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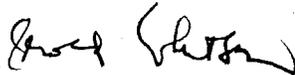
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to the Relief of Needy Indian Persons (RNIP) program were duly approved and adopted by this Department on August 5, 1992.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 5th day of August, 1992.



SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

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ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
RENUMBERING, AMENDING, REPEALING AND RECREATING
AND CREATING RULES

To renumber HSS 211.10(2)(intro.) and (a) to (c); to amend HSS 211.01(3)(v), 211.02(2)(b) and (3)(b)2 and (c); to repeal and recreate HSS 211.07(4) and (11); and to create HSS 211.01(3)(im) and (mm), 211.02(3)(d), 211.055, 211.06(2)(d) and (10), 211.09(2m) and 211.10(2)(b), relating to Relief of Needy Indian Persons (RNIP).

Analysis Prepared by the Department of Health and Social Services

The Department's Relief of Needy Indian Persons (RNIP) program assists some 1,600 low-income American Indians who live on tax-free (reservation) land in Wisconsin. Assistance consists of monthly money payments along with medical benefits and the payment of funeral and cemetery expenses. Recipients are individuals who do not qualify for Aid to Families with Dependent Children (AFDC), because they do not have dependent children, for Supplemental Security Income (SSI), because they are not over the age of 65, blind or disabled, or for general relief (GR) provided by counties because their eligibility for RNIP supersedes their eligibility for GR. Recipients are required to participate in a work experience component as a condition of eligibility for RNIP.

Chapter HSS 211, rules for administration of the RNIP program by elected tribal governing bodies, American Indian organizations and county social service agencies, is amended by this order to incorporate changes made in ss.49.046 and 49.047, Stats., and the addition of a grant diversion program for RNIP recipients by s.49.048, Stats. The rule order also incorporates other policy changes made by the Department to ensure consistency with the Aid to Families with Dependent Children (AFDC) program as required under s.49.046(2)(d), Stats., and as a result of experience with administering RNIP as suggested by the tribal agencies and agreed to by the Department.

The revised rules include language to implement a statutory requirement that the monthly RNIP grant be reduced by the value of other benefits provided to the RNIP group by the tribe; expand allowable work program sites; permit an agency to, when requested, pay the RNIP grant twice monthly instead of once a month; implement the requirement in s.49.046(3)(a)1(intro.), Stats., that the Department designate 2 benefit areas of the state based upon variations in shelter costs in those areas; and provide that an RNIP agency may use work experience program funds to obtain tools and equipment for use in the program. The revised rules in addition provide for grant diversion as part of the work experience component of the RNIP program. In grant diversion all or part of the RNIP benefit is used to subsidize,

for up to 6 months, up to 50 percent of the wages an employer pays a recipient for a job performed by the recipient under a written contract between the operator and the employer. Rule language regarding treatment of lump sum income and earned income deductions is amended so that it is consistent with changes being made in ch. HSS 201, rules for Aid to Families with Dependent Children (AFDC) program. The amending of s. HSS 211.07(11) is necessary because of the changes made by the Family Support Act of 1988 (P.L. 100-485) which was effective October 1, 1989.

The Department's authority to renumber and amend, amend, repeal and recreate and create these rules is found in ss.49.046(4)(a), 49.047(4), and 49.048(9), Stats. The rules interpret ss.49.046, 49.047, and 49.048, Stats, and s.49.19(5)(a)2 to 4m, Stats., as amended by 1989 Wisconsin Act 31.

SECTION 1. HSS 211.01(3)(im) and (mm) are created to read:

HSS 211.01(3)(im) "Grant diversion" means a work program established under s.49.048, Stats., in which all or part of a recipient's grant is used to subsidize, for a period not to exceed 6 months, up to 50 percent of the wages an employer pays the recipient for a job performed by the recipient under a written contract between the operator and the employer.

(mm) "Operator" means an agency, if the agency administers a grant diversion program directly under s.49.048, Stats., or the person operating a grant diversion program under contract with an agency.

SECTION 2. HSS 211.01(3)(v) is amended to read:

HSS 211.01(3)(v) "Work experience component" means a part of the RNIP program, which may include grant diversion, designed to provide a useful work experience and, when possible, training for work which may lead to gainful employment for eligible recipients of relief.

SECTION 3. HSS 211.02(2)(b) and (3)(b)2 and (c) are amended to read:

HSS 211.02(2)(b) Except for a training program approved under s.HSS 211.06(2)(c) or grant diversion approved under s.HSS 211.06(10), the work experience component of RNIP may only be operated within the boundaries of a federally recognized Wisconsin Indian reservation or within 50 miles of that boundary, or within the U.S. bureau of Indian affairs Wisconsin service area for the Winnebago tribe.

(3)(b)2. Costs for rental of office space, based on fair rental price for the area, including utilities, insurance, maintenance, repairs and alterations to the premises; and

(c) Travel costs for transportation, lodging, meals and related items incurred by employees on official business and members of an advisory committee, which may not exceed reimbursement of travel allowances for non-represented state employees; and

SECTION 4. HSS 211.02(3)(d) is created to read:

HSS 211.02(3)(d) The cost of tools and equipment provided to participants in the work experience component. The cost of tools and equipment provided to participants may not exceed amounts approved by the department as necessary and reasonable for proper and efficient program administration. If the tools and equipment are also used for purposes other than the work experience component, the agency shall allocate the costs accordingly.

SECTION 5. HSS 211.055 is created to read:

HSS 211.055 AID TO ELIGIBLE PERSONS. (1) GEOGRAPHIC AREAS.

(a) The area of the state designated by the department as area I under s.49.19(11)(a)1c, Stats., shall be area I for purposes of recognizing differences in shelter care costs when determining the amount of the RNIP payment under s.49.046(3)(a)1, Stats.

(b) The area of the state designated by the department as area II under s.49.19(11)(a)1c, Stats., shall be area II for purposes of recognizing differences in shelter care costs when determining the amount of the RNIP payment under s.49.046(3)(a)1, Stats.

Note: Designated areas I and II are shown in Appendix 17 to ch. 8, RNIP, in vol. 07, Other Programs, of the Department's Economic Assistance Manual which is available for public review in the principal office of any county or tribal income maintenance agency.

(2) AMOUNT OF AID. (a) The agency shall pay aid to eligible persons based on family size and RNIP geographic area as provided in s.49.046(3)(a)1, Stats.

(b) The agency shall reduce the monthly benefit payment by the value of other benefits provided to the family by the tribe, except for the benefits described under s. HSS 211.08. Only those benefits that are provided by a tribe to each of its members may be used as the basis for a reduction of this aid.

(c) The agency shall pay the amount of reduced aid under par. (b) to the tribal governing body of the tribe granting the relief. Payment shall be made within 60 days after the date the agency reduces a recipient's benefits under par (b).

(d) Any funds paid under par. (c) may be used for any legal purpose by the tribal governing body. The tribal governing body shall notify the department within 30 days of the receipt of the funds.

SECTION 6. HSS 211.06(2)(d) and (10) are created to read:

HSS 211.06(2)(d) Recipients may not use hours of work experience completed in one month to satisfy a work experience requirement in any succeeding month.

(10) GRANT DIVERSION. (a) The agency may include grant diversion as part of the work experience component under sub. (1). The agency may administer grant diversion directly or by contract.

(b) A recipient participating in grant diversion shall be paid by the hour, using as the hourly rate the higher of the following:

1. The hourly wage paid to other entry level employes of the employer who perform the same work; or
2. The federal minimum hourly wage prescribed in 29 USC 206(a)1.

Note: The Department of Industry, Labor and Human Relations has consistently taken the legal position that ch. 104, Stats., Minimum Wage Law, and the implementing rules, ch. IND 72, do not apply to any Indian-owned business operating on an Indian reservation established by treaty with the United States government. Indian-owned businesses on a reservation are governed by the tribal government for the reservation and the laws enacted by that governmental body.

(c) A recipient participating in grant diversion shall remain income-eligible for RNIP for the duration of the recipient's participation.

(d) A recipient participating in grant diversion shall comply with the work experience requirements in subs. (1) to (9) and the requirements of the operator as set forth in the written contract between the operator and the employer. Failure to comply may result in a suspension of RNIP as follows:

1. For the first violation, for a period not to exceed 30 days; and

2. For a second or subsequent violation, for a period not to exceed 60 days.

(e) The grant diversion contract between an operator and an employer shall require the employer to repay the total amount of wage subsidy received for employing a recipient if the employer fails to retain the recipient for 3 months following termination of the wage subsidy, unless cause exists for the employer to dismiss the recipient.

(f) A grant diversion contract between an operator and an employer may not contravene a collective bargaining agreement entered into by the employer.

(g) A grant diversion program may not be operated so that it supplants an unsubsidized employe.

SECTION 7. HSS 211.07(4) and (11) are repealed and recreated to read:

HSS 211.07(4) LUMP SUM PAYMENTS. In this subsection, "lump sum payment" means a nonrecurring payment or accumulation of individual payments of earned or unearned income paid in one sum to an RNIP group member, such as social security benefits, personal injury and worker compensation awards, or lottery winnings. A lump sum payment shall be treated as follows:

(a) Any amount earmarked and used for the purpose for which it was paid, such as to pay for back medical bills resulting from an accident or injury, funeral and burial costs or the cost of replacing or repairing a resource, shall be disregarded;

(b) When the RNIP group's income, after applying applicable disregards, exceeds the assistance standard under s.49.19(11)(a), Stats., for the appropriate family size because of the receipt of a lump sum payment, the RNIP group shall be ineligible for RNIP for the full number of months derived by dividing the sum of the lump sum income and other available income by the monthly need standard under s.49.19(11)(a)1a, Stats., for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility begins in the next possible payment month immediately after the month in which the lump sum was received; and

(c) The agency shall recompute the RNIP group's period of ineligibility due to receipt of a lump sum payment as of the date of the change in any of the following circumstances:

1. The assistance standard and the family allowance under s.49.19(11)(a), Stats., increase due to a statutory change;

2. The lump sum income or a portion of it becomes unavailable to the former RNIP group for a reason beyond the group's control, for example:

a. The lump sum amount was used because an immediate threat to the health, safety or welfare of the former RNIP group existed; or

b. There has been a loss or theft of income;

3. Medical expenses were incurred and paid during the period of ineligibility. Only medical expenses which equal or exceed any balance of the lump sum payment remaining after calculating the period of ineligibility shall be counted; or

4. The RNIP group member who received the lump sum payment leaves the group, and control of the lump sum payment is no longer with the remaining group members.

(d) If the size of the RNIP group increases during the period of ineligibility, the eligibility of the person added to the RNIP group shall be determined separately.

(11) DEDUCTIONS FROM INCOME. (a) For support payments. If there is a court order requiring a person in the RNIP group to pay support to a person who is not in the RNIP group, the agency shall consider this income unavailable to the RNIP group and shall deduct it from the group's income before determining eligibility and the amount of the grant.

(b) For employment. The agency shall make the following deductions from earned income based on the person's employment:

1. Allowable work-related expenses of \$90, as provided in s.49.19(5)(a)2, Stats.;

2. An amount equal to \$30 plus 1/3 of the earned income not already disregarded under subd. 1 shall be deducted from the person's earned income unless one of the following conditions applies:

a. The person has received the \$30 plus 1/3 deduction for 4 consecutive months and, since then, has not been off RNIP for 12 consecutive months; or

b. In the last 12 months the person has been excluded from the RNIP group for the sole purpose of avoiding the \$30 plus 1/3 deduction for 4 consecutive months; and

3. When employment cannot be maintained without dependent care for a child or incapacitated adult in the RNIP group, dependent care costs up to \$175 a month per child over age 2 or

incapacitated adult, and up to \$200 a month per child under age 2, as provided in s.49.19(5)(a)4s(intro), Stats.

SECTION 8. HSS 211.09(2m) is created to read:

HSS 211.09(2m) SEMI-MONTHLY PAYMENTS. The agency may, upon written request from a recipient, divide the RNIP monthly benefit into 2 payments and make 2 benefit payments per month to the recipient.

SECTION 9. HSS 211.10(2)(intro.) and (a) to (c) are renumbered HSS 211.10(2)(a)(intro.) and 1 to 3.

SECTION 10. HSS 211.10(2)(b) is created to read:

HSS 211.10(2)(b) The months in which the RNIP recipient participates in grant diversion under s. HSS 211.06(10) shall be considered for purposes of the continuation of medical benefits under par. (a) as months in which RNIP was received.

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), Stats.

Wisconsin Department of Health
and Social Services

Date: August 5, 1992

By: 

Gerald Whitburn
Secretary

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