

the disability is permanent and that the incapacitated parent will never be employable.

(c) If the incapacitated parent is receiving care at a mental, tuberculosis, or veteran's hospital, a reexamination is not required during the time he is receiving such care.

History: 1-2-66; am. Register, April, 1967, No. 136, eff. 5-1-67.

PW-PA 20.11 Payment of aids. All payments to recipients of aid to families with dependent children (including payments on behalf of children in foster homes or a child-caring institution pursuant to section 49.19 (10), Wis. Stats.), shall be made under the following provisions:

(1) **CASH.** Payment shall be made by county check payable to the beneficiary or to a person judicially appointed as the legal representative of such beneficiary by the courts under chapter 319, Wis. Stats., or a protective payee and shall not be subject to discount but redeemable in cash in the amount of its full face value upon demand, provided that nothing in this rule shall be deemed to supersede any provision of section PW-PA 20.06 governing relatives' eligibility for aid to families with dependent children.

(2) **RESTRICTION ON USE OF ASSISTANCE NOT PERMITTED.** Payment must consist of an unconditional transfer and delivery of said check to the recipient for expenditures by him in his discretion and shall not be made in lieu of wages or with respect to work done.

(3) **DATE.** Payment of assistance shall be made in the month for which the grant of aid is designated, either in the full amount of the monthly allowance or in 2 or more installments. When a single payment is made for the full amount of the monthly allowance, it shall be made not later than the fifth day of the month. When the monthly allowance is made in installments, each installment shall be for equal periods based on a 30-day month. Payment of the first installment shall be made no later than the fifth day of the month and each subsequent installment no later than the fifth day of each installment period. Payment of an initial allowance may be made subsequent to the fifth day of the month and shall be made within the month. Additional payments made to meet increased budgetary needs may be made subsequent to the fifth day of the month and payments correcting any prior underpayment may be made any time prior to the end of the twelfth month following the month in which such underpayment occurred.

(3m) **EXCEPTION.** Payment on behalf of a child in a foster home or child-caring institution pursuant to section 49.19 (10), Wis. Stats., shall be made in arrears and not later than the tenth day of the month following the month for which the payment is made.

(4) **COVERAGE.** Initial payment may include the needs to the first of the month in which aid is applied for and eligibility is shown to have existed as of the first of such month; provided, however, that this provision shall not preclude continuing payments when an eligible recipient moves from one county to another nor adjustments when grants of aid are reinstated after suspension, nor adjustments upon order of the state department of health and social services, division of family services, made in accordance with section 49.50 (8), Wis. Stats., nor in any case or similar cases in which a court decision changes the regulation

upon which the case was denied, discontinued or the budget of the recipient was improperly computed, resulting in an improper reduction in the amount of aid.

(5) **ENDORSEMENT.** Pursuant to federal regulation, checks must be endorsed by the payee with his signature; provided that persons unable to write shall endorse their assistance checks either by mark or by finger print in the presence of 2 witnesses who shall append their signatures and addresses.

History: 1-2-56; am. (1) Register, February, 1959, No. 38, eff. 3-1-59; am. Register, March, 1962, No. 75, eff. 4-1-62; am. (4) Register, June, 1970, No. 180, eff. 1-1-71; am. Register, February, 1976, No. 230, eff. 3-1-76.

PW-PA 20.12 Overpayment of AFDC. (section 49.195 (3) Wis. Stats.) (1) **DEFINITION.** Overpayment is that amount of a payment to which a recipient is not entitled.

(2) **CONTINUED PAYMENTS THAT ARE OVERPAYMENTS.** Excess amount of payments ordered continued pending a fair hearing when the fair hearing decision is subsequently adverse to the client are overpayments.

(3) **CONTINUED PAYMENTS THAT ARE NOT OVERPAYMENTS.** Excess amount of payments received when the county agency's advance notice period of adverse action extends into the next month are not overpayments.

(4) **RECOVERY OF OVERPAYMENTS.** (a) Recoupment from the grant shall not be done for overpayments made prior to the effective date of this rule unless court ordered.

(b) Recovery may be waived when the amount of the overpayment is less than \$12 since the cost to collect exceeds the amount to be recovered.

(c) Overpayments may be recovered through one or more of these methods:

1. Voluntary payments which all persons shall be offered the opportunity to make.

2. Recoupment from the grants of persons who are currently receiving AFDC payments by reducing the monthly grant within the following criteria:

a. Persons having no earned income shall not have their grant reduced unless the overpayment was due to a willful error (See c. below) on the part of such person in which case the monthly grant reduction shall not exceed \$10.

b. Persons having earned income shall not have their monthly grant reduced more than $\frac{1}{2}$ of the \$30 + $\frac{1}{2}$ earned income disregard plus \$10 when the overpayment is due to willful error (See c. below) on the part of the recipient, or $\frac{1}{3}$ of the \$30 + $\frac{1}{2}$ earned income disregard in other errors of overpayment.

c. Willful error exists only if there is a court determination of fraud or there is evidence of recipient misrepresentation and the recipient agrees in writing to have the overpayment dollars recouped from the grant.

3. Court ordered payments.

Register, June, 1978, No. 270
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(c) Persons no longer receiving aid shall be asked to voluntarily repay overpayments. Those persons unwilling to do so with respect to overpayments made after the effective date of this rule shall be referred to the appropriate legal counsel for action.

(4) FILES. County agencies shall establish separate files regarding recovery of overpayment sufficient to meet reporting requirements of the department of health and social services.

History: Cr. Register, June, 1978, No. 270, eff. 7-1-78.

PW-PA 20.13 Relief of needy Indian persons. (1) INTRODUCTION.

(a) *Statement of intent.* The intent of these rules is to establish the eligibility requirements and the uniform administration of such eligibility requirements and amounts of aid under the relief of needy Indian persons program, section 49.046, Wis. Stats.

(b) *Effect of rules.* The following rules shall have the full effect and force of law under section 227.01, Wis. Stats. These rules do not repeat the laws related to relief of needy Indian persons. Users of these rules should also be aware of and familiar with the statutory sections related to these rules so that they are knowledgeable about the requirements of the law as well as the rules.

(c) *To whom the rules apply.* The rules apply to county welfare agencies, tribal councils, and other appropriate Indian organizations or other agencies appointed by the department to administer the relief of needy Indian persons program.

(d) *Definitions.* 1. "Department" unless qualified, means the state of Wisconsin department of health and social services.

2. "Division" unless qualified, means the division of family services of the department.

3. "Rule" means a regulation, standard, statement of policy or general order (including the amendment or repeal of any of the foregoing) of general application and having the effect of law.

4. "Tribal council" means the governing body of a federally recognized Indian tribe or band.

5. "Appropriate Indian organization" means an Indian organization recognized and certified by the local tribal council or governing body as having the capability of administering aid under section 49.046 Wis. Stats. and appointed by the department with the consent of the local tribal council or governing body if there is no tribal council.

6. "Indian" means any person: a. whose proportion of Indian blood is one-fourth or more; or b. who is enrolled in a recognized band or

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