State of Wisconsin

Department of Workforce Development

DWD 12.23 and DWD 56

PUBLIC ASSISTANCE OVERPAYMENT COLLECTION

The Wisconsin Department of Workforce Development proposes an order to repeal s. DWD 56.02(9); to renumber and amend s. DWD 56.04(5)(a); to amend ss. DWD 56.04 (3), 56.04(5)(title), 56.04(5)(b), 56.04(5)(e), and 56.04(5)(f); to repeal and recreate s. DWD 12.23; and to create ss. DWD 56.04(2m), DWD 56.04(5)(a)2., and DWD 56.04(5)(a)3., relating to public assistance overpayment collection and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.155(1m)(d), 49.161, 49.195, and 227.11, Stats.
Statutes interpreted: Sections 49.155, 49.161, 49.195, and 49.85 Stats.
Relevant federal law: 45 CFR 233.20(a)(13), 45 CFR 98.60, 45 CFR 98.65, 45 CFR 98.66(a)

Explanation of agency authority

- Section 49.195, Stats., directs the Department to promptly recover all overpayments of the following: (a) benefits under the former Aid to Families with Dependent Children (AFDC) program; (b) subsidized employment benefits and custodial parent of infant grants under the Wisconsin Works (W-2) program; (c) child care benefits; and (d) W-2 transportation assistance. Section 49.195, Stats., directs the Department to create rules to collect overpayments that have not already been collected under ss. 49.161, Stats., and 49.19 (17), Stats., and to implement administrative warrant and execution and levy procedures as an additional method of collecting overpayments.
- Section 49.161, Stats., requires the Department to collect overpayment of benefits paid to trial job, community service job (CSJ), and transitional placement (W-2T) participants. For current CSJ and W-2T participants, the overpayment is collected by reducing the amount of the individual's monthly benefit payment by no more than 10% if the overpayment was due to client error or administrative error. For trial job participants, the W-2 agency may not recover more than the amount the W-2 agency or the Department paid in wage subsidies for that participant while the participant was ineligible to participate. If a benefit overpayment is the result of an intentional program violation, the Department may deduct the following from the monthly W-2 employment position benefit: (a) for overpayments of less than $300, 10% of the amount of the monthly benefit payment; (b) for overpayments of at least $300 but less than $1,000, $75; (c) for overpayments of at least $1,000 but less than $2,500, $100; and (d) for overpayments of $2,500 or more, $200.
- Section 49.155 (1m)(d), Stats., provides that an individual must satisfy other eligibility criteria established by the Department by rule to be eligible for child care assistance under s. 49.155, Stats.

- Federal regulations require states to collect any AFDC overpayment.
- Federal policy allows only expenses that benefit the program to be charged against a federal grant. This policy requires overpayments of all types to be recovered because overpayments, whether by fraud or error, do not benefit the program.

Summary of proposed rule. A county, tribal governing body, W-2 agency, or the Department shall determine whether a public assistance overpayment has been made and if so, the amount of the overpayment. The county, tribal governing body, W-2 agency, or Department shall send notice of the overpayment at the address of a debtor as it appears on the records of the Department. Documentation that a county, tribal governing body, W-2 agency, or the Department properly mailed the notice to the address of the debtor as it appears on the records of the Department and it was not returned as undeliverable shall be prima facie evidence that notice was delivered and received. The Department shall give the debtor an opportunity for review following the factfinding and review procedure if the debtor received the overpayment under the W-2 program or for a hearing under ch. 227, Stats., if the debtor received an overpayment under the child care or AFDC programs.

Liability shall extend to any parent, nonmarital coparent, or stepparent whose family receives W-2, child care, or AFDC benefits during the period that he or she is an adult member of the same household, but his or her liability is limited to such period. Liability for repayment of the overpayment shall be joint and several. Liability for overpayments caused by administrative error shall be limited to one year prior to the date that the agency or department discovers the error for overpayments determined on or after the effective date of these rules.

