

dissatisfied claimant or his representative may present his case with the help of witnesses to show why action or inaction in his case should be corrected by the state agency; it is not an adversary proceeding, but rather a continuation of the administrative process in which the claimant invokes the responsibility of the state agency through a quasi-judicial hearing in the particular case.

(c) A request for a hearing is defined as any clear expression on the part of the claimant to the effect that he wishes to go beyond the usual procedure for adjusting complaints with the county agency, and that he wants an opportunity to present his case to the division of family services. The specific wording of such a request is immaterial.

(d) The date of the request for hearing is defined as the date on which the request is received.

(3) PURPOSES. The major purposes of hearings are:

(a) To provide an opportunity for a dissatisfied claimant to assert his claim to public assistance, medical assistance, food stamps or services related to any of such programs and secure, in an administrative proceeding, equity of treatment in his case in relation to the assistance law and program.

(b) To enable the county and claimants, jointly, to ascertain the factual basis on which, through proper application of the assistance law and agency policy, a just decision may be reached.

(c) To contribute to uniformity in the application of the assistance law and policy by assuring that every claimant is fully informed of his rights, that hearings on any grievance are readily available, and that instances of inequitable treatment are speedily remedied by prompt execution of hearing decisions.

(d) To safeguard claimants from mistaken, negligent, unreasonable or arbitrary action. The hearing process is not a substitute for proper and efficient administration and is not designed to produce any result that could not have been produced through regular administrative processes.

(e) To reveal aspects of county agency policy that constitute a misconstruction of law, state rules or policy.

(f) To provide a method whereby evidence may be obtained for referral to proper state policy-making authority, which evidence may show the need for modification of a state policy or policies.

(4) REQUIREMENTS. (a) Every claimant at the time of his application, and when other administrative decisions are made shall be informed in writing of his right to a fair hearing if his application is not acted upon with reasonable promptness, or if he is not satisfied with the action taken, and the method by which he may obtain a hearing.

(b) Every claimant may obtain a hearing before the division of family services in relation to an application not acted upon with reasonable promptness or if he is dissatisfied with the action taken.

(c) The request for a hearing must be timely. No review will be provided in any case where the decision or inaction to be reviewed involves a question of application or initial eligibility which arose more than 60 days prior to the request for a hearing. In cases involving discontinuance or the amount of the grant no hearing will be held unless

the petition for review is received within 15 days of the date that the discontinuance or change in grant is effective. An appeal of the cases involving an incorrect payment of grant resulting in an underpayment are not subject to the limitations set out above.

(5) **REQUEST FOR HEARING.** A complaint may be initiated orally in person, by letter or by form and if not adjusted by the county agency to the satisfaction of the claimant a request for hearing will be completed and a hearing will be scheduled. Requests for hearing shall usually be on the simple form supplied by the state agency, but no written request shall be rejected for lack of formality. An oral request for a hearing made in person will be accepted, but shall be reduced to writing and signed by the claimant before the hearing will be scheduled. No request shall be dismissed without hearing unless the claimant shall remove from the jurisdiction, die, withdraw his request in writing, or abandon the proceedings. The proceedings may be considered abandoned if neither the claimant nor his representative appears at the time and place set for hearing, and if, within a reasonable time after the mailing of an inquiry as to whether he wishes any further action taken on his request for a hearing, no reply is received by the state agency.

(6) **FAIR HEARING.** (a) Hearings shall be held at a time convenient to the claimant and agency staff easily accessible to the claimant and, whenever possible, on the premises of the county department of social services, subject to the judgment of the hearing officer. Adequate preliminary notice shall be given to the claimant and his representative, if any, including information about the procedure at the hearing.

(b) The hearing shall be conducted by a hearing officer, duly appointed and qualified under the state civil service laws, who has not taken any part in the particular action under consideration.

(c) The claimant shall have the opportunity to examine all documents and records used at the hearing; have the option to present his case, or be represented; have the opportunity to bring witnesses, to establish all pertinent facts and circumstances, to advance any arguments without undue interference, and to question or refute any testimony or evidence.

(d) The claimant may question interpretation of the law, and the reasonableness and equity of policies practiced under the law, if he is aggrieved by their application to his situation.

(e) The hearing is subject to the requirements of due process, but is an informal administrative procedure.

(7) **DECISIONS.** (a) The transcript of testimony and the exhibits, papers and requests filed in the proceeding constitute the exclusive record for decision and are available to the claimant at any reasonable time after the decision upon request.

(b) The decision on the hearing shall be in writing in the name of the division of family services by the secretary of the department or his designee.

(c) The decision shall set forth the issue or issues, citation of law or precedents, the reasoning that led to the decision, the principal and relevant facts elicited at the hearing, and the action taken. These factors shall be grouped under appropriate headings such as preliminary recitals, findings of fact, conclusions of law and order.

A certified copy of the decision shall be mailed to the claimant (and his attorney if any) and the county agency charged with the administration of the services, aid or assistance involved.

(d) If the decision is mandatory upon the county treasurer, a certified copy of the decision shall be mailed to him and to the county clerk. It shall be the duty of the state agency to ascertain from subsequent payrolls and otherwise that there has been compliance with the order.

(8) **ALLOCATION OF RESPONSIBILITY.** The functions relating to fair hearings are allocated to the division of family services. All final decisions, except cases wherein the request for review has been abandoned, shall be based upon hearings conducted by the hearing officer duly appointed pursuant to state civil service laws and responsible to the division, provided that if emergency needs so require the division administrator or any other employee duly designated by him may serve as a hearing officer. Such decisions shall be binding upon the state and county agencies involved and shall be enforced by appropriate legal and fiscal sanctions.

History: 1-2-56; am. (1), Register, April, 1967, No. 136, eff. 5-1-67; r. and recr., Register, July, 1969, No. 163, eff. 8-1-69; am. (4) (c), Register, September, 1971, No. 189, eff. 10-1-71.

PW-PA 20.19 Relief claims proceedings. (1) **PRACTICE.** Proceedings under this rule shall be considered administrative in character. The rules of practice at hearings will conform generally to the rules of practice before courts of equity. The aim is to secure the facts in as direct and simple a manner as possible.

(2) **PLEADINGS.** (a) Complaints and answers need not be verified.

(b) The proceedings shall be deemed to be at issue when an answer or demurrer is filed or when the time for answering or otherwise pleading to the complaint has expired.

(c) The answers to the complaints shall specifically and particularly set forth in writing a statement of the reasons upon which defendant relies to defeat the proceeding. For this purpose, evidentiary facts may be pleaded. A general denial shall be deemed to be no pleading. Failure to deny an allegation of the complaint shall be deemed to be an admission thereof.

(d) Amendment may be made to any pleading upon application and cause shown. The department may, on its own motion, modify or change its order and findings at any time within 20 days from the date thereof, if it shall discover a mistake therein.

(e) Except upon order of a court, proceedings in which an order has been rendered shall be reopened for reception of further evidence or for further consideration only upon written consent of all parties to the proceedings or in accordance with section 270.50, Wis. Stats. Motions under section 270.50, Wis. Stats., shall not be received after 20 days of the date of the order.

(3) **PROOF OF CLAIM.** (a) The dates when and the amount of relief claimed to have been given to the recipient may be established prima facie by affidavit of the relief official who ordered the relief given or by affidavit of the clerk of the county or municipality which paid for and granted the relief. Such affidavit shall show the expenditures by months, listing separately for each month the total monthly expenditures for food, clothing, fuel, utilities, housing, medicine, medical and

surgical treatment, hospital care, hospitalization, nursing, transportation, water, household equipment, other commodities or services, cash, or funeral expenses.

