

# **Statement of Scope**

## **Department of Children and Families**

**Rule Number:** DCF 101.23 and 120

**Relating to:** Emergency Assistance Program Integrity

**Rule Type:** Permanent

This statement of scope was approved by the governor on March 23, 2023.

### **1. Detailed description of the objective of the proposed rule.**

The proposed rules will include policies and procedures necessary to implement the collection of Emergency Assistance overpayments under ss. 49.138 (5), 49.195 (3) and (3m), and 49.85, Stats.

The rules will also extend the time frame for agencies to determine an applicant's eligibility from 5 working days to 10 working days. Many applications are currently denied due to lack of verification within the 5-day eligibility determination period. A rule specifying that eligibility verification may not delay the provision of assistance will be repealed due to conflicts with other statutes and rules that require verification.

### **2. Detailed explanation of statutory authority for the rule.**

Section 49.138 (1d) (b), Stats., provides that "needy person" has the meaning specified by the department by rule.

Section 49.138 (1m), Stats., provides that the department shall implement a program of emergency assistance to needy persons in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. Emergency assistance in cases of homelessness or impending homelessness may be used only to obtain or retain a permanent living accommodation.

Section 49.138, (5), Stats., provides the following:

(a) The department shall recover from an individual an overpayment of emergency assistance if the overpayment resulted from a misrepresentation by the individual applying for the assistance with respect to any fact having an effect on the individual's eligibility for, or the amount of, the assistance granted.

(b) If an overpayment of emergency assistance resulted from an error made by a Wisconsin Works agency, the department shall recover the overpayment from the Wisconsin Works agency and may do so by offsetting the amount from amounts otherwise due the agency under a contract under s. 49.143, Stats.

(c) The department may recover overpayments of emergency assistance under par. (a) or (b) in the manners provided in ss. 49.195 (3m) and 49.85, Stats.

Section 49.195 (3), Stats., provides that a county, tribal governing body, Wisconsin Works agency, or the department shall determine whether an overpayment has been made under s. 49.138, 49.148, 49.161, 49.157, or 49.19, Stats., and, if so, the amount of the overpayment. The

county, tribal governing body, Wisconsin Works agency, or department shall provide notice of the overpayment to the liable person and the opportunity for a hearing under ch. 227, Stats. The department shall promptly recover all overpayments made under s. 49.138, 49.148, 49.155, 49.157, or 49.19, Stats., that have not already been received under s. 49.138 (5), 49.161, or 49.19 (17), Stats., or received as a setoff under s. 71.93, Stats., and shall promulgate rules establishing policies and procedures to administer this subsection.

Section 49.195 (3m), Stats., provides that if an individual's debt is unpaid and the appeal period has expired, the department may issue a warrant directed to the clerk of circuit court of any county. The warrant is considered a final judgment constituting a perfected lien upon the person's right, title and interest in all real and personal property located in the county. After issuing a warrant, the department may file an execution with the clerk of circuit court for filing with the sheriff of the county, commanding the sheriff to levy upon and sell sufficient real and personal property of the person to pay the amount stated in the warrant.

Section 49.85, Stats., provides that at least annually, the department shall certify to the department of revenue the amounts that the department has determined it may recover under ss. 49.138 (5), 49.161, and 49.195 (3), Stats., and may collect under s. 49.147 (6), Stats. Receipt of the certification by the department of revenue constitutes a lien equal to the amount certified on any state tax refunds or credits owed. The lien shall be foreclosed by the department of revenue as a set-off under s. 71.93, Stats.

Section 227.11 (2) (a), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

**3. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule.**

250 hours

**4. List with description of all entities that may be affected by the proposed rule.**

Agencies contracted to administer the Emergency Assistance Program and families who apply for the Emergency Assistance program.

**5. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.**

There are no federal statutes or regulations on overpayments of funds under the Temporary Assistance for Needy Families (TANF) program.

A guidance document issued by the federal Administration for Children and Families provides that the state TANF agency should attempt to recover a TANF overpayment either by recouping it from the recipient through a reduction in the recipient's payment in one or more future months or by collecting cash repayments from the recipient or former recipient under a lump sum or periodic repayment plan. States must use the recovered funds for program costs and are not required to repay any portion to the federal government. TANF-ACF-PI-2000-02, *Collecting and Reporting of Overpayments Made to Families Under the TANF Program and the Former Aid to Families with Dependent Children Program*.

42 USC 1320b-7 requires verification of income and assets through the Income and Eligibility Verification System. 42 USC 1320b-7 (d) (2) requires verification of qualifying noncitizen status.

**6. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small business):**

Minimal or no economic impact on small business

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