

CR 95-67

CERTIFICATE

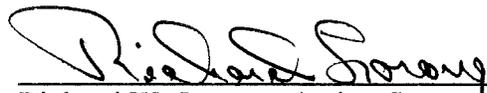
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Richard W. Lorang, Acting 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 2-party payment of rent and voluntary protective or vendor payments under the Aid to Families with Dependent Children (AFDC) program were duly approved and adopted by this Department on June 12, 1995.

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 12th day of June, 1995.

SEAL:


Richard W. Lorang, Acting Secretary
Department of Health and Social Services



8-1-95

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
AMENDING AND CREATING RULES



To amend HSS 201.09(2)(a) and 201.10(2)(d) and to create HSS 201.10(2)(cm) and (2i), relating to 2-party payment of rent and voluntary protective or vendor payments under the Aid to Families with Dependent Children (AFDC) program.

Analysis Provided by the Department of Health and Social Services

Three changes are made by this rulemaking order in payment procedures under the Aid to Families with Dependent Children (AFDC) program. One directs an income maintenance agency to issue part of the monthly grant in the form of a protective or vendor payment for heat, electricity or shelter when the applicant or recipient requests that a protective or vendor payment be made. This is permitted under 45 CFR 234.60 and for shelter under s.49.19(5)(ce), Stats. The second change adds the requirement found at 45 CFR 234.60(a)(9) for review of the need for a protective, vendor or 2-party payment whenever a recipient's circumstances change but at least every 12 months. The third change implements s.49.19(5)(cm), Stats., which requires the Department to issue part of an AFDC grant in the form of a 2-party check made out jointly to the recipient's landlord and the recipient when the landlord reports that the recipient has not paid the rent for 2 or more months, and when the income maintenance agency determines that the conditions for issuance of a 2-party payment for rent has been met.

Section HSS 201.10(2i) outlines the process by which the economic support agency will investigate a landlord's report that an AFDC recipient has not paid rent owed the landlord for a period of 2 months or longer. The rule also directs the economic support agency to send written notice to the landlord and recipient when it has determined that a 2-party payment is required and of the particulars of the requirement, including the amount, starting date, conditions affecting its duration, and the recipient's right to a fair hearing on the determination that a 2-party payment is required.

The Department's authority to amend and create these rules is found in ss.49.19(5)(cm)7 and 49.50(2), Stats. The rules interpret s.49.19(1)(c) and (5)(ce) and (cm), Stats.

SECTION 1. HSS 201.09(2)(a) is amended to read:

HSS 201.09(2)(a) Timely and adequate notice shall be sent to applicants and recipients to indicate that AFDC has been authorized or that it has been reduced, denied, terminated or changed to a protective or vendor payment or a 2-party payment as defined in s. HSS 201.10(2i)(a)8, or to payment by means of electronic funds transfer under s. HSS 201.10(4) and, if it has been terminated, that the AFDC group may be eligible for transitional child care benefits under s. HSS 201.36. In this subsection, "timely" means ~~in accordance with s. 49.19(3), Stats. that the notice is mailed at least 10 days before the date of action, that is, the date upon which the action would become effective.~~ In this subsection, "adequate notice" means a written notice that contains a statement of the action taken, the reasons for and specific regulations supporting the action, and an explanation of the person's right to request a hearing and the circumstance under which aid will be continued if a hearing is requested. Aid shall be continued in all circumstances except where it is not required by federal regulation.

SECTION 2. HSS 201.10(2)(cm) is created to read:

HSS 201.10(2)(cm) An AFDC applicant or recipient may request that the agency issue a protective or vendor payment for heat or electricity for all or part of the grant amount, or for rent as provided under s.49.19(5)(ce), Stats. The request shall be in writing and shall be recorded or retained in the case file. The protective or vendor payment shall be discontinued promptly upon the written request of the applicant or recipient. In this paragraph, "promptly" means in the next possible payment month.

SECTION 3. HSS 201.10(2)(d) is amended to read:

HSS 201.10(2)(d) The agency director or designee shall authorize all protective and vendor payments for a period not to exceed 12 months, or whenever the circumstances that required a protective or vendor payment under par. (b) or (c) change. The reason for the authorization shall be documented in the case record and shall show the name of the eligible recipient, the name of the protective or vendor payee, and the amount and form

of payment authorized. Authorization shall only be made with the recipient's knowledge, providing he or she is able to understand it.

SECTION 4. HSS 201.10(2i) is created to read:

HSS 201.10(2i) TWO-PARTY PAYMENTS. (a) Definitions. In this subsection:

1. "Failed to pay rent" means that the recipient has failed to pay the amount agreed to in the rental agreement.

2. "Landlord" means a person who owns and rents dwelling units.

3. "Payment month" means a month in which the tenant was a recipient.

4. "Person" means an individual, partnership, corporation, association, estate, trust or any other legal or business entity.