(b) If relief is given only intermittently, the particular dates of the intermittent relief grants shall be stated. In order to show the date of the first and last grant of aid in a continuous series where relief is given continuously over several months, the charge for the month shall run from the date of the first order to the end of the month and the charge for the last month in the series shall run from the first of the last month to the date of the last order in that month.

(c) The opposing party shall have the right to call adversely as a witness the person who made such affidavit or any other person who would otherwise have knowledge of the facts therein stated.

(4) **MOTIONS.** (a) Motions not made on the record at the time of hearing shall be filed with the department in writing.

(b) Request for recovery by default will be received upon failure to answer or plead to the complaint within the statutory period. Such request shall be accompanied by affidavit showing the fact that and the date when verified claims were filed upon the clerk of the defendant or defendants, together with copies of such claims incorporated by reference in the affidavit.

(c) When a hearing has been set and a party notified fails to appear, the parties present may offer such proofs or motions as they desire, and the department shall thereafter notify the absent party that unless he file an affidavit showing reasonable excuse for absence and of merit the department will render its decision upon the record made. If the department is satisfied with such affidavit it may in its discretion set the case for further hearing on such conditions as may be just.

(d) Motion for summary judgment upon the pleadings may be submitted by either party pursuant to section 270.635, Wis. Stats., and in event of such motion, the parties shall submit affidavits setting forth the evidentiary facts, including documents or copies thereof for the purpose of determining whether there is a triable issue.

(5) **SERVICE OF PAPERS.** The fact of mailing and the date when a non-resident affidavit was mailed may be proved by affidavit of the clerk or deputy clerk who sent such notice. Such affidavit shall show compliance with the mailing statute in force at the time the notice was mailed. See section 49.11 (7) (d), Wis. Stats., which requires the mailing of notices by registered or certified mail with return receipt requested.

(6) **CONDITIONS PRECEDENT.** No proceeding shall be maintained unless a verified claim for the amount of money due has been duly presented to and disallowed by the county or municipality sought to be charged.

(7) **RESUMES AND TRANSCRIPTS.** (a) The department may at any time prior to decision require or permit the parties to file briefs on either fact or law.

(b) Transcripts of testimony taken or proceedings had before the department will be furnished to parties upon request and payment of the sum of 10 cents per folio and 5 cents per folio for each additional copy thereof. After an appeal has been taken, transcripts will be furnished upon payment of the sum of 5 cents per folio.

(8) **WITNESS FEES.** (a) Witnesses may be paid as provided by section 49.11 (7) (a), Wis. Stats., for attendance at hearings.

(b) Where more than one witness travels in the same car, only one mileage fee shall be allowed, except that all witnesses may receive sufficient mileage fees to cover necessary meals.

(c) Where witnesses travel by public conveyance, actual cost of conveyance plus necessary and reasonable bills for meals and hotels may be allowed.

(d) Interpreters' fees shall be the same as witness fees.

(e) In no case shall any of the above allowances be in excess of the regular mileage allowance. Witness fees shall be proved by submission of receipt of the witness.

History: 1-2-56; am. Register, October, 1962, No. 82, eff. 11-1-62.

PW-PA 20.20 Reimbursement of county administrative costs. For the purpose of promulgating more uniform and standard administrative procedures in county agencies, reimbursement from state and federal funds will be made toward county administrative costs incurred for payments to employees for expenses incurred in performing their duties on the following basis:

(1) The reimbursable portion of the traveling expenses of such employees shall be subject to the same limitations and requirements as are imposed on state employees when such employees incur expenses for similar purposes.

(2) As a limitation on state reimbursement, the provisions of section 20.941, Wis. Stats., relating to the allowance for the use of a personal automobile shall apply to county employees, any part of whose salary or expenses is paid directly or indirectly, by the state.

History: 1-2-56; am. (2), Register, June, 1967, No. 138, eff. 7-1-67.

