

## Chapter PW-PA 20

## PUBLIC ASSISTANCE

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**PW-PA 20.03 Need determination.** (1) **PURPOSE.** This rule is adopted to effectuate on a state-wide basis, the determination of need for public assistance of applicants for and recipients of aid to dependent children, in order to insure in so far as possible equitable treatment of persons in need throughout the state.

(2) **DETERMINATION OF ELIGIBILITY AND AMOUNT OF PAYMENT.** Eligibility for aid and the amount to be paid as aid to dependent children, shall be determined by the county agency in accordance with standards prescribed by the department of health and social services. The department shall define need standards within the statutory requirements which shall include published instructions to the county operating agencies regarding the items of need to be included and how the cost of these items is to be determined, the method of considering resources, and generally principles of budgeting to be applied to the individual circumstances. In effect, the department shall define need within the statutory provisions as set forth in s. 49.19 (5), Stats.

**History:** 1-2-56; am. Register, February, 1975, No. 230, eff. 3-1-75.

**PW-PA 20.04 Eligibility verification.** (1) As a condition of eligibility, each applicant for or recipient of aid will be required:

(a) To furnish to the state or local agency a social security account number, hereinafter referred to as the SSN, or

(b) To apply for such number through procedures adopted by the state or local agency with the social security administration and provide the number upon receipt.

(2) If the applicant or recipient has complied with the requirements of sub. (1) (b) the state or local agency shall not deny, delay, or discontinue assistance pending the issuance or certification of such numbers.

(3) "Applicant" and "recipient" include the caretaker relative, the children, and any other individual whose needs are considered in determining the amount of assistance.

(4) The state or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance required by the Social Security Act and that the SSN will be utilized in the administration of the AFDC program.

(5) The above conditions are required by federal regulation 45 CFR 232.10 effective July 1, 1975.

(6) Effective date. January 1, 1977.

**History:** Cr. Register, March, 1977, No. 255, eff. 4-1-77.

**PW-PA 20.05 Responsibility of relative to support.** When a relative enumerated in s. 52.01, Stats., is not assisting an applicant for aid to dependent children, and refuses to assist and when there is reasonable doubt as to liability or ability of such relative to assist, no application for aid to dependent children under s. 49.19, Stats., shall be denied by the county agency until such agency shall have secured an order from a court of competent jurisdiction under s. 52.01, Stats.; provided also that is deemed to be the responsibility of the county agency in such case to petition under s. 52.01, Stats.

**History:** 1-2-56; am. Register, April, 1967, No. 136, eff. 5-1-67; am. Register February, 1975, No. 230, eff. 3-1-75.

**PW-PA 20.06 Relatives eligible for aid to dependent children.** Section 49.19 (1) (a), Stats., and Title IV, section 406 (a), Federal Social Security Act are construed to permit payments of public assistance grants in behalf of dependent children who are living with a person included in one of the following groups:

(1) Any blood relative, including first cousins, nephews, or nieces and those of half-blood.

**Note:** Relationships to persons of preceding generations as denoted by prefixes of grand, great, or great-great are within this definition.

(2) Stepfather, stepmother, stepbrother, and stepsister.

(3) Persons who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons.

**Note:** Other relatives of persons who adopt children are relatives of such adopted children within this definition.

(4) Spouses of any persons named in the above groups.

**Note:** Such relatives may be considered within the scope of this provision though the marriage is terminated by death or divorce.

**History:** 1-2-56; am. Register, February, 1975, No. 230, eff. 3-1-75.

**PW-PA 20.07 Incapacitation for gainful work; dependent children.** (1) **PURPOSE.** This rule is adopted to promote the rehabilitation of dependent persons in keeping with the legislative intent expressed in s. 49.02 (6), Stats., to determine the eligibility of applicants for aid to dependent children as required under ss. 49.19 (1), (2), (3) and (4), Stats., to determine the amount of aid needed (including necessary medical aid for the incapacitated parent) as directed under ss. 49.19 (5) and 49.46, Stats., and further to carry out the department's responsibilities as expressly stated or implied under ss. 46.206 and 49.50 (2) and (6), Stats.

(2) **DETERMINATION OF ELIGIBILITY.** The decision as to eligibility because of the incapacitation of a parent shall be made by the county agency. Such decision shall be based upon a physician's opinion as to whether or not there is physical or mental disability and a consideration of relevant social and employability factors.

(3) **EXAMINATION AND REPORT.** With respect to any application for aid to dependent children in which incapacitation of a parent is claimed as the basis for eligibility, such parent shall be examined by a licensed physician and he shall report his findings in writing on a form prescribed by the department for this purpose. For purposes of reimbursement under s. 49.52, Stats., fees paid physicians for examinations made under this rule may be reported as expenditures incurred in administration. A physician's report shall be obtained and the decision of the county administrator recorded on the prescribed form before aid may be granted. A completed copy of the report shall be sent to the department for all examinations made. Reexamination for purposes of determining continuing eligibility shall be made as often as indicated by the physician's report or by observation of the person's physical condition, but at least once in any 12-month period.

(4) **EXCEPTIONS.** (a) A medical examination is not required if the incapacitated parent has been found eligible for aid to the blind or for aid to totally and permanently disabled persons.

(b) A medical reexamination for purposes of determining continuing eligibility may not be required in the discretion of the county agency if the examining physician indicates in his report that 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:** 1-2-56; am. Register, April, 1967, No. 136, eff. 5-1-67.

**PW-PA 20.08 Divestment.** (1) **PURPOSE.** This rule is adopted for administration of s. 49.19 (2) (p), Stats., regarding eligibility for aid to families with dependent children when divestment of property has occurred within 2 years prior to the date of application.

(2) **TO WHOM THE RULE APPLIES.** Any person who is an applicant after the effective date of this rule for aid to families with dependent children and all persons for whom that person has legal responsibility and for whom aid is being sought.

(3) **DEFINITION.** Divestment means the conveyance, transfer or disposition of any property without receiving adequate and full consideration in money or money's worth.

(a) "Conveyance, transfer or disposition" is the act of changing legal title or other right of ownership to another person or persons.

(b) "Property" is anything to which a person has legal title or other right of ownership be it exempt or nonexempt real or personal property.

(c) "Adequate and full consideration" is a minimum of 90% of the available market value minus the costs of transaction on the open market.

(d) "Money or money's worth," henceforth called "value received," is the dollar value which can be attached to that which is received in return for the property and may be in any one or more of the following forms:

1. Cash.

2. Other assets such as accounts receivable, promisory notes (both of which must be valid and collectible to be of value), stocks, bonds, land contract and life estate which are evaluated over an extended time period.

3. Other goods, i.e., other property real or personal.

4. Discharge of a debt.

5. Prepayment of bonafide and irrevocable contract such as mortgage, shelter lease, loan, taxes.

6. Services which shall be assigned a valuation equal to the cost of purchase on the open market. Only those services shall be considered for which there exists a written agreement executed prior to the provision of the services, whether provided by a member of the immediate family, other relative or nonrelative.

(4) CRITERIA. (a) Divestment by any person within 2 years prior to the date of making application for aid shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving aid and shall create ineligibility for such aid until the value of the divested amount is expended by or on behalf of the person's maintenance need and medical care. Person in this context means the one who divested plus all other persons for whom that person has legal responsibility and for whom aid is being sought.

(b) Eligibility for aid prohibitions related to divestment are applicable to applicants only.

(c) Divestment shall only be considered when the net value of all of the properties disposed of exceeds \$500.

(d) When property is owned jointly, the expected share of the value received shall be the same as the share of ownership. All owners shall be assumed to share equally in the absence of evidence to the contrary.

(e) Divestment does not occur in cases of division of property as part of a divorce or separation action, loss of property due to foreclosure, defunct sales contracts, or repossession of property due to failure to meet payments.

(5) DETERMINING DIVESTMENT. (a) Determine the net value of all properties the person has conveyed, transferred or disposed of.

1. Net value is the market value minus the costs of transaction on the open market.

2. Net value is determined as of the date of the transaction.

(b) If the net value is \$500 or less divestment shall not be considered.

(c) If the net value exceeds \$500, determine the total "value received" in return for all the properties.

(d) If the "value received" is equal to or greater than "adequate and full consideration" there is no divestment.

(e) If the "value received" is less than "adequate and full consideration" the difference is the "divested amount" and shall be considered an asset.

(f) If the "divested amount" plus the person's other assets is \$1500 or less, the divestment shall not be considered a bar to eligibility.

(g) If the "divested amount" plus the person's other assets is greater than \$1500, the excess over \$1500 is the "amount of the divestment to be satisfied."

(6) **EXPUNGING DIVESTMENT.** The "amount of the divestment to be satisfied shall be "expended" for maintenance needs and medical care, or two years shall have elapsed since the act of divestment, whichever occurs first, to expunge the divestment as related to eligibility for aid.

(7) **DETERMINING "EXPENDED."** (a) "Expended" amounts shall be calculated monthly.

(b) The monthly calculation shall be the AFDC standard according to the appropriate family size plus actual medical care expenses for that month.

*History:* Cr. Register, June, 1980, No. 294, eff. 7-1-80.

**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 s. 49.19(10), 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 ch. 319, 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

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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 s. 49.19 (10), 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 s. 49.50 (8), 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, 1975, No. 230, eff. 3-1-75.

**PW-PA 20.12 Overpayment of AFDC.** (s. 49.195 (3) 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  $\frac{1}{2}$  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.

(d) 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.

(5) 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.** **History:** 1-2-56; am. Register, April, 1967, No. 136, eff. 5-1-67; am. Register, February, 1975, No. 230, eff. 3-1-75; r. and recr. Register, July, 1975, No. 235, eff. 8-1-75; renum. to be ch. HSS 211 and am., Register, October, 1979, No. 286, eff. 11-1-79.

**PW-PA 20.14 Aid to distressed counties.** (1) APPLICATION. (a) Any county which is financially unable fully to perform its duties with respect to aid to dependent children, may apply for state aid by submitting to the state department of health and social services a request in writing together with a statement giving the information required by s. 49.52(5), Stats., certified by the proper county officer or officers, or verified under oath.

(b) This rule also applies to allotment of funds under s. 20.670(3)(d), Stats., upon application of any county or local unit of government claiming financial inability to perform its duties with respect to general relief.

(c) Effective January 1, 1975, this rule no longer applies to aid to dependent children.

(2) INFORMATION REQUIRED. The information required as it may apply to the financial situation of the particular county will generally fall under the following classes:

- (a) Total indebtedness.
- (b) Tax and debt levy limitations.
- (c) Cash on hand.
- (d) Anticipated revenues from all sources.
- (e) Borrowing ability under ch. 67, Stats.
- (f) Tax delinquences.
- (g) Reasonableness of valuation for taxation purposes.
- (h) Reasonableness of amounts of county expenditures and necessity therefore.
- (i) Such other factors not enumerated which are probative of county's financial condition.

(3) **INVESTIGATION OF APPLICATIONS.** Applications and supporting statements shall be subject to review and investigation by the state department of health and social services.

(4) **HEARINGS ON APPLICATIONS.** Hearings on applications may be formal or informal in the discretion of the state agency, and will be scheduled to meet the convenience of the state and county officers.

(5) **PERIODIC REVIEW OF CONTINUING FINANCIAL AID.** Receipt by any county of continued financial aid under s. 49.51 (5), [49.52], Stats., shall be subject to periodic review by the department. Hearings thereon may be held on motion of the department notice to the proper county officers.

**History:** 1-2-56; am. Register, April, 1967, No. 136, eff. 5-1-67. am. Register, February, 1975, No. 230, eff. 3-1-75.

**PW-PA 20.15 Reimbursement for state dependents.** (1) **COUNTY CLAIMS.** Claim for reimbursement for relief granted dependent persons who do not have legal settlement in this state and who have resided less than one year in this state may be made only by a county that has granted the relief directly or has reimbursed a municipality which granted the relief.

(2) **REIMBURSABLE RELIEF.** The relief granted may be in cash or kind, but there shall be no reimbursement for work relief since the value of the labor shall be deemed to offset the payments. Any recoveries subsequently made by a county or municipality from the dependent person, his property, estate, or relatives shall be deducted from subsequent claims for reimbursement. The relief granted must be reasonable and necessary and adequate for health and decency, and there shall be no discrimination between state dependents and other recipients in the standard of relief given.

