

Chapter HSS 211

RELIEF OF NEEDY INDIAN PERSONS

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HSS 211.01 Introduction. (1) **AUTHORITY AND PURPOSE.** This chapter is promulgated under the authority of ss. 49.046 (4) (a) and (f), 49.047 and 227.11, Stats., for the purpose of implementing the relief of needy Indian persons (RNIP) program, including the work experience component of that program. This chapter governs program eligibility requirements, sets criteria for determining relief payments, delineates the scope of medical benefits and establishes uniform procedures and policies relating to the administration of the RNIP program.

(2) **TO WHOM THE CHAPTER APPLIES.** This chapter applies to county departments of social services and human services, elected tribal governing bodies, and any American Indian organization appointed under s. 49.046 (4), Stats., by the department to administer the relief of needy Indian persons program under s. 49.046, Stats., and the work experience component of that program under s. 49.047, Stats., and to persons applying for or participating in the program.

(3) **DEFINITIONS.** In this chapter:

(a) "AFDC" means aid to families with dependent children, a public assistance program under Title IV-A of the Social Security Act of 1935, as amended, and ss. 49.19 to 49.41, Stats.

(b) "Agency" means, unless qualified, the organization appointed by the department to administer the RNIP program, including the work experience component of that program, namely, the tribal governing body, an American Indian organization or a county social services department.

(c) "American Indian organization" means an Indian organization recognized by a tribal governing body as having the capability of administering relief under s. 49.046, Stats., and appointed by the department for that purpose with the consent of the tribal governing body.

(d) "Applicant" means an Indian person who is applying for RNIP payments under this chapter.

(e) "Assistance standard" means the monthly dollar amounts under s. 49.19 (11) (a) 1. and 2., Stats., used in determining need and amount of the family allowance in the AFDC program.

(f) "County social services department" means any county public welfare, social services or human services department created under s. 46.21, 46.22 or 46.23, Stats.

(g) "Deemed" means that all or a portion of an excluded person's money or assets are considered available to the RNIP group.

(h) "Department" means the Wisconsin department of health and social services.

(i) "Excluded person" means an individual who would be a member of an RNIP group except that the recipient is excluded pursuant to s. HSS 211.05 (3) (a).

(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% 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.

(j) "Household" means the total number of persons eligible under s. HSS 211.05 who share a common living arrangement.

(k) "Indian" has the meaning prescribed for "American Indian" in s. 49.046 (1) (a), Stats., namely, a person who is recognized by an elected tribal governing body in this state as a member of a federally recognized Wisconsin tribe or band of Indians.

(l) "Medical assistance" has the meaning prescribed in s. 49.43 (8), Stats.

(m) "Nonfinancially eligible" means eligibility of an RNIP group in accordance with requirements specified in s. 49.046 (2) (a), (b) and (c), Stats., and s. HSS 211.05.

(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.

(n) "Recipient" means an Indian person who is receiving RNIP payments under this chapter.

(o) "Relief" has the meaning prescribed for aid under s. 49.046 (3), Stats.

(p) "RNIP" means relief of needy Indian persons.

(q) "RNIP group" means an Indian person who is applying for or receiving RNIP and all of the persons he or she is legally responsible to support and, if present in the household, an adjudicated Indian father who is legally responsible for the support of the Indian person's children but is not married to the Indian person, all of whom are living in the same household and are not excluded persons.

(r) "Secretary" means the head of the department.

(s) "Spouse" means a person's legal husband or wife.

(t) "Supplemental security income" or "SSI" means the public assistance program under Title XVI of the Social Security Act of 1935, as amended, and s. 49.177, Stats.

(u) "Tax-free land" has the meaning prescribed in s. 49.046 (1) (b), Stats., namely, land in this state within the boundaries of a federally recognized reservation or within the U.S. bureau of Indian affairs service

area for the Winnebago tribe, which is not subject to assessment or levy of a real property tax either as a general tax or as a payment in lieu of the taxes.

(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.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86; am. (3) (v), cr. (3) (im) and (mm), Register, September, 1992, No. 441, eff. 10-1-92; correction in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, September, 1992, No. 441.

