

CR 93-215

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to adoption assistance for families adopting children with special needs were duly approved and adopted by this Department on May 27, 1994.

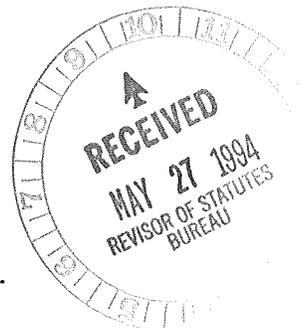
I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 27th day of May, 1994.



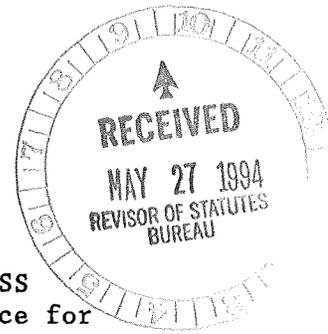
SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services



8-1-94

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING, AMENDING AND CREATING RULES



To repeal HSS 50.04(6) and Note #1 and 50.05(1)(c); to amend HSS 50.05(1)(b); and to create HSS 50.065, relating to adoption assistance for families adopting children with special needs.

Analysis Prepared by the Department of Health and Social Services

This order revises the Department's rules for providing financial and medical assistance to persons who adopt children who have special needs. Because the children have special needs, it is difficult to place them in adoptive homes. Adoption assistance helps make adoption of these children possible.

The Department's rules for the adoption assistance program were generally revised effective October 1, 1992 to clarify certain provisions, make the rules consistent with federal government conditions for receipt of federal financial participation and, pursuant to a change in federal government policy and an adjustment made in the state budget, provide for paying adoption assistance on placement of the child rather than when the adoption is final.

These amendments to rules for the adoption assistance program add an appeals process for adoptive parents which closely follows a federal policy directive stating the minimum conditions under which an appeal may create eligibility for adoption assistance after an adoption. The amendments also modify s. HSS 50.05(1) on the monthly payment of assistance to make the subsection consistent with federal requirements for approval of the Wisconsin Title IV-E (Foster Care and Adoption Assistance) State Plan. A change in the amount of adoption assistance would be permitted when approved by both the Department and the adoptive parents.

The Department's authority to repeal, amend and create these rules is found in s. 48.975(5), Stats. The rules interpret s. 48.975, Stats.

SECTION 1. HSS 50.04(6) and Note #1 are repealed.

SECTION 2. HSS 50.05(1)(b) is amended to read:

HSS 50.05(1)(b) The amount of adoption assistance shall be the total ~~computed maintenance~~ monthly adoption assistance payment minus the amount of the adoptive child's unearned income from other sources as indicated on the adoption assistance agreement under s. HSS 50.06 or as revised by an amendment to the adoption assistance agreement signed by both the adoptive parent or parents and the department.

SECTION 3. HSS 50.05(1)(c) is repealed.

SECTION 4. HSS 50.065 is created to read:

HSS 50.065 APPEAL PROCESS. (1) BEFORE ADOPTION IS FINAL. If an applicant for adoption assistance is not satisfied with the action taken by the department on the application or if a prospective adoptive parent who has been approved for or is receiving adoption assistance is not satisfied with the conditions governing the award, the applicant or prospective adoptive parent, prior to the adoption being declared final by the court, may request a review of the decision by the division administrator or designee or may appeal the decision under ch. 227, Stats., to the department's office of administrative hearings.

Note: A request for review of a decision should be addressed to the Administrator, Division of Community Services, P.O. Box 7851, Madison, WI 53707. A request for a hearing should be addressed to the Office of Administrative Hearings, P.O. Box 7875, Madison WI 53707.

(2) AFTER ADOPTION IS FINAL. An adoptive parent, after an adoption has been declared final by a court, may appeal either of the following under ch. 227, Stats., to the department's office of administrative hearings:

(a) A decision of the department before the adoption became final not to approve an application for adoption assistance or a decision of the department before the adoption became final relating to the amount of the adoption assistance, provided that:

1. The conditions of s. HSS 50.03 for eligibility for adoption assistance existed at the time the adoption became final;

2. One of the following circumstances occurred:

a. Facts regarding the child, the child's biological family or the child's background that were relevant to the proposed adoption were known to the adoption worker who served as the child's guardian and who represented the department which placed the child for adoption, to another agency authorized to place children for adoption and which placed the child for adoption or to an American Indian tribal agency in this state that was guardian of the child and that placed the child for adoption, but were not presented to the adoptive parents by the adoption agency or by another source, such as the child's physician or the agency that originally placed the child for foster care, before the adoption became final;

b. Adoption assistance was denied based upon a means test of the adoptive family;

c. The determination by the department that the child was ineligible for adoption assistance was erroneous; or

d. The adoptive parents were not advised by the adoption agency or by another source, such as a social worker or another adoptive parent, about the availability of adoption assistance and had not previously adopted with adoption assistance; and

3. It has been less than 3 years since the adoptive parents knew or reasonably should have known of the circumstance which is the basis for the hearing request under subd. 2; or

(b) The failure of the department to comply with a condition of the adoption assistance agreement under s. HSS 50.06, provided that the request is initiated within one year after the failure began.

Note: A request for a hearing should be addressed to the Office of Administrative Hearings, P.O. Box 7875, Madison WI 53707.

The repeals and rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Dated: May 27, 1994

By: 
Gerald Whitburn
Secretary

SEAL:

