

Clearinghouse Rule 00-150

CERTIFICATE

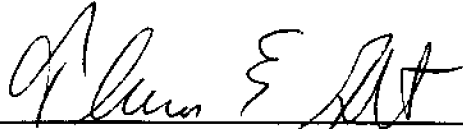
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND FAMILY SERVICES)

I, Phyllis J. Dubé, Secretary of the Department of Health and Family Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to administration of supplemental security income (SSI), state supplemental payments to low-income elderly and disabled residents of Wisconsin and their dependent children were duly approved and adopted by this Department on March 12, 2001.

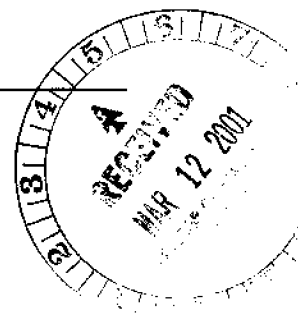
I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

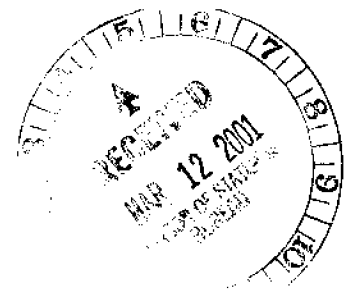
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 12th day of March, 2001.

SEAL:

for 

Phyllis J. Dubé, Secretary
Department of Health and Family Services





ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING RULES

To create HFS 79, relating to administration of Supplemental Security Income (SSI) state supplemental payments to low income elderly and disabled residents of Wisconsin and their dependent children.

Analysis Prepared by the Department of Health and Family Services

Sections 49.77 and 49.775, Stats., authorize the Department to administer Supplemental Security Income (SSI) state supplemental payments to low income elderly and disabled residents of Wisconsin and their dependent children. These SSI payments are funded by state general purpose revenue and federal Temporary Assistance for Needy Families (TANF) grant funding in excess of \$140,000,000 per state fiscal year. These payments are distributed monthly to approximately 100,000 beneficiaries and their dependent children. Neither s. 49.77 or 49.775, Stats., direct the Department to develop administrative rules to administer the program.

An unavoidable aspect of the program is the Department's need to periodically recover payments incorrectly made to benefit recipients. Overpayments and incorrect payments occur due to delays in transmission of eligibility and benefit information between the federal Social Security Administration and the Department and are not due to the Department's error or omission. On November 24, 1999, by order of the Wisconsin Court of Appeals, District II, the Department was found, absent administrative rule, to lack the authority to administratively recoup benefits overpaid to recipients who were ineligible for the benefits or to whom the Department paid an incorrect amount of benefits. The Department sought to appeal the decision to the Wisconsin Supreme Court, but recently learned that the Supreme Court will not hear the case. The Department's inability to recover payments made in error will cost the Department about \$10,000 per month.

The rule proposes to replace an existing emergency rule issued on September 15, 2000. The rule provides the Department with the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats., and to effectively administer both state and federal public welfare funding. Through this rule, the Department will effectively recover taxpayer monies to which recipients were not entitled, pending the promulgation of permanent rules.

ORDER

Pursuant to the authority vested in the Department of Health and Family Services by ss. 49.77, 49.775 and 227.11 (2), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 49.77 and 49.775, Stats.

SECTION 1. Chapter HFS 79 is created to read:

Chapter HFS 79

STATE SUPPLEMENTAL SECURITY INCOME PAYMENTS

- HFS 79.10 Authority and purpose.
- HFS 79.20 Applicability.
- HFS 79.30 Definitions.
- HFS 79.40 Recovery of incorrectly paid benefits.

HFS 79.50 Waiver of recovery.
HFS 79.60 Appeal rights.

HFS 79.10 Authority and purpose. This chapter is promulgated under the authority of ss. 49.77, 49.775 and 227.11 (2) (a), Stats., to administer supplemental security income state supplemental payments to low-income elderly and disabled residents of Wisconsin and their dependent children. This chapter establishes the basis for the recovery of benefits incorrectly paid to individuals who receive benefits under s. 49.77 or 49.775, Stats., or both, provides for the department's waiver of recovery of incorrectly paid benefits and establishes the appeal right of an individual from whom the department seeks to recover benefits incorrectly paid to the individual.

HFS 79.20 Applicability. This chapter applies to the department and to individuals receiving benefits under s. 49.77 or 49.775, Stats., or both.

HFS 79.30 Definition. In this chapter: (1) "Department" means the department of health and family services.

(2) "Incorrectly paid benefits" means payments of any amount dispersed to an individual who was not eligible for any benefit amount during the period for which the payment was made or in an amount which was in excess of the amount for which the person was eligible during the period for which the payment was made.

HFS 79.40 Recovery of incorrectly paid benefits. (1) **CURRENT RECIPIENT.** The department shall recover payments incorrectly made under s. 49.77 or 49.775, Stats., to an individual who receives benefits paid under s. 49.77 or 49.775, Stats., or both, by reducing the amount of an individual's payment under s. 49.77 or 49.775, Stats., or both, by no more than 10% until the full amount of the incorrect payment is recovered by the department, unless the individual requests a larger percentage deduction.

(2) **FORMER RECIPIENT.** (a) The department shall ask a former recipient to voluntarily repay overpayments the department made under s. 49.77 or 49.775, Stats.

(b) If a former recipient refuses to voluntarily repay the amount specified under sub. (2) and the overpayment is \$100 or more, the department may pursue collection or court action.

HFS 79.50 Waiver of recovery. The department may waive recovery of incorrectly paid benefits for an incident of incorrect payment, be it for a single month or for an episode of incorrect payments, when the total recovery or adjustment for the single month or episode is less than \$100.

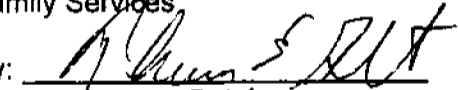
HFS 79.60 Appeal rights. The department shall send a notice of adverse administrative action to an individual identifying the months and amounts for which benefits were incorrectly paid and the reason for which the individual was ineligible for the payment. The notice shall include information regarding the individual's right to appeal the department's decision as provided in ch. HA 3. The department delegates final decision making regarding appeals to the department of administration's division of hearings and appeals under s. HA 3.09 (9) (a).

Dated: March 12, 2001

SEAL:

Wisconsin Department of Health and
Family Services

By:

A handwritten signature in black ink, appearing to read "Phyllis J. Dubé", written over a horizontal line.

Phyllis J. Dubé

Secretary



State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor
Phyllis J. Dubé, Secretary

March 12, 2001

Mr. Bruce E. Munson
Revisor of Statutes
131 W. Wilson St., Suite 800
Madison, WI 53703


Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of ch. HFS 79, relating to relating to administration of supplemental security income (SSI), state supplemental payments to low-income elderly and disabled residents of Wisconsin and their dependent children .

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

The effect of the rule changes on small businesses as defined in s. 227.114 (1) (a), Stats., is described on an accompanying page of this filing.

Sincerely,


For Phyllis J. Dubé
Secretary



Enclosure