

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 subsection (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 sections 49.19 (5) and 49.46, Wis. Stats., and further to carry out the department's responsibilities as expressly stated or implied under sections 46.206 and 49.50 (2) and (6), Wis. 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 section 49.52, Wis. 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 twelve-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 20.11 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 section 49.19 (10), Wis. 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 chapter 319, Wis. 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 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 section 49.19 (10), Wis. 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 section 49.50 (8), Wis. 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. (section 49.195 (3) Wis. 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 $\$30 + \frac{1}{3}$ earned income disregard plus \$10 when the overpayment is due to willful error (See c. below) on the part of the recipient, or $\frac{1}{3}$ of the $\$30 + \frac{1}{3}$ 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.

(c) 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.

(3) (4) 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. (1) INTRODUCTION.

(a) *Statement of intent.* The intent of these rules is to establish the eligibility requirements and the uniform administration of such eligibility requirements and amounts of aid under the relief of needy Indian persons program, section 49.046, Wis. Stats.

(b) *Effect of rules.* The following rules shall have the full effect and force of law under section 227.01, Wis. Stats. These rules do not repeat the laws related to relief of needy Indian persons. Users of these rules should also be aware of and familiar with the statutory sections related to these rules so that they are knowledgeable about the requirements of the law as well as the rules.

(c) *To whom the rules apply.* The rules apply to county welfare agencies, tribal councils, and other appropriate Indian organizations or other agencies appointed by the department to administer the relief of needy Indian persons program.

(d) *Definitions.* 1. "Department" unless qualified, means the state of Wisconsin department of health and social services.

2. "Division" unless qualified, means the division of family services of the department.

3. "Rule" means a regulation, standard, statement of policy or general order (including the amendment or repeal of any of the foregoing) of general application and having the effect of law.

4. "Tribal council" means the governing body of a federally recognized Indian tribe or band.

5. "Appropriate Indian organization" means an Indian organization recognized and certified by the local tribal council or governing body as having the capability of administering aid under section 49.046 Wis. Stats. and appointed by the department with the consent of the local tribal council or governing body if there is no tribal council.

6. "Indian" means any person: a. whose proportion of Indian blood is one-fourth or more; or b. who is enrolled in a recognized band or

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tribe of Indians; or c. who is otherwise recognized and certified by an appropriate tribal council or governing body as being Indian.

7. "Immediate family" means husband, wife and their minor children.

8. "Tax-free land" means land which is subject to neither assessment nor levy of a real property tax either as a general tax or as a payment in lieu of taxes.

9. "County welfare agency" means any county public welfare department created under sections 46.21 or 46.22, Wis. Stats.

10. "Relief" means aid provided by check payable to the eligible Indian person or by vendor payment* in an amount equal to that which is granted if the individual(s) is eligible for aid under section 49.19, Wis. Stats., and in addition medical benefits equal to benefits provided under section 49.46 Wis. Stats.

*Note: A vendor payment is a check payable to a vendor; if it is impossible to issue a check when the need arises, a voucher may be prepared for the assistance required and negotiated by the Indian person and the vendor with the vendor submitting the completed voucher for payment.

(2) ADMINISTRATION. (a) The tribal council, appropriate Indian organization, county welfare agency or other agency appointed by the department shall administer the relief of needy Indian persons program in accordance with section 49.046, this rule and written policies and procedures issued by the department.

(b) A tribal council may petition the department at any time for appointment of the tribal council or an appropriate Indian organization to administer the program. The department shall make the appointment not later than 6 months from the date the petition is received by the department.

(c) The department shall reimburse 100% of the administrative costs of providing relief to needy Indian persons and 100% of the amount of aid provided by the agency appointed by the department to administer relief under this rule.

(d) The department may at any time audit all grants of aid and all records relating to the administration of aid under section 49.046 Wis. Stats., and this rule and may make such audit adjustments which are necessary to the efficient and proper administration of relief to needy Indian persons.

(e) Any agreement entered into by and between the department and a tribal council or an appropriate Indian organization whereby a tribal council or an appropriate Indian organization is appointed to administer the program may be terminated by either of the parties upon 45 days written notice to the other party. Notice to the department shall be served on the secretary of the department. Notice to the tribal council or appropriate Indian organization shall be served upon the presiding officer of the tribal council or appropriate Indian organization stating the reasons for termination. The agency may appeal the termination to the secretary of the department of health and social services and to the courts through the process laid out in section 227 Wis. Stats. If termination of a contract is not contested, or upheld after contest, the department may contract with any other appropriate body.

(f) To promote the efficient and fair administration of the needy Indian persons program, agencies administering the program shall establish a system of personnel administration in compliance with applicable state and federal law, and provided that the personnel system shall be approved by the department.

(3) DETERMINATION OF ELIGIBILITY. (a) Agencies appointed by the department to administer the relief of needy Indian persons program shall:

1. Provide applicants with and accept applications for aid only on forms prescribed by the department.

2. Notify applicants promptly in writing of the disposition of their applications.

3. Determine eligibility for aid on the following criteria:

a. No person who is eligible for any of the other assistance programs specified in section 49.046(1), Wis. Stats., shall be determined to be eligible for aid under section 49.046, Wis. Stats., except that children under 21 years of age who are eligible for Medical Assistance under 49.46 or 49.47 may be eligible for subsistence payments under this rule.

b. No person shall be eligible for aid under section 49.046, Wis. Stats. unless that person meets these requirements:

1) Is an Indian person.

2) When a parent who is in the home is an Indian eligible for aid under section 49.046, Wis. Stats., the members of the immediate family who are living in the household and who are in need of relief shall also be eligible for aid under such section.

3) Resides in Menominee county or on tax-free land in Wisconsin.

4) Is in need of relief.

c. Persons under this relief program shall meet the standard of need determined in the same manner as aid under section 49.19, Wis. Stats., with the exception that there need not be a dependent child in the home.

d. Eligibility of any one family member for another assistance specified in 49.046(1) shall not result in the ineligibility of other family members for relief of needy Indian persons.

4. Provide aid immediately to an applicant in emergent need of assistance when information provided on the signed application form demonstrates that the applicant is within the eligibility criteria for this program prior to clarification or verification of any information contained therein. As used herein, emergent need of assistance refers to circumstances that:

a. Place in jeopardy one or more persons in an eligible family unit; and

b. Cannot be resolved by the applicant with current resources; and

c. In the absence of other resources, requires immediate financial assistance.

This section shall not be construed to require routine verification of information provided by an applicant for the purpose of establishing eligibility for aid under this rule.

5. Every person who is a recipient of relief of needy Indian persons and not employed shall be required to register with the State employment security division of the department of industry, labor and human relations (DILHR) and accept any suitable employment that is offered, except that no person shall be required to register with DILHR under the following conditions:

a. Under age 16.

b. Attending school full time when age 16 and under 18 years of age.

c. Ill with medical evidence that illness or injury temporarily prevents entry into employment.

d. Incapacitation with medical evidence that the incapacitation prevents entry into employment.

e. Person's presence in the home is required because of the illness or incapacity of another member of the family.

f. Person is an adult caretaker in an immediate family in which another adult in the immediate family is employed full time or has registered with the state employment security division or has been accepted in a work training program.

6. The administering agency shall make a redetermination of each active case of those eligibility factors subject to change as indicated by the individual case circumstances, e.g., weekly or monthly wages from employment are unpredictable or irregular. A redetermination shall be made at least every 3 months of those elements subject to change but more frequently when required as cited in the example.

(4) PAYMENTS. (a) Payment shall be made by check payable to one of the following:

1. An eligible Indian person.

2. A person judicially appointed as the legal representative of such eligible Indian person under chapter 880, Wis. Stats.

3. A protective payee or vendor payee.

(b) Payment shall not be subject to discount but redeemable in cash or services in the amount of its full face value upon demand.

(c) Aid may be given in the form of a vendor payment as a type of remedial care whenever the giving of aid in such form is found to be advisable by the agency administering Indian relief. Such aid should be given as a means either of attempting to rehabilitate the person receiving it or of preventing the misuse or mismanagement by such person of aid by money payments.