5. "Recipient" means a person who received an AFDC benefit during either the current month or the previous month.

6. "Rental agreement" means a written agreement for the rental or lease of a dwelling unit.

7. "Tenant" means an individual who signed a rental agreement to occupy a dwelling unit under that rental agreement.

8. "Two-party payment" means a check for current rent which is drawn in favor of an AFDC recipient and the recipient's landlord, jointly.

(b) Condition for 2-party payment. As provided in s.49.19(5)(cm), Stats., a 2-party payment shall be made whenever a recipient has failed to pay rent to the landlord in each of 2 or more payment months, unless the failure to pay rent is authorized by law.

(c) Agency action on landlord's report. Upon receiving a report from a landlord that a recipient who is a tenant has failed to pay rent in each of 2 or more payment months within the

past 6 months, an agency shall investigate the report and, if it appears to be accurate, the agency shall send a written notice to the recipient and the landlord which includes:

1. The name and address of the landlord;
2. The amount of monthly rent agreed to in the rental agreement;
3. The months the recipient failed to pay rent as reported by the landlord, and the total amount of unpaid rent; and
4. The steps the recipient is to follow in responding to the notice.

(d) Recipient's opportunity to respond. The recipient shall respond in writing to the notice under par. (c) within 10 days from the notice date. The response shall be sent to the agency and shall include:

1. Confirmation or denial of the information contained in the notice;
2. Whether the recipient is the only tenant or if another recipient or other individual is also a tenant; and
3. Any reason for nonpayment of the rent, including any authority under law.

(e) Agency determination. Upon receiving the written report from the recipient, or if the recipient fails to contact the agency in writing within 10 days after the date of the notice under par. (c), the agency shall promptly:

1. Determine if a 2-party payment is required;
2. Verify whether more than one individual has signed the rental agreement as a tenant and the amount of the rent under any shared rental agreement that is subject to the 2-party payment under par. (f); and
3. Notify the landlord and the recipient of its determination.

(f) Determining the amount of the 2-party payment under a shared rental agreement. If the agency verifies that more than one individual signed the rental agreement as a tenant, the agency shall determine the amount of the 2-party payment as follows:

1. If a recipient is a tenant and an individual who is not a recipient is also a tenant of the same dwelling unit, and the agency verifies that the recipient has paid the amount of the rent that is his or her responsibility, then no 2-party payment may be issued; or

2. If a recipient is a tenant and another individual who is a recipient is also a tenant of the same dwelling unit, the agency shall verify whether one or both failed to pay rent for 2 months or more. If only one failed to pay rent, the agency shall make a 2-party payment in the amount the recipient who failed to pay rent is responsible to pay. If the landlord states that both recipients failed to pay rent and the agency verifies that both failed to pay, the agency shall issue 2-party payments for both recipients, apportioning the 2-party payments between the recipients in the amount each recipient who failed to pay rent is responsible for, but in no case exceeding the amount of the rent or the AFDC benefits of each recipient.

(g) Notice of determination. If a 2-party payment is required, the agency shall send a notice to the recipient and the landlord which includes the following information:

1. The amount of the 2-party payment that will be paid from the recipient's monthly benefit amount;

2. The date the 2-party payment will begin;

3. The procedure the agency will follow in issuing the 2-party payment;

4. A statement that the total amount of the 2-party payment will not exceed the monthly grant amount for which the recipient is eligible;

5. A statement that the remainder of the grant will be paid directly to the recipient;

6. A statement that the 2-party payment will continue until any of the following occurs:

a. A 2-party payment has been made for 24 consecutive months;

b. The recipient has reimbursed the landlord for all back rent owed; or

c. The recipient has notified the agency in writing that he or she has moved to another address and has a different landlord;

7. The procedure the recipient must follow to notify the agency that the conditions requiring 2-party payments have changed; and

8. Information regarding the recipient's right to a fair hearing in accordance with s.49.50(8), Stats., on the determination that a 2-party payment is required.

(h) Issuance of 2-party payment. If the recipient does not request a fair hearing within the timely notice period under s.HSS 201.09(2) (a) or, after a fair hearing has been held, the hearing officer finds that the recipient has failed to pay rent without authority under law, the agency shall issue the 2-party payment to the recipient in the next possible payment month.

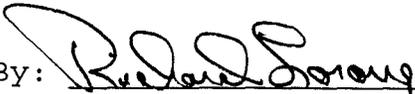
(i) Authorization of 2-party payment. The agency director or the director's designee shall authorize all 2-party payments. The reason for the authorization shall be documented in the case record and shall show the name of the recipient, the name of the landlord and the amount of the payment.

(j) Review of 2-party payment cases. The agency director or the director's designee shall review whether or not a 2-party payment should continue at least once every 12 months and whenever a recipient or a landlord reports that the conditions requiring the 2-party payment have changed.

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

Dated: June 12, 1995

By: 
Richard W. Lorang
Acting Secretary

SEAL:

