

## Chapter HSS 211

### TRIBAL MEDICAL RELIEF PROGRAMS

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**Note:** Chapter HSS 211 was repealed and recreated as an emergency rule effective January 1, 1996; Chapter HSS 211 as it existed on May 31, 1996 was repealed and a new chapter HSS 211 was created effective June 1, 1996.

**HSS 211.01 Authority and purpose.** This chapter is adopted under the authority of ss. 49.02 (7m) and 49.029 (2), Stats., to provide procedures for a tribal governing body to follow to obtain a tribal relief block grant, procedures for a tribal governing body to follow in making eligibility determinations under s. 49.015, Stats., standards for waiver of an eligibility requirement under s. 49.015 (3) (b), Stats., and procedures for appealing eligibility determinations, and to provide a basis for distributing block grant funds under s. 20.435 (1) (bs), Stats., to eligible tribal governing bodies.

**History:** Cr. Register, May, 1996, No. 485, eff. 6-1-96.

**HSS 211.02 Applicability.** This chapter applies to tribal governing bodies that choose to have a tribal relief block grant program under subch. II of ch. 49, Stats., and therefore are required to determine eligibility for relief and to implement an appeal procedure for individuals who are denied relief or whose relief benefit is reduced, suspended or terminated.

**History:** Cr. Register, May, 1996, No. 485, eff. 6-1-96.

**HSS 211.03 Definitions.** In this chapter:

(1) "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, ss. 49.19 to 49.41, Stats., and ch. HSS 201.

(2) "American Indian" means a person who is recognized by a tribal governing body in this state as a member of a federally recognized Wisconsin tribe or band of Indians.

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

(4) "Dependent person" means an American Indian residing on tax-free land who is eligible for relief under s. 49.015, Stats.

(5) "Health care services" means emergency and non-emergency medical, surgical, dental, hospital, nursing and optometric services that are reasonable and necessary under the circumstances, as determined by the tribal governing body. "Health care services" does not include services described under s. 51.42 (3) (ar) 4., Stats.

(6) "Medical assistance" means the assistance program under ss. 49.43 to 49.475 and 49.49 to 49.497, Stats., and chs. HFS 101 to 108.

(7) "Medical assistance divestment" means the disposal of an asset for less than its fair market value with the consequence that the individual who does this is ineligible for medical assistance under the provisions of s. 49.453, Stats., and s. HFS 103.065.

(8) "Relief" means health care services provided to a dependent person and funded by a relief block grant.

(9) "Relief agency" means a tribal governing body or an agency under contract with the governing body to administer relief.

(10) "Relief block grant" means a block grant awarded to a tribal governing body under s. 49.029, Stats.

(11) "Relief of needy Indian persons program" means the assistance program under s. 49.046, Stats., which was operated by tribal governing bodies or counties until January, 1996, when s. 49.046, Stats., was repealed.

(12) "SSI" means supplemental security income, the assistance program under section 1613 of title XVI of the Social Security Act of 1935, as amended, and s. 49.77, Stats.

(13) "Tax-free land" means land in this state within the boundaries of a federally recognized reservation or within the bureau of Indian affairs service area for the Ho-Chunk Nation, 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 taxes.

(14) "Tribal governing body" means an elected tribal governing body of a federally recognized American Indian tribe.

**History:** Cr. Register, May, 1996, No. 485, eff. 6-1-96; corrections in (6) and (7) made under s. 13.93 (2m) (b) 7., Stats., Register, February, 2001, No. 542, eff. 3-1-01.

**HSS 211.04 Application for relief block grant.**

(1) RESOLUTION. (a) If a tribal governing body chooses to have a relief block grant program, the tribal governing body shall adopt a resolution to apply for a relief block grant and provide a copy of the resolution to the department.

(b) If a tribal governing body at any time elects to no longer provide a relief block grant program, the tribal governing body or its designee shall inform the department in writing at least 10 days prior to termination of the program.

(2) CRITERIA. The tribal governing body shall establish written criteria for determining dependency, and review these written criteria at least annually for appropriateness.

(3) PLAN. The tribal governing body shall submit to the department for approval a medical relief block grant plan for the provision of health care services to be funded by the tribal relief block grant as specified under s. 49.02 (1) (c), Stats.

(4) RELIEF AGENCY. The tribal governing body shall establish or designate a relief agency to administer the tribal medical relief block grant.

**History:** Cr. Register, May, 1996, No. 485, eff. 6-1-96.

**HSS 211.05 Procedures for eligibility determination.** A tribal relief agency shall do all of the following related to determining eligibility for relief:

(1) Define and report to the department procedures for verification of eligibility. These shall be sufficient to substantiate the fundamental information upon which a determination of eligibility is based.

(2) Implement written policies developed by the tribal governing body that define the amounts of income, assets and income and asset disregards allowed for use in determining eligibility. A tribal relief agency, in determining eligibility, shall disregard the following resources:

(a) Low-income energy assistance benefits authorized under 42 USC 8621 to 8629.

(b) Food stamp benefits authorized under 7 USC 2011 to 2029.

(c) Any other resources prohibited by law from being considered.

(3) Comply with the requirements of s. 49.015, Stats., in determining an individual's eligibility for relief.