HSS 211.02 Administration. (1) **APPOINTMENT.** (a) The department shall appoint an agency to administer the RNIP program, including its work experience component, in accordance with ss. 49.046 and 49.047, Stats., and this chapter.

(b) A tribal governing body may petition the department at any time for the appointment of that body or an American Indian organization to administer the program under this chapter. The department shall:

1. Begin negotiations with the tribal governing body no later than 2 months after the date the petition is received; and

2. Decide no later than 6 months after the date the petition is received whether to make the appointment based on its determination of the capability of that body or organization to administer RNIP and its work experience component in accordance with this chapter.

(c) Any contract under which the department appoints a tribal governing body or an American Indian organization to administer the program may be terminated by either party upon 45 days written notice to the other party, as follows:

1. Notice to the department shall be sent to the secretary of the department.

2. Notice to the tribal governing body or American Indian organization shall be sent to the presiding officer of that body or organization and shall include the reasons for termination.

(d) A department-initiated termination may be appealed to the secretary. If the termination is not contested or the secretary determines that another agency should be appointed, the department may appoint another agency to administer the program.

(2) **WORK EXPERIENCE.** (a) The agency appointed by the department to administer RNIP shall operate a work experience component of the program for RNIP recipients, except that the department may waive this requirement if it would not be cost-effective due to a low number of persons who would be required to participate in the program.

(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.

(c) 1. The elected tribal governing body of American Indian organization shall be liable for any benefits legally recoverable under the workers' compensation law, ch. 102, Stats., if in its contract with the department the body or organization assumes this liability. If it assumes this responsibility, the cost of workers' compensation shall be an administrative cost of operating the program.

2. A county social services agency operating the program shall be liable for any benefits legally recoverable under the workers' compensation law, ch. 102, Stats., except that the agency may contract with another governmental unit for whose benefit the work experience program is primarily designed to share or wholly assume the liability. The cost of workers' compensation insurance shall be considered an administrative cost of the program.

(3) **REIMBURSEMENT OF THE AGENCY.** The department shall reimburse the agency to administer the RNIP program, including the work experience component, as follows:

(a) The amount of relief paid shall be reimbursed in full;

(b) The necessary and appropriate administrative costs of providing relief shall be reimbursed in accordance with the contract. Necessary and appropriate costs include:

1. Equipment, supplies, and telephone costs, including all capital equipment purchases which shall be approved by and ordered through the department;

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

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

(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.

(4) **AUDIT.** The department may at any time audit all relief payments and all records relating to the administration of RNIP programs and their work experience components and make any necessary audit adjustments to ensure efficient and proper administration of the program.

(5) **PERSONNEL POLICY.** The tribal governing body or American Indian organization administering RNIP and its work experience component shall establish a written personnel policy which shall be the same as that approved by the tribal governing body for the administration of other programs under its authority.

(6) **JUDICIAL REVIEW.** The department shall be the respondent in all proceedings for judicial review arising from the administration of RNIP programs.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86; am. (2) (b), (3) (b) 2. and (c), cr. (3) (d), Register, September, 1992, No. 441, eff. 10-1-92.

HSS 211.03 Application. (1) **APPLICATION FORM.** The agency shall:

(a) Provide applicants for RNIP with the application form prescribed by the department;

(b) Accept applications made using this form; and

(c) Notify each applicant in writing within 30 days following the date of application concerning the disposition of his or her application.

(2) **PROVIDING CORRECT AND TRUTHFUL INFORMATION.** Applicants and recipients shall provide to the agency, the department or its delegated agent full, correct and truthful information necessary for eligibility determination or redetermination. The applicant or recipient shall report to the agency any changes in income, financial resources or other circumstances which may affect eligibility within 10 days of the change.

(3) **REFUSAL TO PROVIDE INFORMATION.** (a) If an applicant or recipient refuses to provide information necessary to determine RNIP eligibility, the persons whose eligibility depends upon this information shall be ineligible.

(b) The agency may require verification of information necessary to determine eligibility, but a person may not be found ineligible for failure to provide verification if it is not within the person's power to provide verification.

(4) **SIGNING THE APPLICATION.** (a) Each application shall be signed by the applicant or the applicant's responsible relative, legal guardian or authorized representative.

(b) The application shall be signed in the presence of an agency representative in accordance with s. 49.13 (1), Stats.

(c) Two witnesses' signatures shall be required when the application is signed with a mark.

(5) **FRAUD.** When the agency director or designee decides that possible fraud exists, the case shall be referred to the district attorney.

(6) **REVIEW.** The agency shall review eligibility in each case within 6 months after the date of initial eligibility and at least once every 6 months after that first review.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86.

HSS 211.04 Emergency aid. (1) **DEFINITION OF EMERGENCY.** In this section, "emergency" means circumstances that:

(a) Place the welfare of one or more eligible persons in the RNIP group in jeopardy;

(b) Cannot be resolved by the applicant with the RNIP group's current resources; and

(c) In the absence of other resources, including potential or pending AFDC or supplemental security income, require that immediate financial assistance be given to the RNIP group.

(2) **IMMEDIATE ASSISTANCE.** RNIP shall be granted immediately to an applicant in an emergency prior to clarifying or verifying the information in the application when the information in a signed application demonstrates that the applicant meets the RNIP eligibility criteria under s. HSS 211.05.

(3) **WORK EXPERIENCE WAIVER.** The work experience requirement in s. HSS 211.06 shall be waived for emergency RNIP recipients.

(4) **AUTHORIZATION.** If an applicant for emergency relief is found eligible for supplemental security income, the applicant shall direct the federal social security administration to pay any initial supplemental security income payment to the agency. If that initial payment is less than the amount of emergency relief granted to the RNIP group, the agency shall accept that amount as full reimbursement. If that initial payment is more than the amount of the emergency relief granted to the RNIP group, the agency shall keep an amount equal to the amount of emergency relief and shall return the remainder to the RNIP group.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86.

HSS 211.05 Eligibility. Eligibility for RNIP shall be determined in accordance with this section, as follows:

(1) **NONFINANCIAL ELIGIBILITY CRITERIA.** No person is eligible for RNIP unless that person:

(a) Is an American Indian or a member of an RNIP group;

(b) Resides on tax-free land;

(c) Is not eligible to receive the type of aid needed under any program specified in s. 49.046 (2) (b), Stats., namely, SSI, AFDC or medical assistance, except that:

1. If a person is eligible for medical assistance but not eligible for AFDC or SSI, and meets the RNIP eligibility requirements, that person shall be eligible for RNIP money payments but is not eligible for RNIP medical payments;

2. Relief may be paid only as emergency assistance pending a determination of eligibility for AFDC or for SSI, in accordance with the provisions of s. HSS 211.04; or

3. The eligibility of any family member for AFDC, SSI or medical assistance may not cause the ineligibility of any other family member for relief; and

(d) Meets the work experience and job service requirements in s. HSS 211.06.

(2) **FINANCIAL ELIGIBILITY CRITERIA.** No RNIP group is eligible for relief unless the RNIP group:

(a) Meets the limitations on value of assets, including a motor vehicle, specified in s. 49.19 (4) (bm), Stats., and

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(b) Meets the standard of need determined in the same manner as aid under s. 49.19 (11), Stats., except that there need not be a dependent child in the home. All income shall be considered in determining financial eligibility of the RNIP group.

(3) **DEEMING THE ASSETS AND INCOME OF EXCLUDED PERSONS.** (a) The agency shall exclude from an RNIP group a person who is otherwise eligible, if the person:

1. Voluntarily chooses to be excluded from the group;
2. Does not comply with the work experience participation requirements in s. HSS 211.06 (2);
3. Does not comply with the job service requirements in s. HSS 211.06 (5);
4. Does not comply with non-financial or any other eligibility criteria; or
5. Withholds eligibility information.

(b) All available assets of any excluded person shall be deemed to the RNIP group except:

1. Homestead property;
2. Household effects; and
3. The equity value of one vehicle, up to the limit set by s. 49.19 (4) (bm), Stats.