The proposed rule duplicates the recoupment procedures in s. 49.161, Stats., and the current s. 12.23 on collecting W-2 employment position overpayments from current W-2 participants.

The proposed rule provides that a debt shall be considered delinquent if the Department does not receive a debtor's payment by the due date 3 times over the life of the debt. A delinquent debt may be subject to warrant and execution, levy, and tax intercept. A delinquent debt retains delinquent status regardless of any future payment on the debt. The department may recover a delinquent debt by more than one means of collection at the same time.

If a debt for repayment of an overpayment is delinquent and no appeal rights are pending, Section 49.195 (3m), Stats., authorizes the Department to issue a warrant that is considered in all respects a final judgment constituting a perfected lien upon the debtor's right, title, and interest in all real and personal property located in the county in which the warrant is entered. The Department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats, when a warrant has been issued, before property is seized, and before seized property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the Department is proceeding against and mistaken identity of the debtor. The Department may not withdraw the warrant based on a hearing request when a warrant is issued or cease enforcement before property is seized based on a hearing request. If a hearing is requested after property is seized, the seized property may not be sold before the hearing decision is issued or the hearing request is withdrawn. When the amount set forth in the warrant and all costs due the Department have been

paid, the Department shall issue a satisfaction of the warrant. Statutory exemption rights in ss. 815.18 (3) and 815.20, Stats., apply to this administrative warrant and execution procedure.

If a debt for repayment of an overpayment is delinquent and no appeal rights are pending, Section 49.195 (3n), Stats., authorizes the Department to levy on personal property belonging to the debtor, including wages due and deposits in a financial institution account. The Department shall first send a notice of intent to levy at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy. Next, the Department shall serve the levy upon the debtor and 3rd party in possession of property to which the debtor has rights. The debtor may appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. The appeal shall be limited to questions of prior payment and mistaken identity of the debtor. The levy is not stayed pending an appeal where property is secured through the levy.

Within 20 days from the service of the levy upon a 3rd party, the 3rd party shall file an answer with the Department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation. The 3rd party shall, upon demand of the Department, surrender the personal property or rights or discharge the obligation to the Department, except that part of the personal property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

If levied personal property that has been surrendered to the Department is not a liquid asset in the form of cash, check, or an equivalent that can be applied to the debt without a sale of the asset, the Department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before surrendered property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the Department is proceeding against and mistaken identity of the debtor. If a hearing is requested, surrendered property may not be sold before the hearing decision is issued or the hearing request is withdrawn.

The debtor is entitled to an exemption from levy of the greater of a subsistence allowance of 75% of the debtor's disposable earnings then due and owing or an amount equal to 30 times the federal minimum hourly wage for each full week of the of the debtor's pay period, an amount equal to 60 times the federal minimum hourly wage for a two-week pay period, or an amount equal to 130 times the federal minimum hourly wage for a monthly pay period. The debtor is entitled to an exemption of the first $1,000 of an account in a depository institution.

Any appeal based on a notice received in a warrant and execution or levy proceeding or a notice of intent to certify a debt for set-off against a state tax refund shall be limited to questions of prior payment of the debt that the Department is proceeding against and mistaken identity of the debtor. The minimum amount that must be due before warrant and execution and levy procedures may be commenced is $300. The Department may waive recovery of an overpayment if the Department has made reasonable efforts to recover the overpayment from the debtor and determines it is no longer cost effective to continue overpayment recovery efforts.

The child care administration rules are also amended to incorporate the general public assistance overpayment rules affecting parents in s. DWD 12.23. The proposed rule provides that a child care administrative agency or the Department shall take all reasonable steps necessary to recover from a parent funds when the parent was not eligible for that level of child care benefit and the overpayment benefited the parent by causing the parent to pay less for child care expenses than the parent otherwise would have been required to pay under child care assistance program requirements, regardless of the reason for the overpayment.

An overpayment to a parent includes excess child care funds paid when there was a change in family eligibility circumstances that was significant enough that it would have resulted in a smaller child care benefit or ineligibility for a child care benefit due to any reason, including the parent failed to report a change or the parent was absent from an approved activity without good cause, while the child was in the care of the provider. The child care worker shall determine good cause if the approved activity is unsubsidized employment. A parent's absence from unsubsidized employment shall be considered good cause if the parent is using employer-approved sick time, personal time, or vacation time and the child is in care for no more than the hours authorized.

The proposed rule clarifies that a parent shall report any change in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days after the change. The agency shall redetermine eligibility in a timely manner following receipt of a parent's report of a change in circumstances and shall also redetermine eligibility at least every 6 months.

The rule on collecting overpayments from child care providers is clarified to state that the provider is responsible for the overpayment when the overpayment benefited the provider by causing the provider to receive more child care assistance than otherwise would have been paid on the family's behalf under child care assistance program requirements and the overpayment did not benefit the parent by causing the parent to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements. Overpayments from providers are collected by making an offset from current or future funds under the Department's control that are payable to the provider of no more than 50% of each payment.

Summary of related federal law. Federal AFDC regulations require states to collect any overpayment. There is no provision on overpayment collection in the federal TANF statute or regulations. Federal public assistance overpayment collection policy regarding benefits provided under the Aid to Families and Children program and programs funded by Temporary Assistance to Needy Families block grants is in the U.S. Department of Health and Human Services, Administration for Children and Families, Program Instruction Transmittal No. TANF-ACF-PI-2000-2 (http://www.acf.dhhs.gov/programs/ofa/pi002.htm). This memo specifies that the requirement for states to recover all remaining AFDC overpayments remains in place and that AFDC overpayments will be recouped from current TANF benefits if the recipient is still receiving cash assistance or through a cash repayment from former recipients. TANF overpayments are also to be recouped from current recipients or through cash repayment from former recipients.

The state child care assistance program receives funding from TANF and the Child Care Development Fund (CCDF). CCDF regulations specifically provide that states shall recover child care payments that are the result of fraud and the payments shall be recovered from the party responsible for committing the fraud. In addition, CCDF regulations provide that any expenditure not made in accordance with statutory provisions, regulatory provisions, or with the approved plan may be disallowed and must be repaid to the federal government. According to staff at the federal Department of Health and Human Services (DHHS), overpayments are not considered to be expended in accordance with the federal CCDF statute or regulations.

In addition, DHHS staff have informed the Department that a similar provision that applies to all federal grant programs also applies to funds received under the CCDF grant. OMB Circular A-87 on Cost Principles for State and Local Governments provides that only costs that benefit a federal grant program may be charged to that program. All overpayments, whether by fraud or error, are not considered to benefit the program and do not meet the federal cost allowability test.

Comparison with rules in adjacent states. Minnesota. All TANF overpayments are recoverable regardless of the reason for the overpayment. All adults are jointly and individually liable. An appeal based on the fact or amount of an overpayment must occur based on the original notice not in an appeal of a recoupment. Recoupment of AFDC and TANF overpayments from current TANF recipients is specifically authorized. AFDC and TANF overpayments, excluding overpayments based on agency error, become judgments by operation of law 90 days following a properly served notice, with the full power of enforcement of a civil judgment. Child care overpayments are recouped from child care assistance or collected through voluntary repayment or civil court action. Child care overpayments are collected regardless of the reason for the overpayment.

Illinois. Recoupment of AFDC and TANF overpayments from current TANF recipients is specifically authorized. Overpayments are collected regardless of reason for overpayment. Child care overpayments are collected by reductions in future payments or public assistance benefits.

Michigan. Overpayments are recouped from benefits of any adults who were a group member when the overpayment occurred or collected through voluntary repayment agreements or court action. All TANF monthly benefit overpayments must be repaid regardless of the reason for the overpayment. A person who is determined to have received child care benefits as a result of the misrepresentation of his or her circumstances may be required to reimburse the agency for any benefits received for which the person was not eligible. A child care provider who bills the agency for more child care than he or she actually provided may be required to reimburse the agency in cash or from current and future provider payments.

