



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Leean, Secretary

January 5, 2001

The Honorable Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
P.O. Box 8952
Madison, Wisconsin 53708-8952

Dear Representative Grothman:

The Department of Health and Family Services has an emergency rulemaking order in effect that will expire before the emergency rules are replaced by permanent rules unless the effective period of the emergency order is extended. Pursuant to s. 227.24 (2), Stats., I ask the Joint Committee to extend the effective period of the emergency order by 60 days as indicated below. The emergency rules are as follows:

State Supplemental Security Income Payments. The emergency rulemaking order creating rules was published and effective on September 15, 2000, and **will expire on February 11, 2001**, unless extended. Before that date, the Department had no administrative rules governing its administration of Supplemental Security Income state supplemental payments to low income elderly and disabled residents of Wisconsin and their dependent children. Absent an administrative rule authorizing the Department to recoup payments, the Wisconsin Court of Appeals, District II, found that the Department lacked the authority to recoup benefits overpaid to recipients who were ineligible for the benefits or to whom the Department paid an incorrect amount of benefits.

The Department's inability to recover payments made in error was costing the Department about \$10,000 per month. Developing and promulgating permanent administrative rules to address the Court's decision was estimated to require at least 7 months, thereby costing the Department approximately another \$70,000. The Department deemed that unanticipated expense a threat to the public welfare insofar as Wisconsin and federal taxpayers should not be called upon to shoulder the burden of these unanticipated and undeserved expenses. Therefore, the Department promulgated the emergency rule until the Department could promulgate a similar permanent rule.

The Department's emergency rulemaking order provides the Department the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats., and effectively administer

Representative Grothman

January 5, 2001

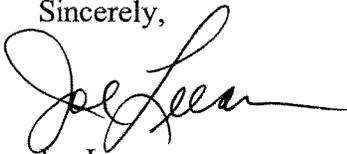
Page 2

both state and federal public welfare funding. Through the rule, the Department can recover taxpayer monies to which SSI recipients were not entitled, pending the promulgation of permanent rules.

Replacement permanent rules were sent to the Legislative Council for review on October 25, 2000 and were the subject of a public hearing held on December 13, 2000. The Department intends to send the Legislative Report to the Presiding Officers of the Senate and Assembly by January 10, 2001. Consequently, the Department will not be able to file the rules until at least February 12 for an April 1, 2001, effective date. Therefore, I request an extension of the effective period of the emergency rules by **60 days**, through April 12, 2001. If the effective period of the emergency rules is not extended, in the interim, the Department will not have the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats.

A copy of the emergency rulemaking order is attached to this letter. If you have any questions about the rules, you may contact Kathy Luedtke, SSI Coordinator in the Division of Supportive Living at 266-6890.

Sincerely,



Joe Lekan
Secretary

Attachments

cc Senator Robson
Senator Fred Risser
Assemblyman Scott Jensen

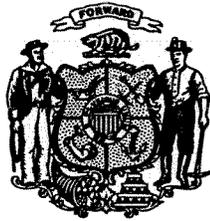
WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-150

AN ORDER to create HFS 79, relating to administration of supplemental security income (SSI), state supplemental payments to low-income elderly and disabled residents of Wisconsin and their dependent children.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

10-25-00 RECEIVED BY LEGISLATIVE COUNCIL.
11-20-00 REPORT SENT TO AGENCY.

RNS:AS;jal;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 00-150

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

What is the statutory authority to decrease a current recipient's payments in order to recoup overpayments?

2. Form, Style and Placement in Administrative Code

In s. HFS 79.60 (title), "Rights" should be lower case.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. HFS 79.10 "ss" should end with a period. Also, "Stats.," should be inserted after "227.11 (2) (a)".

b. In s. HFS 79.20, "Stats.," should be inserted after "49.775,".

c. In s. HFS 79.40 (2) (a), "49,77" should be replaced with "49.77."

d. In s. HFS 79.60, should the citation to s. HA 3.09 (9) (b) be to s. HA (9) (a) instead? Paragraph (b) discusses what the procedure is if the department does not delegate final decision-making authority to the Division of Hearings and Appeals.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. HFS 79.10, “to implement aspects of a program to administer SSI state supplemental payments” should be replaced with a more descriptive phrase or deleted. Also, “SSI” should be defined, spelled out or deleted. Finally, a hyphen should be inserted between “low” and “income.”

b. In s. HFS 79.40 (1), “from an individual” should be replaced with “to an individual.” Also, “a” should be inserted before “larger percentage reduction.”

c. In s. HFS 79.40 (2) (a), what is meant by “collection” and may the department recoup these overpayments absent a court order?