(c) All net income of the excluded person which exceeds the average of the differences between the area I standards set by s. 49.19 (11) (a), Stats., for family sizes 3 and 2, 4 and 3, 5 and 4, and 6 and 5 shall be deemed to the RNIP group. If 2 persons are excluded, the amount deemed to the RNIP group shall be net income in excess of 2 times the average. Net income shall be calculated as follows:

1. Gross monthly earned income less allowable work-related expenses and dependent care costs;
2. Plus gross monthly unearned income less any costs related to the unearned income; and
3. Less court-ordered child support paid for a child residing outside the home.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86.

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) 1 c, 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) 1 c, 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.

History: Cr. Register, September, 1992, No. 441, eff. 10-1-92.

HSS 211.06 Work experience requirement. (1) GENERAL. The agency shall operate a work experience component of the RNIP program, as required by s. 49.047, Stats., unless the requirement is waived under s. HSS 211.02 (2) (a). The work experience component may include grant diversion under sub. (10). Work experience shall consist of a minimum of 15 hours a week or 60 hours a month on the job or in training which may lead to gainful employment.

(2) PARTICIPATION REQUIREMENTS. (a) Recipients of RNIP shall participate in work experience as a condition of eligibility for RNIP.

(b) Recipients may only be assigned to work which is not prohibited by law and they may not supplant regular employes of the agency or of any unit of municipal, county or state government.

(c) Recipients may be assigned to participate in an agency-approved training program in fulfillment of the minimum work experience requirement. An approved training program shall include:

1. Full or part-time participation in adult education, vocational or technical school;

2. On-the-job training in public or private work settings; or

3. Training carried out in cooperation with other training programs.

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

(3) EXEMPTIONS. A recipient is not required to participate in work experience if the recipient:

(a) Is otherwise employed 100 hours or more a month;

(b) Is under age 16;

(c) Is absent from his or her place of residence on tax-free land for a temporary period of not more than 30 consecutive days;

(d) Provides medical evidence that illness or injury prevents his or her participation in work experience for more than 30 but less than 90 days;

(e) Provides medical evidence that his or her incapacitation prevents entry into work experience for at least 90 days;

(f) Is required to be in the home because of the illness, injury, or incapacitation of a spouse or other relative specified in s. 49.19 (1) 2.a., Stats., or any other member of the RNIP group;

(g) Is an adult in an RNIP group in which another adult is employed 100 hours or more a month or has been accepted in the work experience component;

(h) Is a legal caretaker of a child under age 6 and is in an RNIP group in which another legal caretaker is required to participate in the work experience program and the other caretaker has been excluded from the RNIP group because of failure to comply with the participation requirements under sub. (2);

(i) Is granted emergency assistance under s. HSS 211.04 and a temporary exemption from work experience, not to exceed 60 days, while awaiting receipt of requested medical or psychological reports or other specialized information; or

(j) Is at least 6 months pregnant.

(4) VOLUNTEER. Any recipient who is exempt under sub. (3) shall be allowed to voluntarily register with and participate in the work experience component. The penalty in sub. (6) may not be applied if he or she withdraws from the work experience.

(5) JOB SERVICE. Any recipient required to participate in the work experience component, except a person who is assigned to a training program, shall register with the job service division of the department of industry, labor, and human relations. All recipients shall register with job service at the time of application and, to continue eligibility, at the time of each review scheduled under s. HSS 211.03 (6). As a condition of RNIP eligibility, the recipient shall accept any suitable offer of employment and may not quit the job without good cause. The agency shall consider:

(a) Refusal of an offer of employment to be without good cause if:

1. The recipient received a definite offer of employment at wages meeting the federal minimum wage and that are customary in the community for that type of work;

2. The recipient is physically able to do the work;

3. The recipient has the means to get to and from the particular job, and commuting time to and from the job is under 2 hours a day; and

4. The conditions of employment do not impose an unreasonable risk to the health or safety of the recipient;

(b) Quitting a job or refusing to seek or accept employment to be without good cause if the reason was participation in a strike; and

(c) Quitting a job or refusing an offer of employment to be with good cause if the agency finds and states in writing in the case record that it is essential for the well-being of the recipient's family that the recipient remain in the home.

(6) PARTICIPATION REQUIREMENTS AND PENALTIES. Any person who does not comply with subs. (2) and (5) and is not exempt under sub. (3) shall be ineligible for relief for 60 days from the effective date of denial, discontinuance, or reduction except when there is good cause which shall be demonstrated by any of the following circumstances:

(a) Illness, injury or incapacity of the participant or a member of the participant's family. In this subdivision, "member of the participant's family" means a spouse, child, parent or other dependent relative who lives with the participant;

(b) Court-required appearance or temporary incarceration;

(c) Family emergency or unavailable child care;

(d) Breakdown in the transportation arrangement; or

(e) Appointment for a job interview.

(7) PAYEE. If the person who refuses to comply with the requirements in subs. (2) and (5), is the payee for benefits provided to an RNIP group, the agency shall appoint another adult in the RNIP group to be the payee. If there is no other adult in the RNIP group, the agency shall appoint a protective payee as provided in s. HSS 201.10 (2).

(8) DEEMING. The assets and income of any person who fails to comply with the requirements in sub. (2) or (5), and who is thereby excluded from the RNIP group, shall be deemed in accordance with s. HSS 211.05 (3).

(9) REIMBURSABLE EXPENSES. (a) Expenses incurred by a recipient as a result of participating in work experience may be reimbursed only upon approval of the agency administrator.

(b) Reimbursable expenses shall be limited to:

1. Transportation costs from a person's residence to a work or training site and return to the residence;

2. Special clothing required but not provided by an employer or trainer, such as gloves or special shoes; and

3. Books and other materials required as part of training.

(c) Expenses for tools or materials required to perform work are not reimbursable.

(d) Reimbursement shall be made and accounted for as follows:

1. The agency administrator or designee shall approve the work or training activity and the expenses for which reimbursement is requested before payment may be made;

2. Payment for transportation costs shall be based on the mileage rate for employees of the agency and the actual number of miles driven to and from the work or training site. When more than one recipient travels in the same vehicle, one payment shall be made. If the vehicle owner is a

recipient of relief, payment shall be made to that person. If the vehicle owner is not a recipient of relief, payment shall be made to the person who is a recipient and that person shall pay the vehicle owner;

3. Payment shall be by a check separate from the relief payment check;

4. A separate payroll shall be maintained for payment of reimbursable expenses; and

5. The procedures for reimbursement of agency employe expenses shall be used, except that the agency shall reimburse recipients at least once a 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.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86; cr. (2) (d) and (10), Register, September, 1992, No. 441, eff. 10-1-92; am. (1), Register, November, 1992, No. 443, eff. 12-1-92.

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HSS 211.07 Income. (1) **GENERAL.** In determining the amount of the payment for each RNIP group, the agency shall consider all earned and unearned income of the RNIP group except income exempt under s. HSS 211.08.

(2) **LOANS OR GRANTS.** Any education or training loans and grants available for living costs after payment of tuition, fees, books, transportation essential to the education or training and for dependent care shall be treated as unearned income.

(3) **RENTAL INCOME.** Rental income shall be treated as follows:

(a) If a person in the RNIP group reports rental income to the internal revenue service as self-employment income, the procedures specified in sub. (8) shall be followed.

(b) If a person in the RNIP group does not report rental income to the internal revenue service as self-employment income, the net rent shall be counted as unearned income. In this paragraph, "net rent" means the total rent payments minus the total expense. Net rent shall be determined as follows:

1. When the owner is not an occupant, net rent shall be the rent payment actually received minus the mortgage payment and verified operational costs; and

2. In situations where the person receives money from a duplex or triplex operation and lives in one of the units, net rent shall be the rent payment actually received minus the total expense computed as follows:

a. Add the total mortgage payment and total operational costs common to the entire operation; and

b. Divide that result by total number of units to get the proportionate share of each and add the proportionate share to any operational costs paid by the owner that are unique to the rental unit.

(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) 1 a, 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.

(5) **CONTRACTUAL INCOME.** Income received on other than an hourly or piecework basis from employment under a contract which is renewable on an annual basis shall be averaged over a 12-month period. The person shall be considered compensated for an entire year even though predetermined non-work or vacation periods are involved or actual compensation is scheduled for payment during work periods only.

