

Clearinghouse Rule 09-026

PROPOSED ORDER OF THE DEPARTMENT OF VETERANS AFFAIRS ADOPTING RULES

1. INTRODUCTORY CLAUSE

The Wisconsin Department of Veterans Affairs hereby proposes an order to amend VA 2.01 (2) (a), VA 2.01 (2) (b), VA 2.01 (3) (b) and VA 2.01 (3) (c).

2. RULE SUMMARY

(a) 1. Statute interpreted: sec. 45.40, Stats.

(a) 2. Statutory authority: sec. 45.40 (3m), Stats.

(a) 3. Explanation of agency authority: The department is charged with administering a grant program to assist needy veterans with subsistence and health care. It provides eligible applicants with subsistence payments when a loss of income is caused by illness, injury or a natural disaster for up to 90 days following the date of the loss of income. It also provides grants for obtaining dental, hearing and vision care through private health care providers.

(a) 4. Related statute or rule: There is no related statute or rule.

(a) 5. Plain language analysis: The amendment of VA 2.01 (2) (a) will limit the period for which a subsistence aid application can be made and require the applicant to list all available assets the applicant has at the time of application for the benefit. The amendment to VA 2.01 (2) (b) will allow the use of concurrent applications in the health care aid program if written and binding quotes for the health care procedures have been submitted to the department. To facilitate the administration of concurrent applications, health care providers will be required to request payment from the department within 30 days of the last day the health care procedure may be obtained by the grantee. The amendment to VA 2.01 (3) (b) will allow applicants to apply for subsistence aid at any point in the 90 day period following the applicant's loss of income from an illness, injury or natural disaster. The amendment to VA 2.01 (3) (c) will update the restrictions identified in the program in accordance with the amendments to the statute enacted in 2007.

(a) 6. Summary of, and comparison with, existing or proposed federal regulations: There is no current or pending federal regulation which would provide subsistence or health care aid for the eligible veterans under this program.

(a) 7. Comparison with rules in adjacent states: There are no similar rules in adjacent states.

(a) 8. Summary of factual data and analytical methodologies: County veterans service officers, veteran service organizations and department staff reviewed historical data to determine whether existing application procedures for the Assistance for Needy Veterans Grant program adequately addressed the needs identified by veterans and health care providers. The review identified issues related to the application process for the subsistence aid grant, including the need for an application period which was concurrent with the emergent period covered by the grant and additional flexibility for making an application following the first 30 day period of the 90 day period covered by the grant. The report also identified issues related to concurrent applications for health care aid related to tracking income limitations while providing eligible veterans the ability to access multiple health care needs. These needs were summarized in a report to the Secretary of the department and presented to the Board, with recommended actions, in June, 2008.

(a) 9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact statement: No analysis was performed regarding an economic impact statement.

(a) 10. Effect on small business: These rules do not appear to have any effect upon small businesses, nor any significant fiscal impact upon the private sector.

(a) 11. Agency contact person: James A. Stewart, Chief Legal Counsel, 30 West Mifflin Street, P.O. Box 7843, Madison, WI 53707-7843
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3. TEXT OF RULES

SECTION 1. VA 2.01 (2) (a) is amended to read:

VA 2.01 (2) GRANT APPLICATION. (a) *Forms required.* A grant application shall be submitted on a department approved form. It may be submitted through a county veterans service officer, through any other department authorized agent, or directly to the department, either manually or electronically. The application shall specify the type of care being requested and if the care requested is subsistence aid, the application must be submitted no later than the 91st day following the verified loss of income due to illness, injury or natural disaster. A declaration of aid shall be submitted with the application. The declaration shall state that the applicant has applied for all aid offered through or administered by the county, including aid from the federal or state government and shall list all assets available to the applicant or the applicant's family. If requested by the department the applicant shall submit evidence establishing that all other available aid has been applied for and accepted. The department may request

additional verification of any information provided in the application. The department shall notify the applicant or applicant's county veterans service officer if any required documentation is missing or if further verification is required to make a decision on the applicant's eligibility. The department shall terminate an application if such documentation or verification does not arrive at the department's central office within 30 days of that notification.