(3) **NOTIFICATION TO STATE.** (a) When a county grants relief or reimburses a municipality for relief accorded a person as a state dependent its county clerk shall file with the state department of public welfare a verified copy of the sworn statement taken under section 49.11 (1), Wis. Stats., together with an affidavit that diligent effort has been made to ascertain the facts relating to the dependent's legal settlement and period of residence in this state and stating the facts relating to such settlement and residence.

(b) The sworn statement of the relief recipient (or other person) under section 49.11 (1), Wis. Stats., must be taken at the time relief is granted, but the verified copy thereof and the clerk's affidavit of investigation on Form AD-256 should be filed together, and the filing with the state department is not limited to 20 days as otherwise provided for the filing of non-resident notices under section 49.11 (3), Wis. Stats., as between counties and municipalities.

(4) **PRESENTATION OF CLAIM TO STATE.** Claim for state reimbursement may be made by the county treasurer either monthly or in aggregate at the expiration of the state dependency status on forms prescribed by the state department of public welfare showing an itemized statement of the account.

(5) **SUPPORTING RECORDS.** Each county shall maintain sufficient records, vouchers, authorizations and receipts as may be necessary to support its claim for reimbursement, which shall be subject to inspection and audit by duly authorized representatives of the state department of public welfare.

**Note:** All references to the department of public welfare should be taken as references to the department of health and social services.

(6) **REQUIREMENTS FOR REIMBURSEMENT.** (a) No reimbursement for relief granted to state dependents as defined in s. 49.04 (1), Stats. shall be provided to counties unless the county claiming reimbursement for such relief has adopted written standards which apply to all parts of the county relative to the eligibility for and amount of relief granted.

1. The standards so adopted shall be made available to applicants and recipients of relief for which reimbursement is sought under s. 49.04, Stats., and to the public.

2. Benefit standards so issued shall be reasonably adequate for health and decency as provided under (2) of this section.

3. If such standards adopted by a county establish a benefit level less than that provided for the AFDC program under s. 49.19 (11), Stats., the county shall file a statement with the secretary of the department of health and social services containing detailed information demonstrating that the standard as adopted is reasonable and necessary to provide the items listed in s. 49.01 (1), Stats.

(b) No reimbursement for relief granted state dependents under s. 49.04 (1), Stats., shall be provided to counties unless the county claiming reimbursement for such relief makes provision for the following procedural safeguards which apply to all parts of the county for all persons whose applications are denied in whole or in part.

1. Any denial in whole or in part of an application for relief shall be accompanied by a written statement informing the applicant of the basis of denial with reference to the appropriate standard upon which the denial was based. Said statement shall be provided to the applicant no later than 3 working days from the date of the denial. Said statement shall also inform the applicant of a right to a timely and impartial evidentiary hearing.

2. Any hearing so requested shall be held before an impartial person who has not participated in the decision under review.

3. Any hearing so requested must be held within 5 working days after the request is received. If the hearing is not held within 5 working days the applicant shall be provided with relief until such time as a hearing is held and a decision is rendered.

4. The applicant at the hearing shall be granted the opportunity to present evidence and argument in person or by a representative.

5. The applicant shall be given the opportunity to cross examine all witnesses relied upon by the relief agency.

6. The decision must rest upon evidence presented at the hearing and where there is an issue of credibility or veracity, the decision may not rest on mere uncorroborated hearsay.

7. A written decision shall be issued no later than 5 working days after the hearing and shall indicate the reasons for the final determination and the evidence relied upon in reaching that determination.

(c) The department shall establish a system for ongoing monitoring of compliance with this rule and for the denial of state reimbursement to counties that do not comply with this rule.

**History:** 1-2-56; cr. (6), Register, July, 1978, No. 271, eff. 8-1-78.

**PW-PA 20.16 County agency official bond.** (1) SURETY BOND. The person in charge of the administration in each county of aid to dependent children shall furnish a bond having as surety a company authorized to do surety business in this state. The cost of such bond shall be paid for as provided in section 204.11, Wis. Stats. The cost of such bond shall be deemed an administrative expense. Such bond shall be for such amount as shall be fixed by the board of supervisors of the county

wherein the bonded person is to perform his functions and shall be substantially in the form provided in section 19.01 (2), Wis. Stats.

(2) **APPROVAL AND FILING.** Each such bond shall be approved as to form by the district attorney and shall be filed in the office of the clerk of the county in which the bonded person performs his functions.

(3) **NOTICE OF BOND.** The clerk shall give notice in writing to the county board or its chairman and to the state department of health and social services stating the amount of the bond filed, the name of the surety, the date of filing and the date of approval by the district attorney. The notice herein required shall be given within 5 days after the person required to be bonded has entered upon his office or employment. Each such notice shall be published with the proceedings of the county board.

(4) **AMOUNT FIXED BY COUNTY BOARD.** The provisions of sections 19.01 (2), (3), (5), (6) and (8), 19.015, 19.02 to 19.06 inclusive, Wis. Stats., and all other provisions of law relating to official bonds unless clearly inapplicable or inconsistent herewith shall apply to all matters in connection with the official bonds required by this rule. As soon as possible after the convening of the November annual meeting of the county board of supervisors in each county, each such board shall by resolution fix, and at any subsequent meeting may change the amount of the bond herein required.

(5) **JUDGES EXEMPT.** This rule shall not apply to judges.

**History:** 1-2-56; am. Register, February, 1975, No. 230, eff. 3-1-75.

**PW-PA 20.17 Confidential nature of records.** (1) **RECORDS AND OFFICES AFFECTED.** Pursuant to section 49.53, Wis. Stats., case records and all financial data pertaining thereto on file in the county agency administering aid to dependent children, medical assistance, food stamps, social security aid payrolls on file in the offices of the county clerk and county treasurer, and old age assistance liens filed in the office of the register of deeds fall within the purview of this rule.

(2) **ADMINISTRATIVE AGENCY RECORDS.** (a) *Custody.* All agency records shall be safely kept and shall not be removed from the files and offices except when in the custody of a responsible official or employe of the agency.

(b) *Inspection of records.* Inspection of agency records by persons other than employes of the county agency administering aid to dependent children, medical assistance, and food stamps of the state department of health and social services and of the federal department of health, education and welfare shall be permitted only pursuant to signed request and written permission of the chief administrative officer of the agency, and a record shall be kept of said permission; provided that officials of the county shall not be required to sign such a request but shall be entitled to secure information for any purpose connected with the administration of the social security aids in accordance with the provisions and limitations of the law.

(c) *Privileged communications.* Social and medical information shall be deemed to be strictly confidential.

(3) ADMINISTRATIVE USES DEFINED. (a) Use of disclosure of information concerning applicants and recipients for any purpose connected with the administration of aid to dependent children, medical assistance and food stamps shall be deemed to permit providing pertinent information to other agencies administering relief, providing hospital or medical care or service, to assist applicants or recipients or their families so as to ameliorate or eliminate public dependency and to assure economical expenditures of public funds.

(b) The use or disclosure of financial information secured by proper public officials from the records of the county treasurer or county clerk in connection with fiscal governmental functions is

deemed to be for a purpose directly connected with the administration of the social security aids within the meaning of section 49.53, Wis. Stats.

(c) The use or disclosure of information secured from old age assistance liens filed in the office of the county register of deeds in connection with a proper search of title is deemed to be for a purpose directly connected with the administration of old age assistance within the meaning of section 49.53, Wis. Stats. The use or disclosure of any information secured in the course of any search of such records in the office of the register of deeds for any purpose is hereby prohibited in accordance with the terms of section 49.53, Wis. Stats.

(4) **RESPONSIBILITY FOR USE OF INFORMATION.** In the event that information is supplied from the case records or any other source, the person or agency so informed will be held responsible for the proper use of such information.

(5) **SUBPOENAS.** Subpoenas duces tecum for the production of agency records containing information concerning applicants and recipients of aid to dependent children, medical assistance and food stamps shall be obeyed except that objection shall be raised that section 49.53, Wis. Stats., prohibits the production of such case records for any purpose not connected with the administration of such aids, pensions, or assistance.

(6) **HEARINGS.** Hearing under section 49.50 (8), Wis. Stats., shall be public or private in the election of the applicant or recipient.

(7) **PUBLIC NOTICE.** A printed notice containing the pertinent laws and rules relating to the misuse of the index of old age assistance liens shall be posted in plain view in the offices of the register of deeds:

#### PUBLIC NOTICE

Persons using the index to old age assistance liens or other records relating to old age assistance are hereby notified of the legal restrictions relating to the proper use of such information.

Federal Social Security Act, Title I, Sec. (2) (a): A state plan for old age assistance must provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of old age assistance.

Section 49.53, 1971 Wisconsin Statutes: "LIMITATION ON GIVING INFORMATION. (1) Except as provided under sub. (2), no person may use or disclose information concerning applicants and recipients of aid to families with dependent children, social services under s. 49.01, or supplemental payments under s. 49.177, for any purpose not connected with the administration of the programs. Any person violating this subsection may be fined not less than \$25 nor more than \$500 or imprisoned in the county jail not less than 10 days nor more than one year or both.

(2) (a) Each county agency administering aid to families with dependent children shall maintain a monthly report at its office showing the names and addresses of all persons receiving such aids together with the amount paid during the preceding month. Nothing in this paragraph shall be construed to authorize or require the disclosure in such report of any information (names, addresses, amounts of aid or otherwise) pertaining to adoptions, aid furnished to or in behalf of unmarried

mothers under s. 49.19 (4) (d) and (g), or aid furnished for the care of children in foster homes under s. 49.19 (10).

(b) Such report shall be open to public inspection at all times during regular office hours and may be destroyed after the next succeeding report becomes available. Any person except any public officer, seeking permission to inspect such book shall prove his identity and shall be required to sign a statement setting forth his address and his reasons for making such request and indicating that he understands the provisions of par. (c) with respect to the use of the information obtained. The use of a fictitious name is a violation of this section. Within 72 hours after any such record has been inspected, the agency shall mail to each person whose record was inspected a notification of that fact and the name and address of the person making such inspection. The agency shall keep a record of such requests.

(c) It is unlawful to use any information obtained through access to such report for political or commercial purposes. The violation of this provision is punishable upon conviction as provided in sub. (1)."

PW-PA 20.17 (3) (c) paragraph "c". "The use or disclosure of information secured from old age assistance liens filed in the office of the county register of deeds in connection with a proper search of title is deemed to be for a purpose directly connected with the administration of old age assistance within the meaning of section 49.53, 1971 Wis. Stats. The use or disclosure of any information secured in the course of any search of such records in the office of the register of deeds for any other purpose is hereby prohibited in accordance with the terms of section 49.53, 1971 Wis. Stats."

PW-PA 20.17 (4) "Responsibility for use. In the event that information is supplied from the case records or any other source, the person or agency so informed will be held responsible for the proper use of such information."

#### STATE DEPARTMENT OF HEALTH & SOCIAL SERVICES

Wilbur J. Schmidt, Secretary

**History:** 1-2-56; am. (7), Register, April, 1967, No. 136, eff. 5-1-67; am. Register, February, 1975, No. 230, eff. 3-1-75.

**PW-PA 20.18 Fair hearings.** (1) **LEGAL BASIS.** This rule is adopted pursuant to sections 46.03 (8) and 49.50 (8) (9), Wis. Stats., and to conform with the requirements of Titles IV, XIX and XX of the U.S. Social Security Act, the U.S. Food Stamp Act and Wis. Stat. 49.046 (3) relating to complaints, hearings, and reviews of public assistance, medical assistance, social service and food stamp claims.

(2) **DEFINITIONS.** (a) A claimant is defined as a person seeking an opportunity to file an application, a person who has filed an application and is awaiting the agency's decision, a person whose application has been approved, a person receiving assistance or whose assistance payment has been reduced or a person who still considers entitlement to assistance to exist although such assistance has been denied or payment has been discontinued or a person who has been denied or excluded from a service program.