(6) **IN-KIND BENEFITS.** (a) When in-kind benefits are regular, predictable, and received in return for a service or product delivered, these benefits shall be treated as earned income.

(b) When in-kind benefits do not meet all 3 of the criteria under par. (a), they shall not be counted when determining eligibility and grants.

(c) The value of in-kind benefits shall be determined by the prevailing wage-rate in the community for the type of work the person is doing, but may not be less than the minimum wage for that type of work.

(7) **ROOM AND BOARD PROFIT.** Room and board profit shall be treated as earned income. To determine room and board profit, the expenses of providing room and board shall be deducted from the gross room and board income received as follows: or a roomer only, deduct \$15.00; for a boarder only, deduct current food stamp allotment for one; and for both a roomer and boarder, deduct current food stamp allotment for one and also deduct \$15.00.

(8) **FARM AND SELF-EMPLOYMENT.** (a) Farm and self-employment income to be counted in RNIP calculations shall be determined by adding the following items back into the net earnings: depreciation, personal business and entertainment expenses, personal transportation, pur-

chases of capital equipment and payments on the principal of loans, and dividing the total by 12 to get the monthly earnings.

(b) If no tax return has been filed, the person shall complete a 1040 form of the internal revenue service to determine net earnings or loss, or to anticipate, in the case of relatively new businesses, net earnings as required by the internal revenue service.

(c) If the latest income tax return does not accurately reflect actual circumstances because a substantial increase or decrease in business has occurred, the agency shall calculate the self-employment income based on anticipated earnings.

(d) Agencies shall determine if it is necessary to use anticipated earnings on a case-by-case basis and shall document the reasons for the determination in the case record.

(9) INCENTIVE ALLOWANCES. Incentive allowances and all other money received by participants age 18 and older in programs specified in s. HSS 211.08 (1) (c) shall be included as income.

(10) SHELTERED WORKSHOP PAYMENT. Allowances or money received by participants in a sheltered workshop or any other work-adjustment setting shall be treated as earned income.

(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 $\frac{1}{2}$ 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 $\frac{1}{2}$ 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 $\frac{1}{2}$ 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.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86; emerg. r and recr. (11), eff. 10-2-89; r. and recr. (11), Register, March, 1990, No. 411, eff. 4-1-90; r. and recr. (4) and (11), Register, September, 1992, No. 441, eff. 10-1-92.

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HSS 211.08 Exempt income. The following income shall be exempt for purposes of determining eligibility for RNIP and the amount of the monthly payment:

(1) **PAYMENTS FOR EDUCATION OR TRAINING.** (a) Loans and grants for undergraduate education purposes made or insured under any programs administered by the U.S. department of education are exempt.

(b) Loans and grants obtained and used under conditions that prevent using them for current living costs are exempt.

(c) Incentive allowances or money received by participants under age 18 who are in a Job Training Partnership Act, 29 USC 1501 et. seq., program or the job corps are exempt. This includes participants in title IV, youth employment and demonstration projects, jobs for progress, mainstream and the summer youth employment program.

(d) All training allowances granted by the agency are exempt.

(e) All payments of the department's division of vocational rehabilitation are exempt, except as specified in s. HSS 211.07 (10).

(f) Income from the following programs is exempt: volunteers in service to America; foster grandparents, service corps of retired executives, active corps of executives, retired senior volunteer program or older American community service program, and university year for action.

(2) **PAYMENTS FOR RELOCATION OR SPECIAL HOUSING.** (a) Relocation payments made to displaced persons under s. 32.19, Stats., are exempt.

(b) Any payment received under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 USC 4601 et. seq., is exempt.

(c) Any payment to persons from an experimental housing allowance program contracted prior to January 1, 1975, is exempt.

(3) **CERTAIN FUNDS RECEIVED BY NATIVE AMERICAN GROUPS.** The following funds received by the specified Native American groups are exempt: Menominee Indian bond interest; homestead relief payments; judgment payments to the Grand River Band of Ottawa Indians, Lac du Flambeau Band and the Minnesota Bois Forte Band of Chippewa Indians, or any other judgment payment to an Indian tribe through the Indian claims commission; payments under the Alaskan native settlement act; payments to the Bad River and Lac Courte Oreilles Bands of Chippewa Indians and the Stockbridge Munsee Indian Community of Mohicans; and payments made under any other federal statute that specifically exempts funds paid to an Indian tribe from being counted as income for public assistance purposes.

(4) **ENERGY ASSISTANCE BENEFITS.** Payments made under the low-income energy assistance program and emergency fuel grants are exempt.

(5) **NUTRITION-RELATED BENEFITS.** The following nutrition-related benefits are exempt:

(a) The value of the coupon allotment received under the Food Stamp Act of 1977, as amended, 7 USC 2011 et. seq.;

(b) The cash value of any donated food and other emergency food;

(c) The cash value of home produce of applicants or recipients used for their own consumption, as distinguished from produce sold or exchanged;

(d) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, 42 USC 1771 et. seq., including women, infants and children's (WIC) benefits, and the special food service program for children under the National School Lunch Act, as amended, 42 USC 1751 et. seq.; and

(e) Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended, 42 USC 3045 et. seq.

(6) **REIMBURSEMENT OR PAYMENT FOR SOCIAL SERVICES.** Funds from Title XX of the Social Security Act of 1935, as amended, paid directly by the agency to the applicant or recipient for reimbursement or purchase of services are exempt.

(7) **DAY CARE VOUCHERS.** The value of day care vouchers is exempt.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86.

HSS 211.09 Monthly payment. (1) **INITIAL PAYMENT.** The initial RNIP payment shall be computed from the effective date of eligibility which is the date the applicant submits a signed and completed application to the agency, or the first date on which the applicant meets all of the eligibility criteria, whichever is later.

(2) **PAYMENT AMOUNT.** The monthly amount of relief to be paid to each RNIP group shall be determined as follows:

(a) Calculate the total payment per household according to s. 49.046 (3) (a), Stats.;

(b) Divide the total payment for a household by the total of all RNIP group members in the household to determine the proportionate share of each member;

(c) Multiply the proportionate share by the number of persons in each RNIP group to determine the RNIP group share;

(d) Subtract each RNIP group's income not otherwise disregarded from that RNIP group's share;

(e) Round the amount in par. (d) down to the next lowest dollar;

(f) Subtract any overpayment amount determined under sub. (7) from each RNIP group's share; and

(g) Add any underpayment amount determined under sub. (6) to each RNIP group's share.

(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.

(3) **NUMBER OF PAYMENTS PER HOUSEHOLD.** The agency may either:

(a) Pay each RNIP group in the household its share as determined under this subsection; or

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(b) Total the amounts for each RNIP group in the household as determined under this subsection and make one payment to the household.

(4) **VOUCHER PAYMENTS.** In addition to protective payments under s. HSS 201.10 (2), vendor and voucher payments may also be made to ensure that the RNIP recipient receives the benefit of the payment when the recipient has a history of money mismanagement.

(5) **SUPPLEMENT.** RNIP payments may not supplement money payments to persons receiving assistance under s. 49.177, 49.19 or 49.46, Stats.

(6) **CORRECTION OF UNDERPAYMENTS.** The agency shall promptly correct any underpayments to current recipients and those who would be current recipients if the error causing the underpayment had not occurred. Retroactive corrective payments shall not be considered income or assets in the month paid or the following month.

(7) **CORRECTION OF OVERPAYMENTS.** (a) An agency shall recover all overpayments made to an RNIP group, including overpayments resulting from the continuation of payments pending a fair hearing when the fair hearing decision subsequently finds against the recipient, and overpayments resulting from continuation of the grant because of an untimely notice of decision.