**History:** Cr. Register, May, 1996, No. 485, eff. 6-1-96.

**HSS 211.06 Standards for waiver of certain eligibility requirements.** (1) A tribal relief agency may waive the eligibility requirement under s. 49.015 (2) or (2m), Stats., in accordance with its tribal medical relief block grant plan, as follows:

(a) Waiver of the prohibition against receiving AFDC or SSI may be granted in cases of unusual misfortune or hardship as determined by the tribal governing body.

(b) Waiver of the medical assistance divestment barrier to eligibility may be granted only if all attempts at recovery of the divested property have been made and no other resources or assistance is available to the person and unusual misfortune or hardship exists as determined by the tribal governing body.

(2) A tribal governing body shall report all waivers to the department in the manner prescribed by the department. The department may make a determination as to the appropriateness of the waiver and submit its determination to the tribal governing body regarding the relief provided as a result of a waiver that the department determines is inappropriate.

**History:** Cr. Register, May, 1996, No. 485, eff. 6-1-96.

**HSS 211.07 Procedures for permitting appeal of eligibility determinations.** (1) **NOTICE.** If a tribal relief agency denies an application for relief, or reduces, suspends or terminates the relief, the tribal relief agency shall provide adequate written notice to the affected individual. The notice shall contain all of the following:

(a) The effective date of the action.

(b) The reason for the action.

(c) A statement that the action may be appealed to the tribal governing body and providing a reasonable period of time for the individual to appeal and a place for an appeal to be filed.

(2) **FAIR HEARING.** If the tribal relief agency denies, reduces, suspends or terminates the relief, the tribal governing body shall permit and enable an affected individual to request a fair hearing. A fair hearing shall permit or provide all of the following:

(a) Permit the individual or his or her representative, at a reasonable time before the hearing, to examine records to be used at the hearing.

(b) Permit the individual to present his or her case personally or with the aid of others, including an attorney.

(c) Permit the individual or his or her representative to establish facts and circumstances pertinent to his or her case.

(d) Provide an impartial decisionmaker who is familiar with the relief program who may not communicate outside the hearing with either party.

(e) If determined necessary by the impartial decisionmaker, permit the individual or his or her representative to subpoena witnesses or compel the attendance of a witness or the production of evidence.

(f) Provide for procedures that permit the individual or his or her representative to question or refute any testimony or evidence, including permission to confront and cross-examine adverse witnesses.

(g) Provide, if desired by either party, for the party to make a record of the hearing by means of an electronic device, either

sound or video or both, through the services of a court reporter or by other means acceptable to both parties.

(h) Provide for procedures that permit the tribal governing body or individual to limit the hearing to the written reason for the hearing, the facts in the case and the requested remedy sought.

(3) **DECISION.** The tribal governing body shall issue its decision in writing in a timely manner. The hearing decision shall:

(a) Be based exclusively upon evidence presented at the hearing and the written policies in effect on the date of the action being appealed.

(b) Inform the individual of the evidence and policies relied upon in reaching the decision and whatever rights to review are available and the time limit for requesting a review.

(c) Inform the individual of any remedy provided. The remedy may be the one sought by the individual requesting the hearing or a more appropriate remedy as determined by the impartial decisionmaker.

**History:** Cr. Register, May, 1996, No. 485, eff. 6-1-96.

**HSS 211.08 Distribution of funds to eligible tribal governing bodies.** The department shall distribute all tribal medical relief block grant funds available beginning January 1, 1996, to eligible tribal governing bodies as follows:

(1) **NUMBER OF RECIPIENTS.** (a) The department shall divide fifty percent of the total available tribal medical relief block grant funds by each eligible tribe's average per month number of relief to needy Indian persons program recipients during calendar year 1994 to determine the amount available per recipient.

(b) The department shall multiply the amount available for each recipient as determined under par. (a) by the number of relief to needy Indian persons program recipients during calendar year 1994 for each of the eligible relief block grant program tribes. The result shall be half of each tribe's allocation.

(2) **MEDICAL ASSISTANCE COSTS.** The department shall determine each eligible tribe's percent of total relief to needy Indian persons medical assistance costs for calendar year 1994 and multiply fifty percent of the total available tribal medical relief block grant funds by the resulting percent for each eligible tribe. The result shall be half of each tribe's allocation.

(3) **REALLOCATION.** If the department determines that a tribal governing body's existing allocation will not be exhausted before the end of the contract year ending September 30, the department may reallocate the funds in a manner consistent with the formula stated under subs. (1) and (2).

(4) **FUTURE ALLOCATIONS.** (a) After the tribal governing body contract year ending September 30, 1996, the department may distribute tribal medical relief block grant funds based upon each eligible tribal governing body's medical relief block grant expenditures for the year prior to the year of the allocation, expressed as a percentage of the total medical relief block grant expenditures of all eligible tribal governing bodies that same year.

(b) A tribal governing body not choosing to be eligible for a relief block grant in a particular contract year ending September 30 that chooses to participate in the program the following year shall be allocated an initial contract year amount based upon the tribe's population as a percentage of the total population of the tribe and all other tribes represented by eligible tribal governing bodies in the previous year.

**History:** Cr. Register, May, 1996, No. 485, eff. 6-1-96.