

NOV 29 2000

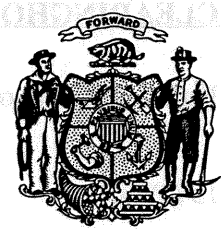
LCRC FORM 2

NOV 30 2000

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)]

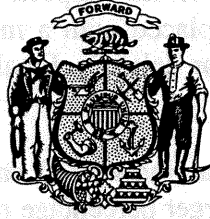
Comment Attached YES NO

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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?

TRANSMITTAL TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

PROPOSED RULES OF THE DEPARTMENT OF HEALTH AND FAMILY SERVICE

HFS 79, Wis. Adm. Code

Subject: State Supplemental Security Income Payments

Statutory Authority: Sections 49.77, 49.775 and 227.11 (2), Stats.

Analysis: Reason for Rules, Intended Effects, Requirements

This order creates rules for the Department's administration of Wisconsin's Supplemental Security Income (SSI) state supplemental payments to low income and disabled residents.

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 GPR 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.

The rule proposes to replace an existing emergency rule issued on September 15, 2000. The rule provides the Department with the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats., and to effectively administer both state and federal public welfare funding. Through this rule, the Department will effectively recover taxpayer monies to which recipients were not entitled, pending the promulgation of permanent rules.

Forms (none)

Agency Procedure for Promulgation:

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Names and Phone Numbers of Agency Contacts:

Kathleen Luedtke, SSI Coordinator, Division of Supportive Living, 266-6890

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING RULES

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.

Analysis Prepared by the Department of Health and Family Services

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.

The rule proposes to replace an existing emergency rule issued on September 15, 2000. The rule provides the Department with the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats., and to effectively administer both state and federal public welfare funding. Through 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 and 227.11 (2), 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.

define or delete

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 an individual from whom the department seeks to recover benefits incorrectly paid to the individual. *Stats.*

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

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 a larger percentage deduction. *Authority*

(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. *a*

(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 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 department delegates final decision making regarding appeals to the department of administration's division of hearings and appeals under s. HA 3.09 (9) (b). *a*

The 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) (intro.), Stats.

Wisconsin Department of Health and Family Services

Dated:

By: _____
Joseph Leean
Secretary

SEAL:

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:

0005 1 8 932

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 Lee
Secretary

SEAL:

Fiscal Estimate — 1999 Session

- Original Updated
 Corrected Supplemental

| | |
|-------------|--------------------------------------|
| LRB Number | Amendment Number if Applicable |
| Bill Number | Administrative Rule Number HFS 79 |

Subject
 State Supplemental Security Income Payments

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.
 Yes No

Decrease Costs

Local: No Local Government Costs

- | | |
|--|---|
| 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

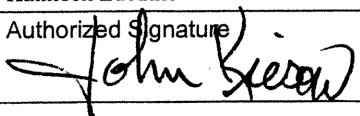
Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This emergency administrative rule permits the Department of Health and Family Services to continue to recover incorrectly paid cash benefits. The funding source for these benefits is a combination of GPR and federal Temporary Assistance to Needy Families funding. Administrative recoveries of this nature are presently occurring and their continuation poses no new direct or indirect costs to the Department. Funds recovered under this emergency rule are redistributed to eligible recipients as part of the Department's required maintenance of effort for Supplemental Security Income cash benefits.

Long-Range Fiscal Implications

| | | |
|---|---------------------------|-------------------------------|
| Prepared By: Kathleen Luedtke | Telephone No. 266-6890 | Agency DHFS/DSL/SSI |
| Authorized Signature  | Telephone No. 266-9622 | Date (mm/dd/ccyy) 09/12/00 |