SECTION 2. VA 2.01 (2) (b) (1) is amended to read:

VA 2.01 (2) GRANT APPLICATION (b) *Eligibility*. 1. 'All applicants.' Except for applicants who are eligible under subd. 3., the applicant's income shall not exceed 130% of the federal poverty guidelines, in effect on the date the application arrives at the department's central office, for the number of family members living in the primary residence. An applicant may apply for subsistence aid, health care aid, or both. Applications approved by the department shall have the balance of the maximum available aid allocated towards each type of aid requested, unless the applicant indicates a lesser amount in writing. Applications shall be denied if no unallocated funds are available at the time of application. The department shall indicate on each description of benefits the type of health care or subsistence aid authorized, the date the department confirmed that the applicant was eligible for the grant, a date 90 calendar days from that date, the unallocated amount available for each type of aid and for the cumulative limits of this section, and the amount of aid being authorized. No more than one description of benefits may be outstanding at any time, except where all health care providers have submitted binding quotes prior to the issuance of more than one description of benefits, and are willing to accept payment from this program in full for any service rendered to the applicant in accordance with the description of benefits. The department shall pay the lesser of the actual cost of services invoiced or the binding quote submitted by the health care provider. No payment shall be made by the department unless an itemized written invoice is received by the department within 30 days of the expiration date, or any approved extension of that expiration date, as identified in the applicable description of benefits. Authorized applications for health care aid may not be withdrawn without the agreement of the provider of the health care aid.

SECTION 3. VA 2.01 (3) (b) is amended to read:

VA 2.01 (3) LIMITATIONS (b) *Subsistence aid*. Subsistence aid ~~may be granted for a thirty-day period if an applicant presents evidence of a loss of income due to illness, injury, or a natural disaster.~~ Subsistence aid may also be granted for a 3-month period if the applicant presents evidence that incapacitation will last for 3 or more months is available for the 90 day period following the date of the verified loss of income due to illness, injury or a natural disaster. Applications may be made for any 30 day period within the 90 days following the date of the verified loss of income. No more than three 30 day periods of subsistence aid may be granted for any verified loss of income due to illness, injury or natural

disaster. No subsistence aid will be granted for any period prior to the date the application for subsistence aid is received. Subsistence aid shall be limited to the difference between the amount of earned and unearned income available before the loss of income and the earned and unearned income being received after the loss of income, subject to the limitations under s. 45.40 (1) (b) and (3), Stats. The applicant shall verify the loss of income by submitting verification of income forms, certified public accounting statements or any other evidence as the department deems credible. Illness or injury must be verified in writing on a form approved by the department. When the department has evidence that the incapacitation will cause an income loss for 3 months 90 days or longer, subsistence grants will be prorated for each of the 3 months 30 day periods unless the department determines that an alternate distribution of the grant would benefit the applicant. If the loss of income is the result of alcohol or other drug abuse, the applicant shall verify current participation in an approved treatment program.

SECTION 4. VA 2.01 (3) (c) is amended to read:

VA 2.01 (3) LIMITATIONS (c) *Restrictions*. Aid granted for subsistence or health care under s. 45.40, Stats., is subject to a ~~\$5,000~~ 7,500 cumulative total based on the aid granted to a veteran and his or her spouse and dependents. The maximum amount of subsistence aid payable in a consecutive 12-month period is ~~\$2,500 3,000 for dental care, \$1,500 per ear for hearing care, and \$500 for vision care.~~ The department may provide a grant only if the provider accepts the grant, available health insurance, third party payments on behalf of the applicant and any department-approved payment from the veteran as payment in full. The department may approve a payment by the veteran when a provider refuses to accept the maximum grant available to the veteran as payment in full if the veteran has sufficient available liquid assets to contribute an amount that will induce the provider to accept the aggregate payment as payment in full.

The amendments and creation of 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., and shall apply to all applications received after that effective date.

4. EFFECTIVE DATES:

The amendments and creation of 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., and shall apply to all applications received after that effective date.

5. EMERGENCY RULE:

These are not emergency rules.

6. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will not have a significant impact on a substantial number of small businesses. The current administration of this program requires submission by health care providers of an invoice for the provision of health care to the department within the same time period as the proposed rules. There is no historical data indicating that the health care providers have failed to submit invoices within the proposed time limit in the past.

7. FISCAL ESTIMATES:

The fiscal estimates are contained in the attached fiscal estimate statement.

Dated at Madison, Wisconsin, March 19, 2009.

KENNETH B. BLACK, Acting Secretary
State of Wisconsin
Department of Veterans Affairs