PW-PA 20.21 Destruction of record material. (1) **PURPOSE.** The purpose of this rule is to define the limitations of section 59.715 (21), Wis. Stats., pertaining to the destruction of case record and other record material in aid to the blind, aid to dependent children, old-age assistance and aid to disabled persons, and in relief for which claim for state reimbursement is made under section 49.04, Wis. Stats., and the destruction of records in Indian relief claims under section 49.046, Wis. Stats.

(2) **RECORDS TO BE PERMANENTLY PRESERVED.** A face sheet or similar record of each case and a financial record of all payments for each aid account shall be permanently preserved.

(a) Face sheet or similar record means a sheet or sheets giving identifying data about the person or persons concerned, sufficient to distinguish the particular person or family, including such information as names, addresses, occupations, relatives, birth and marriage dates and marital status.

(b) Financial record means a financial card or ledger sheet showing all payments made to or in behalf of the individual or family aided, by month, and including a record of all refunds and collections.

(3) **CONDITIONS FOR DESTRUCTION OF OTHER RECORDS.** Records, other than those specified in subsection (2) of this rule, may be destroyed when there has been no case activity on the part of the county department and the particular person or family for a period of 5 years just preceding, except as hereinafter provided.

Register, September, 1971, No. 189
Public Welfare

(a) No records may be destroyed in any case in which:

1. An estate against which the county has a claim has not been settled.

2. There is property on which the county has an old-age assistance lien and the claim has not been settled.

3. Claims for reimbursement under section 49.04 and section 49.046, Wis. Stats., have not been settled and audited.

(b) Claims paid by the county, and papers supporting such claims, and cancelled checks for payments made to or in behalf of recipients of aid to the blind, aid to dependent children, old-age assistance, aid to disabled persons or relief to needy Indians may not be destroyed until after 7 years, in accordance with subsections 59.715 (9) and (18), Wis. Stats.

History: 1-2-56; am. Register, October, 1962, No. 82, eff. 11-1-62.

PW-PA 20.22 Liquid assets. (1) **AID TO DEPENDENT CHILDREN.** Where a dependent child or children otherwise eligible for a grant of aid to dependent children together with the parent or parents included in the grant of such aid have more than \$500 in liquid assets, including cash or loan value of insurance, eligibility for grant of aid to dependent children does not exist.

(2) **AID TO TOTALLY AND PERMANENTLY DISABLED PERSONS.** Where a dependent person otherwise eligible for a grant of aid to totally and permanently disabled has more than \$500 in liquid assets, excluding cash or loan value of insurance, eligibility for aid does not exist.

History: Cr. Register, May, 1961, No. 65, eff. 6-1-61.

PW-PA 20.23 Loans on Menominee Enterprises, Inc. bonds. (1) **PURPOSE.** Loans will be made to owners of bonds of Menominee Enterprises, Inc. who are dependent persons in need of a loan for welfare purposes.

(2) **AMOUNT.** The amount of the loan shall not exceed the par value of bonds available for pledging to the state as security for such loan.

(3) **AGREEMENTS.** (a) The department shall prescribe the form of note to be executed.

(b) Loans will bear interest at the rate of 4% per annum from the first day of the month following the date of the execution of the note, such interest to become due and payable each December until such note is paid.

(c) The period for payment of the loan shall not exceed 3 years.

(d) Defaults in interest payments shall be added to the principal of the loan.

(e) Defaults in repayment of a loan shall after 60 days of maturity date result in forfeiture of the pledged bond in the amount of the loan plus all interest. Upon such default, the par value of the bond in excess of the amount due and owing shall be returned to the owner or his estate in the form of fractionated bonds to the lowest \$100 multiple with a cash adjustment for the difference.

(f) The department may extend notes in default upon the execution of a new note by the obligor if such new note is secured by a pledge of a Menominee Enterprise, Inc. bond.

History: Emergency rule, eff. 1-11-64; cr. Register, March, 1964, No. 99, eff. 4-1-64.

Register, September, 1971, No. 189
Public Welfare