, foster home or an intermediate resource and the persons the recipient is in charge of, and in respect of those persons between themselves;

(2) persons who have taken refuge in a shelter for victims of violence;

(3) the recipient in charge of a foster home under a services contract entered into with the Minister of Public Security to facilitate the rehabilitation of persons placed in the foster home, except if the recipient shares the dwelling unit with a person other than persons required to dwell therein; or

(4) an independent adult who occupies a room with another person in a community residence not referred to in paragraph 3 that offers room and board and assistance or rehabilitation services for a consideration.”.

10. Section 23 is amended by adding the following paragraphs:

“The basic benefit is \$433 or \$725, as the case may be, if the independent adult or an adult member of the family shares a dwelling unit, within the meaning of section 22.3, with his or her father or mother who is not a recipient under the Employment-Assistance Program.

The second paragraph does not apply

(1) if the sharing of the dwelling is in a dwelling unit referred to in section 22.5, in the cases and on the conditions provided for therein;

(2) if the capacity for employment of the independent adult or an adult member of the family is severely limited;

(3) if the family includes only one adult and at least one dependent child;

(4) if the sharing of the dwelling is necessary to enable the independent adult or a member of the family to provide to or to receive from the father or mother constant care required by reason of a disease or disability; or

(5) if the adult establishes that the father or mother receives the maximum amount of the monthly guaranteed income supplement under the Old Age Security Act (R.S.C. 1985, c. O-9).”.

11. Section 24 is amended by replacing “123” at the end of the second paragraph by “22.4”.

12. Section 25 is amended by replacing the first sentence by the following:

“**25.** The basic benefit of an adult referred to in section 7 is \$146 or, in the cases and on the conditions provided for in the second paragraph of section 23, \$96.”.

13. Section 29 is revoked.

14. The following is inserted after section 31:

“**31.1.** For the purposes of the first paragraph of section 26 of the Act, a manpower and employment agreement entered into with the Government of Canada is an agreement entered into with that government within the framework of its Aboriginal Human Resources Development Strategy.”.

15. Section 40 is amended by inserting “within the meaning of section 3.1” after “resides”.

16. Sections 71 and 72 are revoked.

17. Section 77 is amended by inserting “or financial assistance granted as such to a Native person” after “allowance” in the fourth paragraph.

18. Subdivision 4 of Division III of Chapter III, comprising sections 81 to 83, is revoked.

19. Section 84 is amended

(1) by replacing everything that follows “receive” in paragraph 6 by “under section 130, without taking into account, where applicable, the deduction provided for in paragraph 1 of section 84.1.”;

(2) by adding “or granted as such to a Native person” at the end of paragraph 15;

(3) inserting “or financial assistance granted as such to a Native person” after “allowance” in paragraph 16;

(4) by replacing “123” in paragraph 19 by “22.4”.

20. The following is inserted after section 84:

“**84.1.** To calculate the benefit in the case of an adult referred to in the second paragraph of section 23, the following resources shall be reduced by an amount that may not exceed a total of \$100, or \$50 in the case of an adult referred to in section 7, in the following order:

(1) the amount of the parental contribution that the adult is deemed to receive under section 130;

(2) the support paid to that adult by his or her father or mother or, as the case may be, the amount by which that support exceeds the amount excluded therefrom pursuant to paragraph 6 of section 84;

(3) income from room or board received from the father or mother, calculated in accordance with section 94.”.

21. Section 87 is amended

(1) by inserting “or financial assistance granted as such to a Native person” after “allowances” in the part preceding subparagraph 1 of the first paragraph;

(2) by deleting the second paragraph.

22. The following is inserted after section 102:

“**102.1.** Despite section 102, an adult referred to in paragraph *a*, *b* or *c* of section 21 of the Regulation respecting the selection of foreign nationals (R.R.Q.,

1981, c. M-23.1, r.2) is deemed to possess, for a period of 90 days following arrival in Canada, an amount of liquid assets that may not be less than the amount prescribed and applicable on the date of issue of the adult’s selection certificate, in accordance with the financial capacity factor provided for in Schedule A to that Regulation and in Schedule 1 to the Regulation respecting the weighting applicable to the selection of foreign nationals, made by Minister’s Order dated 9 September 1996.

An adult referred to in subsection 1 of section 75 of the Immigration and Refugee Protection Regulations, other than a skilled worker referred to in section 76(1) *b ii*, made under subsections 12(2) and 14(2) of the Immigration and Refugee Protection Act (Statutes of Canada, 2001, c. 27), is deemed to possess, for a period of 90 days following arrival in Canada, an amount of liquid assets that may not be less than the amount prescribed pursuant to the first paragraph and applicable on the date of issue of the adult’s visa.

The exclusions of liquid assets provided for in sections 103 to 113 do not apply to the amount of liquid assets that an adult is deemed to possess pursuant to this section.”.

23. Section 110 is amended by inserting “or granted as such to a Native person” after “program” in paragraph 5.

24. Subdivision 8 of Division III of Chapter III, comprising sections 122 to 126, is revoked.

25. Section 128 is amended

(1) by inserting “, within the meaning of section 3.1,” after “resides” in subparagraph *b* of paragraph 1;

(2) by inserting “, within the meaning of section 3.1,” after “resides” in subparagraph *b* of paragraph 2.