Iowa. Overpayments are collected through voluntary repayment, recoupment, and tax intercept. An appeal is allowed based only on the first notice of overpayment. Overpayments are collected regardless of the reason for the overpayment.

Summary of factual data and analytical methodologies. The initial proposed rules provided that overpayments caused by administrative error be collected in the same manner as any other overpayment because s. 49.195 (3), Stats., directs the Department to collect all public assistance overpayments. An amendment to 1999 Wisconsin Act 9 that would have prohibited the Department from collecting overpayments caused by administrative error was vetoed by the

Governor. In addition, federal policy provides that expenditures not in accordance with program requirements may not be charged against a federal grant. In response to public hearing comments, the Department proposes to limit liability for W-2 and child care overpayments caused by administrative error to one year prior to the discovery of the error for overpayments established after the effective dates of these rules. Limiting liability to one year before discovery of the overpayment is also the state policy for collection of food stamp overpayments caused by administrative error.

The warrant and execution and levy procedures are outlined in statute and are similar to the warrant and execution and levy procedures used by the Unemployment Insurance program to collect benefit overpayments and delinquent taxes. The proposed rule adds the required hearings and sets the threshold for use of the procedure. The total receivables that will be subject to warrant and execution and levy procedures is $25 million, with approximately $20.4 million in AFDC receivables, $1.5 million in general W-2 receivables, and $3.7 million in child care receivables.

The notice and hearing requirements in the warrant and execution and levy sections were designed to comply with s. 49.195 (3s), Stats., which requires a hearing or review (1) after a warrant has been issued and before the warrant has been executed; (2) before property is levied under both the warrant and execution and levy procedures; and (3) after levied property is seized and before it is sold. In addition, Section 49.195 (3), Stats., directs that the Department's collection rules include notification procedures similar to those established for child support collections. According to the Legislative Fiscal Bureau summary for 1999 Wisconsin Act 9 (page 1540), this provision means that notification is required at the following points in the collection process: (a) when the Department first determines that an overpayment has been made; (b) after the Department has issued a warrant that acts as a lien upon the person's right, title and interest in all real and personal property located in the county in which the warrant is entered; (c) after issuing an execution of a warrant or enforcing a levy upon a financial account or other personal property; (d) prior to levy upon real property; and (e) prior to issuing an execution to sell the property.

The proposed rule states that liability for an overpayment extends to any parent, nonmarital coparent, or stepparent during the period that he or she is a member of the household. This provision clarifies that *Richland County Department of Social Services v. McHone*, 95 Wis.2d 108, 288 N.W.2d 879 (Ct. App. 1980) applies only to recovery of aid when an individual receives a windfall under s. 49.195 (1), Stats. The one sentence note following s. 49.195, Stats., that summarizes the case states that "recovery may be had only from a parent who immediately received aid" or the parent whose name was on the benefit check. A reading of the case shows that this holding was based only on the language in sub. (1) that starts "if any parent at the time of receiving aid." This language does not appear in the overpayment collection sections of s. 49.195, Stats., or the proposed rule. Under the proposed rule, in general a parent whose income must be included in determining financial eligibility is jointly and severally liable for an overpayment.

Effect on small business. The proposed rule will affect small businesses that are a third party in possession of or obligated with respect to property or rights to property of a debtor.

Generally, this will be an employer served with a levy to withhold a portion of a debtor's wages. Section 49.195 (3n)(t), Stats., provides that a third party is entitled to a levy fee of $5 for each levy in any case where property is secured through the levy.

Except as employers of debtors, private W-2 agencies will not be affected by the rule because the additional warrant and execution and levy collection procedures in the rule will be implemented by the Department and not W-2 agencies.

The rule adds clarifying language on collecting overpayments from child care providers but the additional language is based on current policy.

Anticipated costs incurred by private sector. The proposed rule will not have a significant fiscal effect on the private sector.

SECTION 1. DWD 12.23 is repealed and recreated to read:

DWD 12.23 Recovery of overpayments. (1) DEFINITIONS. In this section:

(a) "Administrative error" means an error committed by an agency or the department in determining benefits given under s. 49.148, 49.155, 49.157, or 49.19, Stats., that results in an overpayment.

(b) "Client error" means an error caused by an individual who is a member of a W-2 or AFDC group reporting incorrect information or failing to report information due to misunderstanding or mistake that results in an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats.

(c) "Complies with the payment schedule" as used in s. 49.195 (3m)(h), Stats., means the debtor submits each payment due on an overpayment so that it is received by the department by the due date every month over the life of the debt.

(d) "Debtor" means a liable person who received an overpayment of benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., and has not repaid it in full.

(e) "Disposable earnings" means that part of the earnings of any debtor after the deduction from those earnings of any amounts required by law to be withheld, any life, health, dental or similar type of insurance premiums, union dues, any amount necessary to comply with a court order to contribute to the support of minor children, and any levy, wage assignment, or garnishment executed prior to the date of a levy under this section.

(f) "Intentional program violation" means an individual who is a member of a W-2 or AFDC group intentionally made a false or misleading statement or misrepresented, concealed, or withheld facts that resulted in an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats. An intentional program violation may be determined based on an administrative hearing, a court finding, a signed waiver of an administrative hearing for an alleged intentional program violation, or a consent agreement in lieu of prosecution based on the same facts or events as the intentional program violation.

(g) "Overpayment" or "debt" means any benefit or payment received under s. 49.148, 49.155, 49.157, or 49.19, Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation.

(h) "Recoupment" means the process of repayment of an overpayment by the department withholding a portion of a W-2 participant's grant under s. 49.148, Stats.

(2) OVERPAYMENT DETERMINATION AND NOTICE. (a) A county, tribal governing body, W-2 agency, or the department shall determine whether an overpayment has been made under s. 49.148, 49.155, 49.157, or 49.19, Stats., and if so, the amount of the overpayment.

(b) The county, tribal governing body, W-2 agency, or department shall send notice of the overpayment at the address of a debtor as it appears on the records of the department. Documentation that a county, tribal governing body, W-2 agency, or the department properly mailed the notice to the address of the debtor as it appears on the records of the department and that it was not returned as undeliverable shall be prima facie evidence that notice was delivered and received.

(c) The notice shall include the reason for the overpayment, the time period in which the overpayment occurred, the amount of the overpayment, and notice of the right to appeal the overpayment determination.

(d) The department shall give the debtor an opportunity for review following the procedure specified under s. 49.152 (2), Stats., if the debtor received the overpayment under s. 49.148 or 49.157, Stats., or for a hearing under ch. 227, Stats., if the debtor received an overpayment under s. 49.155 or 49.19, Stats.

(3) LIABILITY. (a) Liability shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., during the period that he or she is an adult member of the same household, but his or her liability is limited to such period. For the purpose of determining liability for an overpayment of a child care subsidy under s. 49.155, Stats., "parent" has the meaning given in s. 49.155 (1)(c), Stats.

(b) Liability for repayment of an overpayment shall be joint and several.

(c) Liability for overpayments caused by administrative error shall be limited to one year prior to the date that the agency or department discovers the error for overpayments determined on or after "the effective date of this section [revisor inserts date]."

(4) SIMULTANEOUS COLLECTION. A county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time.

(5) RECOUPMENT FROM CURRENT W-2 PARTICIPANTS. (a) *Administrative error and client error.* 1. If any overpayment of benefits paid under s. DWD 12.18 (1)(b) or (c) is due to administrative error or client error, the W-2 agency or the department shall recoup the overpayment from a debtor who continues to receive benefits under s. DWD 12.18 (1)(b) or (c) by reducing the amount of the benefits amount by no more than 10%.

2. The debtor may make a voluntary repayment in addition to the amount withheld from the benefit under subd. 1.

3. The county, tribal governing body, or W–2 agency shall ask a debtor who has received an overpayment to voluntarily repay the overpayment. If the debtor fails to pay voluntarily, the county, tribal governing body, or W–2 agency shall refer the debt to the department for further collection efforts.

(b) *Overpayments caused by intentional program violations.* If an overpayment of benefits under s. DWD 12.18 (1)(a), (b), or (c), is the result of an intentional violation of ss. 49.141 to 49.161, Stats., or this chapter, the W–2 agency or the department shall recoup the overpayment from the debtor by deducting an amount from the debtor's benefits received under s. DWD 12.18 (1)(a), (b), or (c) until the overpayment is recovered. The amount to be deducted each month may not exceed the following:

1. For intentional program violations resulting in an overpayment that is less than $300, the amount to be deducted may not exceed 10% of the monthly benefit payment.

2. For intentional program violations resulting in an overpayment that is at least $300 but less than $1,000, the amount to be deducted may not exceed $75.

3. For intentional program violations resulting in an overpayment that is at least $1,000 but less than $2,500, the amount to be deducted may not exceed $100.

4. For intentional program violations resulting in an overpayment that is $2,500 or more, the amount to be deducted may not exceed $200.

(6) TRIAL JOB OVERPAYMENTS. The W–2 agency shall recover any overpayment of benefits paid under s. DWD 12.18 (1)(a) from the debtor. The W-2 agency may not recover more than the amount that the W-2 agency or the department paid in wage subsidies for the debtor while the debtor was ineligible to participate under s. DWD 12.16 (2). The W–2 agency shall ask a former participant in a trial job who received overpayments to voluntarily repay the

overpayment. If a former participant does not voluntarily repay the overpayment, the W–2 agency shall refer the debt to the department for further collection action.

(7) EFFECT OF RESTITUTION PAYMENTS. A debtor's payments to the department as part of a restitution agreement under s. 973.20, Stats., arising out of the facts or events that are the basis for the overpayment owed to the department shall be applied to the liability owed to the department, but a debtor's completion of probation or fulfillment of the restitution agreement shall not limit or impair the ability of the department to collect any remaining balance on the debt.

(8) DELINQUENCY. A debt shall be considered delinquent if the department does not receive a debtor's payment by the due date 3 times over the life of the debt. A delinquent debt may be subject to warrant and execution under s. 49.195 (3m), Stats.; levy under s. 49.195 (3n), Stats.; setoff against a refund under ss. 49.85 and 71.93, Stats.; and other authorized collection methods. The department may recover a delinquent debt by more than one means of collection at the same time. A delinquent debt retains delinquent status regardless of any future payment on the debt.

Note: The limitation on using warrant and execution and levy only when a debtor has not complied with the payment schedule 3 times is not required by statute. Because the department is limiting the use of warrant and execution and levy to debtors who have not complied with a payment schedule, the withdrawal of a warrant when the debtor does comply with the payment schedule under s. 49.195 (3m) (h), Stats., will not occur.

(9) WARRANT AND EXECUTION UNDER SECTION 49.195 (3m), STATS. (a) *Creation of lien*. 1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending and the time for requesting a review has expired, the department may issue a warrant directed to the clerk of circuit court of any county.

2. The clerk of circuit court shall enter in the judgment and lien docket the name of the debtor named in the warrant, the amount for which the warrant is issued, and the date on which the clerk entered the information.

3. The department shall pay the fees required under s. 814.61 (5), Stats., for entering the warrant and shall collect the fees from the debtor named in the warrant when satisfaction or release is presented for entry.

4. A warrant issued under subd. 2. shall be considered in all respects a final judgment constituting a perfected lien upon the debtor's right, title, and interest in all real and personal property located in the county in which the warrant is entered.

5. The department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., when a warrant has been issued. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The department may not withdraw a warrant based on a request for hearing.

(b) *Execution of the warrant*. 1. After the warrant is issued and no review or appeal rights under par. (a)4. are pending and the time for requesting a review has expired, the department may file an execution with the clerk of circuit court for filing with the sheriff of the county, commanding the sheriff to execute the warrant and sell sufficient real and personal property of the debtor to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue of the warrant within 90 days after receipt of the warrant. The execution may not command the sheriff to levy upon or sell any property that is exempt from execution under ss. 815.18 (3) and 815.20 , Stats.

2. The department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before property is seized. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The department may not cease enforcement or seizure based on a request for hearing.

3. The department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before seized property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. If a hearing is requested, the department shall notify the sheriff that seized property may not be sold before the hearing decision is issued or the hearing request is withdrawn.

(c) *Satisfaction of the warrant*. When the amount set forth in the warrant and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of

the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the person named in the warrant.

(10) LEVY UNDER SECTION 49.195 (3n), STATS. (a) *Definition*. In this subsection, "personal property" means all tangible and intangible property and rights to such property that is not real estate, including compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise; periodic payments received pursuant to a pension or retirement program; rents; proceeds of insurance; contract payments; stock and bonds; and accounts in financial institutions.

(b) *Notice prior to levy*. 1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending and the time for requesting a review has expired, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.

2. The department shall make the demand for payment and give notice to the debtor at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance, at the address of the debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including interest and penalties, and the name of the debtor who is liable for the debt.

3. The debtor's refusal or failure to accept or receive the notice does not prevent the department from making the levy.

4. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy.

(c) *Service of levy and review when property levied.* 1. The department may collect the debt and the expenses of the levy by levy upon any personal property belonging to the debtor.

2. The department shall serve the levy upon the debtor and any 3rd party in possession of or obligated with respect to property or rights to property that is subject to levy by personal service or by any type of mail service that requires a signature of acceptance as provided in s. 49.195 (3n) (m), Stats. The debtor or 3rd party's failure to accept or receive service of the levy does not invalidate the levy.

3. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. The appeal shall be limited to questions of prior payment of the debt that the department is

proceeding against and mistaken identity of the debtor. The levy is not stayed pending an appeal where property is secured through the levy.

(d) *Third-party response*. 1. Within 20 days from the service of the levy upon a 3rd party, the 3rd party shall file an answer with the department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation.

2. Any person in possession of or obligated with respect to personal property or rights to personal property that is subject to levy and upon which a levy has been made shall, upon demand of the department, surrender the personal property or rights or discharge the obligation to the department, except that part of the personal property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

(e) *Appeal rights before surrendered property is sold*. If levied personal property that has been surrendered to the department is not a liquid asset in the form of cash, check, or an equivalent that can be applied to the debt without a sale of the asset, the department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before surrendered property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. If a hearing is requested, surrendered property may not be sold before the hearing decision is issued or the hearing request is withdrawn.

(f) *Exemption rights*. 1. The debtor is entitled to an exemption from levy of the greater of the following:

a. A subsistence allowance of 75% of the debtor's disposable earnings then due and owing.

b. An amount equal to 30 times the federal minimum hourly wage for each full week of the debtor's pay period.

c. An amount equal to 60 times the federal minimum hourly wage for a two-week pay period.

d. An amount equal to 130 times the federal minimum hourly wage for a monthly pay period.

2. The first $1,000 of an account in a depository institution is exempt from any levy to recover a benefit overpayment.

(g) *Proceeds*. 1. The department shall apply all money obtained under this subsection first against the expenses of the proceedings and then against the liability for which the levy was made and any other liability owed to the department by the debtor.

2. Whenever the value of any personal property that has been levied upon under this subsection is not sufficient to satisfy the claim of the department, the department may levy upon any additional personal property of the debtor until the debt and expenses of the levy are fully paid.

3. The department may refund or credit any amount left after the applications under subd. 1., upon submission of a claim for that amount and satisfactory proof of the claim, to the person entitled to that amount.

(11) WARRANT AND EXECUTION, LEVY, AND TAX INTERCEPT APPEAL ISSUES. Any appeal based on a notice in subs. (9) and (10) or a notice of intent to certify a debt for set-off against a state tax refund under s. 49.85, Stats., shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor.

(12) THRESHOLD FOR WARRANT AND EXECUTION AND LEVY. The minimum amount that must be due before collection proceedings under subs. (9) and (10) may be commenced is $300.

(13) WAIVER. The department may waive recovery of an overpayment under this section if the department has made reasonable efforts to recover the overpayment from the debtor and determines it is no longer cost effective to continue overpayment recovery efforts.

SECTION 2. DWD 56.02 (9) is repealed.

SECTION 3. DWD 56.04 (2m) is created to read:

DWD 56.04 (2m) REPORTING CHANGE IN ELIGIBILITY. A parent shall report any change in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days after the change.

SECTION 4. DWD 56.04 (3) is amended to read:

DWD 56.04 (3) A child care administrative agency shall redetermine parent need for service and eligibility <u>at all of the following times:</u>

a. In a timely manner following receipt of a parent's report of a change in circumstances affecting his or her eligibility.

b. ~~at~~ At least every 6 months.

SECTION 5. DWD 56.04 (5) (title) is amended to read:

DWD 56.04 (5) ~~RECOUPMENT~~ OVERPAYMENT RECOVERY AND SANCTIONS.

SECTION 6. DWD 56.04 (5) (a) is renumbered DWD 56.04 (5)(a)1. and as renumbered is amended to read:

DWD 56.04 (5)(a)1. A child care administrative agency or the department shall take all reasonable steps necessary to ~~recoup or~~ recover from a parent funds paid to a child care provider or to that parent when the parent was not eligible for that level of child care benefit and the overpayment benefited the parent by causing the parent to pay less for child care expenses than the parent otherwise would have been required to pay under child care assistance program requirements, regardless of whether the overpayment was the result of administrative error, client error, or intentional program violation. Section DWD 12.23 shall apply to overpayment collection from a parent under this section.

SECTION 7. DWD 56.04 (5)(a)2. and DWD 56.04 (5)(a)3. are created to read:

DWD 56.04 (5)(a)2. An overpayment shall include excess child care funds paid when there was a change in family eligibility circumstances that was significant enough that it would have resulted in a smaller child care benefit or ineligibility for a child care benefit due to any reason, including the following:

a. The parent failed to report a change in circumstances that may affect his or her eligibility within 10 days after the change.

b. The parent was absent from an approved activity under s. 49.155 (1m)(a), Stats., without good cause, while the child was in the care of the provider.

DWD 56.04 (5)(a)3. The child care worker shall determine good cause under subd. 2.b. if the approved activity is unsubsidized employment. A parent's absence from unsubsidized employment shall be considered good cause if the parent is using employer-approved sick time, personal time, or vacation time and the child is in care for no more than the hours authorized.

SECTION 8. DWD 56.04 (5) (b) is amended to read:

DWD 56.04 (5) (b) A child care administrative agency shall take all reasonable steps necessary to recoup or recover from a provider any overpayments made for child care services for which the provider was responsible or overpayments caused by administrative error that benefited the provider. A provider shall be responsible for an overpayment if both of the following criteria are satisfied:

1. The overpayment benefited the provider by causing the provider to receive more child care assistance than otherwise would have been paid on the family's behalf under child care assistance program requirements.

2. The overpayment did not benefit the parent by causing the parent to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements.

SECTION 9. DWD 56.04 (5)(e) is amended to read:

DWD 56.04 (5)(e) If the provider has not repaid an overpayment, the child care administrative agency or department may recover the overpayment by making an offset from current or future funds under its control that are payable to the provider of no more than 50% of each payment.

SECTION 10. DWD 56.04 (5)(f) is amended to read:

DWD 56.04 (5)(f) If the department refuses to issue payment based on a provider's violation of a ~~a~~ requirement in this chapter, the provider may not hold the parent liable for payment other than the copayment and any amount that the parent agreed to above the department's maximum reimbursement rate if the parent relied on an approved authorization for care for his or her child to receive care from the provider.

SECTION 11. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.