(d) Payment of aid in any form shall not be made in place of wages for work performed.

(e) Timing of assistance payments.

1. Payment of assistance shall be made in the month for which the grant in aid is designated, either in the full amount of the monthly allowance or in two or more installments.

2. 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.

3. When the monthly allowance is paid 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.

4. Payment of an initial allowance may be made subsequent to the fifth day of the month and shall be made within the month.

5. Additional payments made to meet increased budgetary needs may be made subsequent to the fifth day of the month.

6. Payments correcting prior underpayments may be made any time prior to the end of the twelfth month following the month in which such underpayment was made.

(f) Initial payment shall include maintenance 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. Initial payment shall be made for medical expenses incurred up to 3 months prior to the date of application if the administering agency determines that eligibility existed during such prior months.

1. This provision shall not prevent:

a. Continuing payments when an eligible recipient moves from one administering jurisdiction to another.

b. Adjustments when grants of aid are reinstated after suspension.

c. Adjustments on order of the department, made in accordance with section 49.50 (8), Wis. Stats.

d. Adjustments 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.

(g) Checks shall be endorsed by the payee with his signature except that persons unable to write shall endorse their assistance checks either by mark or by fingerprint in the presence of two witnesses who shall append their signatures and addresses.

(h) Relief payments shall not supplement money payments to persons receiving assistance under programs specified in section 49.046 (1) Wis. Stats.

(5) RECORDS AND REPORTS. (a) The tribal council, Indian organization or county welfare agency administering aid under section 49.046, Wis. Stats., shall:

1. Maintain case records in a manner approved by the department.
 2. Account to the department for money allocated to it for relief purposes under section 49.046, Wis. Stats. Any allocated money not expended for authorized relief purposes shall be refunded to the department.
 3. Submit to the department any reports it may require.
 4. Make all records relating to relief under section 49.046, Wis. Stats., open to inspection at reasonable hours by authorized representatives of the department.
- (6) **FAIR HEARINGS.** (a) Applicants for or recipients of relief of needy Indian persons shall have the same rights of fair hearing and review as set forth in section 49.50, Wis. Stats., and the Wis. Adm. Code, section PW-PA-20.18.

(7) **LIMITATIONS ON PROVIDING INFORMATION.** (a) *Custody of records.*

1. Agency records shall be safely kept.

2. Records shall not be removed from the files and offices except when in the custody of a responsible official or employe of the agency, provided that records may be sent by certified mail to the department upon the department's request.

(b) *Inspection of records.* 1. Inspection of agency records by persons other than employees of the agency administering the relief of needy Indian persons program and of the department shall not be permitted except with the written permission of the applicant or recipient.

2. A record of permissions granted shall be maintained by the agency.

3. Officials of the governing board administering this program shall be entitled to secure information for any purpose connected with the proper administration of the relief of needy Indian persons program in accordance with the provisions of this rule.

(c) *Limitation on giving information.* Information in the agency case file shall be deemed to be strictly confidential. Use or disclosure of information shall be made only for purposes related to the administration of the relief of needy Indian persons program. These purposes shall be limited to providing pertinent information:

1. To other agencies administering relief or public assistance.
2. To assist recipients to obtain hospital or medical care services.
3. To assist applicants or recipients or their families to obtain assistance and services to lessen or eliminate public dependency.
4. To assure economical expenditures of public funds.

(d) *Limitation.* The agency administering this program shall not permit any person(s), except those involved in the administration of relief of needy Indian persons program, to obtain information about individual persons, addresses and amounts of aid received. Information as to the number of persons receiving aid, expenditures for relief grants and for administration costs are deemed to be public

information and shall be provided to the public or to persons interested in obtaining such information.

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.

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 section 49.52(5), Wis. Stats., certified by the proper county officer or officers, or verified under oath.

(b) This rule also applies to allotment of funds under section 20.670(3)(d), Wis. 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 chapter 67, Wis. 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 section 49.51(5), [49.52], Wis. 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.

Register, July, 1975, No. 235
Public Welfare

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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