26. Section 131 is amended by adding the following paragraph:

“In accordance with the second paragraph of section 15 of the Act respecting income support, employment assistance and social solidarity, where an independent adult’s or family’s application for eligibility under the program is refused for one of the reasons set out in sections 9 to 11, no benefit may be granted for that month. A new application for eligibility under the program must be made but may be accepted only as of the first day of the month following the refusal and the rules set out in sections 9 to 11 apply to that other application.”.

27. Section 136 is amended by striking out “, including the special benefits provided for in section 71.”.

28. Section 153 is amended by inserting the following paragraph after the first paragraph :

“In addition, the measure shall cease to apply where the adult is a Native person receiving financial assistance granted as an employment-assistance allowance or reimbursement of additional expenses or where the adult agrees with the authority designated in an agreement referred to in section 1.1 on another activity to be engaged in.”.

29. Section 154 is amended by inserting “or financial assistance granted as such to a Native person” after “employment-assistance allowance” in paragraph 2.

30. Section 155 is amended by replacing “An adult not residing” in the first paragraph by “For the purposes of subparagraph 1 of the second paragraph of section 68 of the Act respecting income support, employment assistance and social solidarity, the residence of an adult is the place of principal residence. However, an adult whose principal residence is not”, and by replacing “he” in the first and second paragraphs by “the adult”.

31. Section 165 is replaced by the following :

“**165.** A child in a class other than the classes referred to in subparagraph 2 of the second paragraph of section 68 of the Act respecting income support, employment assistance and social solidarity is not a dependant.”.

32. Section 166 is replaced by the following :

“**166.** A child whose principal residence is not in Québec is not a dependant.”.

33. Section 175 is amended

(1) by replacing “item *b* in paragraph 3 of section 79.3 of the Act, the amount of last resort” in the first paragraph by “subparagraph *b* of paragraph 3 of section 79.3 of the Act, the amount of”;

(2) by striking out “last resort” in subparagraph 1 of the second paragraph;

(3) by replacing “section 311.1” in subparagraph 1 of the second paragraph by “sections 311.1 and 311.2”.

34. The following is inserted after section 176:

“**176.0.1.** For the purposes of the first paragraph of section 79.5 of the Act, if the adult or the adult’s spouse has, for the year, received child support for a dependent child, the total net income of the family is reduced by the lesser of

(1) the amount by which the aggregate of the child support amounts received in the year and included in computing total net income under section 79.3 of the Act exceeds the aggregate of the amounts that are deductible as repayment of support payments in the year under section 336.0.4 of the Taxation Act if, from the 1997 taxation year, the text of that section enacted by subparagraph *b* of paragraph 5 of section 79.3 had applied; and

(2) \$1,200.00.”.

35. Section 176.1 is amended by deleting the second paragraph.

36. Section 176.3 is amended by striking out “last resort” after “under a”.

37. Section 184.1 is amended by inserting the following paragraph after the first paragraph :

“A person is also not required to repay the amount of the benefit determined for a given month, pursuant to section 23 or 25, taking into account the fact that the person lived with his or her father or mother who was a recipient under the Employment-Assistance Program, where the benefits of the father or mother are subsequently claimed in their entirety for that month. The same applies where the amount of the benefit was determined following an erroneous declaration by one of the parents in respect of the amount of income received under the Old Age Security Act.”.

38. Section 190 is replaced by the following :

“**190.** For the purposes of section 117 of the Act, the Minister shall withhold the amount of the advance payment provided for in sections 82.1 and 82.2 of the Act, up to 33 $\frac{1}{3}$ % of the payment or, if the recoverable amount is due to misrepresentation, the entire amount.”.

39. The following is added after section 216:

“**217.** Sections 71 and 72, as they read on 30 November 2004, apply until 30 September 2005, in the cases and on the conditions provided for therein, to a family receiving a special benefit in November 2004, as long as the family continues, without interruption, to be a recipient under the Employment-Assistance Program and to meet the requirements entitling the family to the special benefit.

For the purposes of the first paragraph, the family referred to in section 12 is a recipient under the Employment-Assistance Program for the period referred to therein.

218. Section 102.1 applies to an application for eligibility under the Employment-Assistance Program filed on or after 1 December 2004, even if the date of arrival of the adult in Canada is prior to that date. Until 1 March 2005, those provisions do not apply if the adult is a recipient under the Employment-Assistance Program on 1 December 2004 and remains a recipient without interruption.”.

40. The provisions of sections 30 and 32 have effect from 1 January 2003, those of sections 33 and 36 have effect from 1 November 2000 and those of sections 34, 35 and 37 have effect from 1 January 2002.

41. Until 1 January 2005, the second paragraph of section 7 of the Regulation respecting income support, as amended by section 6 of this Regulation, shall be read as if the reference to “22.1 to 23” were a reference to “22.1 to 22.5”.

42. This Regulation comes into force on 1 December 2004, except sections 10 and 12, paragraph 1 of section 19 and sections 20 and 37, which come into force on 1 January 2005, and paragraph 2 of section 21, which comes into force on 1 April 2005.