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 49.77 and 49.775, Stats., authorize the Department to administer Supplemental Security Income (SSI) state supplemental payments to low income elderly and disabled residents of Wisconsin and their dependent children. These SSI payments are funded by state general purpose revenue and federal Temporary Assistance for Needy Families (TANF) grant funding in excess of \$140,000,000 per state fiscal year. These payments are distributed monthly to approximately 100,000 beneficiaries and their dependent children. Neither s. 49.77 or 49.775, Stats., direct the Department to develop administrative rules to administer the program.

An unavoidable aspect of the program is the Department's need to periodically recover payments incorrectly made to benefit recipients. Overpayments and incorrect payments occur due to delays in transmission of eligibility and pricing information between the federal Social Security Administration and the Department and are not due to the Department's error or omission. On November 24, 1999, by order of the Wisconsin Court of Appeals, District II, the Department was found, absent administrative rule, to lack the authority to administratively recoup benefits overpaid to recipients who were ineligible for the benefits or to whom the Department paid an incorrect amount of benefits. The Department sought to appeal the decision to the Wisconsin Supreme Court, but recently learned that the Supreme Court will not hear the case. The Department's inability to recover payments made in error will cost the Department about \$10,000 per month. Developing and promulgating permanent administrative rules to address the Court's decision will require at least 7 months, thereby costing the Department approximately another \$70,000. The Department deems this unanticipated expense a threat to the public welfare insofar as Wisconsin and federal taxpayers should not be called upon to shoulder the burden of these unanticipated and undeserved expenses. Therefore, the Department is promulgating this emergency rule until the Department can promulgate a similar permanent rule.

This emergency rule provides the Department with the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats., and to again effectively administer both state and federal public welfare funding. By issuing this rule, the Department will effectively recover taxpayer monies to which recipients were not entitled, pending the promulgation of permanent rules.

ORDER

Pursuant to the authority vested in the Department of Health and Family Services by ss. 49.77, 49.775, 227.11 (2) and 227.24 (1), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 49.77 and 49.775, Stats.

SECTION 1. Chapter HFS 79 is created to read:

Chapter HFS 79

STATE SUPPLEMENTAL SECURITY INCOME PAYMENTS

HFS 79.10	Authority and purpose.
HFS 79.20	Applicability.
HFS 79.30	Definitions.
HFS 79.40	Recovery of incorrectly paid benefits.
HFS 79.50	Waiver of recovery.
HFS 79.60	Appeal rights.

HFS 79.10 Authority and purpose. This chapter is promulgated under the authority of ss 49.77, 49.775 and 227.11 (2) (a), to implement aspects of a program to administer SSI state supplemental payments to low income elderly and disabled residents of Wisconsin and their dependent children. This chapter establishes the basis for the recovery of benefits incorrectly paid to individuals who receive benefits under s. 49.77 or 49.775, Stats., or both, provides for the department's waiver of recovery of incorrectly paid benefits and establishes the appeal right of individuals' from whom the department seeks to recover benefits incorrectly paid to the individual.

HFS 79.20 Applicability. This chapter applies to the department and to individuals receiving benefits under s. 49.77 or 49.775, or both.

HFS 79.30 Definition. In this chapter, "department" means the department of health and family services.

HFS 79.40 Recovery of incorrectly paid benefits. (1) **CURRENT RECIPIENT.** The department shall recover payments incorrectly made under s. 49.77 or 49.775, Stats., from an individual who receives benefits paid under s. 49.77 or 49.775, Stats., or both, by reducing the amount of an individual's payment under s. 49.77 or 49.775, Stats., or both, by no more than 10% until the full amount of the incorrect payment is recovered by the department, unless the individual requests larger percentage deduction.