(b) Procedures for recoupment from current recipients shall be as follows:

1. A recipient shall be asked to repay the agency and shall repay the agency; or

2. Recoupment shall be obtained by reduction of each monthly RNIP payment, as follows:

a. The amount withheld from each monthly payment shall be 10 percent of the RNIP group's share as determined under sub. (2) (a) to (c), unless a court orders a different amount.

b. The amount withheld from a monthly payment may not reduce the payment below \$1; and

c. Withholding from the monthly payment shall continue every month until the overpayment is paid back in full.

d. The agency may accept a voluntary repayment in addition to the amount withheld each month from the payment;

(c) Procedures for recoupment from former recipients shall be as follows:

1. Former recipients shall agree to repay the overpayment; or

2. The agency shall refer them for legal action.

(8) **PAYMENT RESTRICTION.** Payment of relief may not be made in place of wages for work.

(9) **REIMBURSABLE EXPENSES.** In addition to the monthly payment, payment may be made to reimburse for expenses attributable to partici-

pation in the work experience component as provided in s. HSS 211.06 (9).

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86; cr. (2m), Register, September, 1992, No. 441, eff. 10-1-92.

HSS 211.10 Medical benefits. (1) **CERTIFICATION.** Certification for medical benefits shall be made for up to 3 months prior to the date of application for RNIP if eligibility for relief existed during that period.

(2) **CONTINUATION OF BENEFITS.** (a) Medical benefits shall be continued for 4 months after the effective date of the discontinuance of RNIP if:

1. A relief payment was received in at least 3 of the 6 months immediately preceding the effective date of its discontinuance;

2. The relief payment was discontinued because of increased employment hours or income from employment; and

3. At least one person who was included in the RNIP group is employed.

(b) The months in which the RNIP recipient participates in grant disbursements 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.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86; renum. (2) (intro.) and (a) to (c) to be (2) (a) (intro.) and 1. to 3., cr. (2) (b), Register, September, 1992, No. 441, eff. 10-1-92.

HSS 211.11 Funeral and cemetery expenses. The provisions for and limitations on funeral and cemetery expenses in s. 49.30, Stats., apply to a recipient of relief under this chapter.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86.

HSS 211.12 Fair hearings. If aggrieved by a decision of the department or an agency under this chapter, an applicant for or recipient of relief or a participant in the work experience component may request a fair hearing under ss. 49.50 and 49.046 (5), Stats., and s. PW-PA 20.18.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86.

HSS 211.13 Records and reports. An agency administering the RNIP program and its work experience component shall:

(1) Maintain case records in a manner approved by the department;

(2) Account to the department for money allocated to the agency for relief or work experience purposes and refund any unexpended allocated money to the department;

(3) Submit any reports as required by the department; and

(4) Make all records relating to the RNIP program and its work experience component open to inspection by authorized representatives of the department.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86.

HSS 211.14 Confidentiality. (1) **CUSTODY OF RECORDS.** (a) Agency records shall be maintained in a secure manner.

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(b) Records may not be removed from the files or offices except when in the custody of a responsible official or employe of the agency.

(c) Upon request of the department, records shall be sent to the department by certified mail.

(2) **INSPECTION OF RECORDS.** (a) No person, other than an employe of the agency or the department, may be permitted to inspect the records of an RNIP applicant or recipient without the written permission of the applicant or recipient.

(b) The agency shall maintain a record of permissions granted.

(c) Officials of the governing body administering the RNIP program shall be entitled to information necessary for the proper administration of the program in accordance with the requirements of ss. 49.046 and 49.047, Stats., and this chapter.

(3) **CONFIDENTIAL INFORMATION.** Information in case records shall be considered strictly confidential. Use or disclosure of information may be made only for purposes related to the administration of the RNIP program and shall be limited to:

(a) Other agencies administering relief or public assistance;

(b) Assisting recipients to obtain hospital or medical care services;

(c) Assisting applicants or recipients or their families to obtain assistance and services to lessen or eliminate dependency on public funds; and

(d) Ensuring the economical expenditures of public funds.

(4) **LIMITATION.** An agency administering RNIP may not permit persons, except authorized agency and department employes, to obtain information about individual persons, addresses and amounts of relief. Information about the number of persons receiving relief, expenditures for relief and administrative costs is public information and shall be provided to any person interested in obtaining this information.

History: Cr. Register, May, 1986, No. 365, eff. 6-1-86.