Register, August, 1978, No. 272  
Public Welfare

(b) A hearing is defined as an orderly, readily available proceeding before an impartial employe of the state agency, in which a dissatisfied claimant or the claimant's representative may present with the help of witnesses why action or inaction in the claimant's 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 of desire on the part of the claimant to go beyond the usual procedure for adjusting complaints with the county agency and an opportunity to present the case to the state department of health and social 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 personal 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 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 all claimants are fully informed of their 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 application, and when other administrative decisions are made shall be informed in writing of the right to a fair hearing when an application is not acted upon with reasonable promptness, or if not satisfied with the action taken, and the method by which a hearing may be obtained.

(b) Every claimant may obtain a hearing before the state department of health and social services in relation to an application not acted upon with reasonable promptness, or if not satisfied 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 case question which arose more than 90 days prior to the request for a hearing. In cases involving discontinuance or reduction of the amount of the grant aid shall not be discontinued or reduced prior to receipt of the written fair hearing decision when a petition for a hearing is received within 10 days of the date on the advance notice that the discontinuance or change in grant is effective.

(5) **REQUEST FOR A 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 the request in writing, or abandon the proceedings. The proceedings may be considered abandoned if neither the claimant nor the claimant's 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 the claimant wishes any further action taken on the 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 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 self representation, or to be represented; have the opportunity to bring witnesses, to establish all pertinent facts and circumstances, to advance any arguments without undue interferences, 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 aggrieved by their application.

(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 state department of health and social services by the secretary or designee of the department.

(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 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 the county treasurer 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 office of administrative hearings and rules. 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 office of administrative hearings and rules provided that if emergency needs so require any other employe duly designated by the secretary of the state department of health and social services 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; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, August, 1978, No. 272, eff. 9-1-78.

**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 files 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 s. 49.11 (7) (a), 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.** **History:** 1-2-56; am. (2), Register, June, 1967, No. 138, eff. 7-1-67; r. Register, March, 1981, No. 303, eff. 4-1-81.

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

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(3) **CONDITIONS FOR DESTRUCTION OF OTHER RECORDS.** Records, other than those specified in sub. (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.

(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 ss. 49.04 and 49.046, 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 dependent children, or relief to needy Indians may not be destroyed until after 7 years, in accordance with s. 59.175 (9) and (18), Stats.

**History:** 1-2-56; am. Register, October, 1962, No. 82, eff. 11-1-62; am. Register, February, 1975, No. 230, eff. 3-1-75.

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

**History:** Cr. Register, May, 1961, No. 65, eff. 6-1-61; am. Register, February, 1975, No. 230, eff. 3-1-75.

**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.

**PW-PA 20.24 Student 18-year-old aid program** (s. 49.20, Stats.)

(1) INTRODUCTION. This program is based on s. 49.20 of the Wisconsin Statutes which was signed into law as part of chapter 418, Laws of 1977, on May 18, 1978.

(a) *Purpose.* In accordance with s. 49.20, Stats., this program is to provide state aid to 18-year-old high school students who become ineligible for aid to families with dependent children solely because of turning age 18.

(b) *Definitions.* 1. AFDC. "AFDC" means aid to families with dependent children.

2. AFDC case. For purposes of this rule the "AFDC case" consists of all those persons whose needs were being met by the same AFDC grant as the 18-year-old's, during the month in which he or she turned 18.

3. Caretaker relative. A "caretaker relative" includes all of the following: father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, half brother or half sister, nephew, niece, aunt, uncle, first cousin, or any of these denoted by prefixes of grand, great or great-great.

4. Enrolled. "Enrolled" means having selected a program of studies for the semester in which a person is attending or plans to attend school. Confirmation of enrollment or of a plan to enroll may be obtained from a local school official.

5. Regularly attending. Persons attending classroom instruction during the normal school year shall be considered "regularly attending" school. When absence from school is due to illness, convalescence, a family emergency, or an official school vacation, they are also considered to be regularly attending. If summer school sessions are offered as an option in a school system, a person is not required to participate in order to

be considered regularly attending. Summer is considered to be an official school vacation.

6. Agency. The "agency" means the local agency that administers the AFDC program.

(2) APPLICATION. (a) Application for this program shall be made in behalf of the 18-year-old by the caretaker relative with whom the 18-year-old is living.

(b) Application for this program shall also constitute application for Medical Assistance for the 18-year-old. Eligibility of the 18-year-old for the Medical Assistance program shall be determined in accordance with the criteria specific to the Medical Assistance program.

(c) Application shall be made on the forms as prescribed by the department.

(3) ELIGIBILITY. The 18-year-old must meet the following nonfinancial and financial requirements:

(a) *Nonfinancial/requirements.* The nonfinancial requirements are met if the person:

1. Is 18 years of age.
2. Is a Wisconsin resident.
3. Is enrolled in and regularly attending a secondary education program leading to a high school diploma.
4. Received AFDC, but not as a foster child during the month in which he or she become 18.
5. Is living with the caretaker relative.
6. Is deprived of parental support or care because of any of the following reasons:

- a. death of a legal parent
- b. continued absence of a legal parent from the home
- c. incapacitation of a legal parent
- d. unemployment of the legal father

(b) *Financial requirements.* 1. The 18-year-old's nonexempt assets shall not exceed the AFDC program asset limitations.

2. Exempt assets are:

- a. Real and personal property owned by the 18-year-old which would be exempt property under the AFDC program.
- b. One vehicle, if it is owned by the 18-year-old, is driven on the road or is a snowmobile, and is state registered.
- c. Assets which are placed in an educational fund according to the criteria in subd. 7.

3. The nonexempt income of the person whose 18th birthday caused the AFDC case to be no longer eligible for AFDC shall not exceed the appropriate family allowance for one specified in s. 49.19 (11), Stats.

4. The nonexempt income of the person whose 18th birthday causes the AFDC payment to be reduced shall not exceed the difference between the appropriate family allowance specified in s. 49.19 (11), Stats., for the number of persons in the AFDC case including the 18-year-old and the number of persons in the AFDC case, excluding the 18-year-old.

5. Nonexempt income includes all unearned income of the 18-year-old that is not subject to the criteria in subd. 7.

6. All earned income of the 18-year-old shall be exempt.

7. If, starting with the end of the second year of high school, there is a plan for the 18-year-old to continue education or training beyond high school, unearned income set aside in an education fund shall be exempted in the financial eligibility determination. This fund may contain up to an amount sufficient to defray two year's expenses.

(4) **PAYMENT.** (a) Payment shall be made by check or by vendor payment.

(b) The payment amount for the person whose 18th birthday caused the AFDC case to be no longer eligible for AFDC shall be the difference between the appropriate family allowance for one, specified in s. 49.19 (11), Stats., and the 18-year-old's nonexempt unearned income.

(c) The payment amount for the person whose 18th birthday causes the AFDC payment to be reduced shall be computed according to the following procedure:

1. From the appropriate family allowance specified in s. 49.19 (11), Stats., for the number of persons in the AFDC case, subtract the family allowance for that AFDC case less one.

2. From the result in subd. 1., subtract the 18-year-old's nonexempt unearned income.

The remainder in subd. 2. is the payment amount.

(5) **PAYEE.** The payee shall be the caretaker relative with whom the 18-year-old is living.

(6) **PROGRAM ADMINISTRATION.** (a) All agencies are required to administer this program.

(b) The administration of this program shall be within the same limitations and in accordance with the same procedures used to administer the AFDC program with respect to verification procedures, reimbursement to the agency, promptness on notification of decision on application, correction of overpayments and underpayments, and all other administrative procedures unless stated to the contrary within this subsection.

(c) Reimbursement to the agency for this program shall be solely from state funds which are not federally matchable.

(d) A home visit shall be made prior to the initial payment if the 18-year-old's living situation has changed.

(e) The agency shall verify the recipient's regular attendance of school every three months.

(f) The agency shall review the entire eligibility of the recipient every 6 months.

(g) The agency shall meet reporting requirements for this program as specified by the department of health and social services.

(h) Agencies shall notify all AFDC cases whose benefits are reduced or discontinued because of an AFDC case member becoming 18 years of age of this state program at the same time the 10-day notice of reduction or discontinuance of AFDC is sent.

(7) RIGHTS AND RESPONSIBILITIES. Rights and responsibilities of AFDC recipients are equally applicable to recipients of student 18-year-old aid.

**History:** Ennerg. cr. eff. 8-16-78; cr. Register, December, 1978, No. 276, eff. 1-1-79.

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