(2) **FORMER RECIPIENT.** (a) The department shall ask a former recipient to voluntarily repay overpayments the department made under s. 49.77 or 49.775, Stats.

(b) If a former recipient refuses to voluntarily repay the amount specified under sub. (2) and the overpayment is \$100 or more, the department may pursue collection or court action.

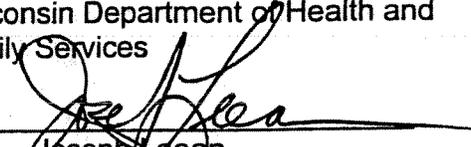
HFS 79.50 Waiver of recovery. The Department may waive recovery of incorrectly paid benefits when the recovery or adjustment is less than \$100.

HFS 79.60 Appeal Rights. The department shall send a notice of adverse administrative action which meets the requirements of ch. 227, Stats., to an individual identifying the months and amounts for which benefits were incorrectly paid and the reason for which the individual was ineligible for the payment. The notice shall include information regarding the individual's right to appeal the Department's decision as provided in ch. HA 3.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health and
Family Services

Dated: September 13, 2000

By: 

Joseph P. Moran
Secretary

SEAL:



State of Wisconsin
Tommy G. Thompson, Governor

JAN 03 2001

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

January 2, 2001

The Honorable Judy Robson, Co-Chair
Joint Committee for the
Review of Administrative Rules
15 South State Capitol
Madison, WI 53702

The Honorable Glenn Grothman, Co-Chair
Joint Committee for the
Review of Administrative Rules
15 North State Capitol
Madison, WI 53702

Dear Senator Robson and Representative Grothman:

The Department of Agriculture Trade, and Consumer Protection is asking the Joint Committee for the Review of Administrative Rules to extend the Department's emergency rule relating to security deposits and carpet cleaning for an additional 60 days, until April 17, 2001. Without this extension the emergency rule will end on February 16, 2001.

This emergency rule was promulgated at the direction of the Joint Committee. As requested by the Joint Committee, the Department repealed the "Note" at the end of Wis. Admin. Code § ATCP 134.06(3)(c) and incorporated the substance of the note into a new section of the rule, § ATCP 134.06(3)(d). The emergency rule was published and became effective on July 20, 2000. A copy of the emergency rule is attached.

The Department submitted a Scope Statement for a permanent rule to the DATCP Board on August 17, 2000, and the Board approved the Scope Statement at that meeting. A copy of the Board minutes approving the Scope Statement is attached.

After the Board approved the Scope Statement, the Department began meeting with members of the primary interest groups to discuss how to resolve the security deposit/carpet cleaning issue. The Department held several meetings in the fall and made progress in its discussions with the interest groups. At the November 15, 2000, JCRAR meeting, the department requested, and the Committee granted, the department's request to extend the emergency rule for 60 days, from December 18, 2000 until February 16, 2001.

Since the November 15th JCRAR meeting, the department has drafted several proposed rule changes and met with representatives from the interest groups on November 21, 2000 and December 21, 2000, to discuss various proposals. The Department expects to meet with the interest groups one more time, in early January 2001, to try to reach a resolution. If the JCRAR extends the emergency rule for 60 days as requested, the Department will have time to meet with the interest groups once more and, if there is progress on the outstanding issues, present a hearing draft rule to the DATCP Board.

The Hon. Judy Robson and the Hon. Glenn Grothman

January 2, 2001

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The Department hopes to present a hearing draft rule to the DATCP Board in February 2001. If the DATCP Board authorizes public hearings on a draft rule, the Department would likely bring a final draft rule to the Board in May or June 2001. If the DATCP Board approves the final draft rule in May or June, the Department would likely refer the final draft rule to the Legislature in June or July 2001. If the Legislature took no action to stop the rule, it would likely be published on September 1 or October 1, 2001.

Thank you for your consideration of our request.

Sincerely,

A handwritten signature in cursive script that reads "Ben Brancel".

Ben Brancel
Secretary

**EMERGENCY ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection hereby
- 2 adopts the following emergency rule to repeal ATCP 134.06(3)(c)(note) and to create
- 3 ATCP 134.06(3)(d), relating to residential rental practices.

**Analysis prepared by the Department of Agriculture,
Trade and Consumer Protection**

Statutory authority: ss. 227.26(2)(b), 93.07, 100.20(2), Stats.
Statutes interpreted: s. 100.20, Stats.

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state landlord-tenant rules contained in ch. ATCP 134, Wis. Adm. Code. These rules affect over 1.5 million Wisconsin residents.

This emergency rule modifies current residential rental practices rules related to security deposit withholding. Under current rules, a landlord may not withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible. A "note" to s. ATCP 134.06(3)(c) also states that a landlord may not withhold from a tenant's security deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant neglect.

On June 21, 2000, the Legislature's Joint Committee for Review of Administrative Rules (JCRAR) found that the "note" to s. ATCP 134.06(3)(c) is actually a rule and directed DATCP to adopt the "note" as an emergency rule. According to s. 227.26(2)(b), Stats., DATCP must promulgate the emergency rule under s. 227.24(1)(a), Stats., within 30 days after the JCRAR directs DATCP to do so. Because the JCRAR has directed DATCP to adopt this emergency rule, DATCP is not required to make any other finding of emergency.

EMERGENCY RULEMAKING ORDER

1 **SECTION 1.** ATCP 134.06(3)(c)(note) is repealed.

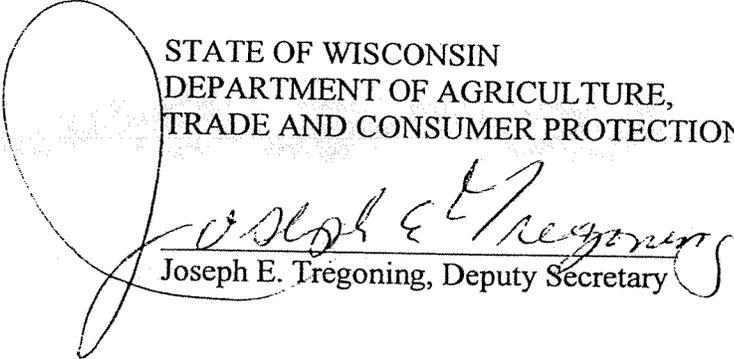
2 **SECTION 2.** ATCP 134.06(3)(d) is created to read:

3 ATCP 134.06(3)(d) A landlord may not withhold from a tenant's security
4 deposit for routine painting or carpet cleaning, where there is no unusual damage
5 caused by tenant abuse.

6 **EFFECTIVE DATE.** The emergency rule contained in this order shall take
7 effect upon publication, and shall remain in effect for 150 days. The department may
8 seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this 11th day of July, 2000.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION


Joseph E. Trégoning, Deputy Secretary



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Attendance Form

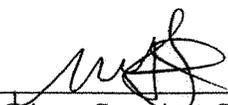
Last Modified : January 1999

January 24, 2001

Room 328 Northwest, State Capitol Building

Accounting for: Public Hearing Executive Session

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT			X
3. Senator HANSEN	X		
4. Senator SCHULTZ	X		
5. Senator COWLES	X		
6. Representative GROTHMAN	X		
7. Representative SERATTI	X		
8. Representative GUNDERSON	X		
9. Representative KREUSER	X		
10. Representative TURNER	X		
Totals	9		1


Maggie Grimm, Committee Clerk



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253

P.O. Box 8952
MADISON, WI 53708-8952
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Attendance Form

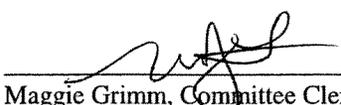
Last Modified : January 1999

January 24, 2001

Room 328 Northwest, State Capitol Building

Accounting for: Public Hearing Executive Session

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT	X		
3. Senator HANSEN	X		
4. Senator SCHULTZ	X		
5. Senator COWLES	X		
6. Representative GROTHMAN	X		
7. Representative SERATTI	X		
8. Representative GUNDERSON	X		
9. Representative KREUSER	X		
10. Representative TURNER	X		
Totals	10	—	—


Maggie Grimm, Committee Clerk