

STATE OF WISCONSIN
Department of Veterans Affairs

In the matter of rulemaking proceedings before the Department of Veterans Affairs.

ORDER OF THE DEPARTMENT OF VETERANS AFFAIRS
ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 035-20, was approved by the Governor on May 6, 2020, published in Register No. 773A2 on May 11, 2020, and approved for implementation by the Secretary of the Department of Veterans Affairs on May 21, 2020. This emergency rule was approved by the Governor on May 29, 2020.

ORDER

An order of the Department of Veterans Affairs *to repeal* VA 2.01 (k); *and to amend* VA 2.01(1) (d), (e), and (i), (2) (a), (b) 1. and 3., and (3) (a) and (b); relating to the assistance to needy veterans grant program.

FINDING OF EMERGENCY

On March 12, 2020, Governor Tony Evers issued Executive Order #72, which proclaims that a public health emergency exists for the State of Wisconsin. As this emergency has a significant impact on Wisconsin veterans and their families, the Department of Veterans Affairs finds that an emergency exists and that the proposed emergency rule is necessary for the immediate preservation of public health, safety, and welfare. Facts constituting the emergency are as follows:

In times of a declared national or public health emergency, amended rule language is needed in order to expand eligibility for financial assistance to veterans who suffer a loss of income. Certain administrative rules relating to the Assistance to Needy Veterans Grant program were temporarily suspended on April 9, 2020, under the Governor's Emergency Order #23. The proposed rules will enable the Department to extend the amendments beyond the expiration of the Governor's emergency authority.

Current rules limit the circumstances in which a veteran may be eligible for subsistence and health care assistance following a recent loss of income due to an illness, injury, or natural disaster. The emergency rules would expand eligibility and remove and/or amend certain application requirements.

ANALYSIS

Analysis prepared by the Department of Veterans Affairs.

Statutes interpreted:

Sections 45.03 (2) and 45.40, Stats.

Statutory authority:

Section 45.40 (3m), Stats.

Explanation of agency authority:

Section 45.40 (3m), Stats., provides that the department shall promulgate rules establishing eligibility criteria and household income limits for payments made for subsistence and health care aid under subs. (1m), (2), and (2m).

Related statute or rule:

None

Plain language analysis:

This emergency rule amends provisions in ch. VA 2, with the objective of expanding eligibility and removing barriers for a veteran to apply for subsistence and health care aid under the Assistance for Needy Veterans Grant program as specified in s. VA 2.01. Current rules allow the department to provide subsistence and health care aid to veterans based on financial need who have experienced a recent loss of income due to an illness, injury, or natural disaster.

This emergency rule includes the following amendments:

- Amends the definition for “available liquid assets” to exclude cash value of life insurance policies, liquid investments, including stocks and bonds and amounts deposited in any retirement plans.
- Amends the definition for “declaration of aid” to eliminate a requirement for the form to be signed by a county official.
- Amends the definition for “description of benefits” to no longer expire 90 days after the date eligibility has been established.
- Repeals a definition for “economic emergency”.
- Amends or repeal certain application requirements and timeframes.
- Eliminates the timeframe in which a health care provider is required to provide health care.
- Eliminates the eligibility threshold of 180 percent of the federal poverty guidelines.

Summary of, and comparison with, existing or proposed federal regulation:

None

Comparison with rules in adjacent states:

Illinois: The Illinois Military Veterans Assistance Act provides for financial assistance to indigent veterans through the city or town military veterans organization within each county. General assistance funds are allocated to a county for assistance to veterans and their families in accordance with the provisions of the Illinois Public Aid Code.

Iowa: Iowa veterans are eligible for subsistence-type aid through the Iowa Veterans Trust Fund.

Michigan: The Department of Military and Veterans Affairs provides grants up to \$2,000 per year for qualified veterans and their families through a Military Family Relief Fund that provides subsistence-type aid.

Minnesota: Minnesota administrative rule chapter 9055 contains provisions relating to the State Soldiers Assistance Fund, which includes a subsistence aid program that provides temporary financial assistance for eligible veterans.

Summary of factual data and analytical methodologies:

On March 12, 2020, Governor Tony Evers issued Executive Order #72, which proclaimed that a public health emergency exists for the State of Wisconsin. As this emergency has a significant impact on Wisconsin veterans and their families, the Department of Veterans Affairs finds that an emergency exists and that the proposed emergency rule is necessary for the immediate preservation of public health, safety, and welfare.

The Department deems it necessary to amend current rule language in order to expand eligibility for financial assistance to veterans who suffer a loss of income. Certain administrative rules relating to the Assistance to Needy Veterans Grant program were temporarily suspended on April 9, 2020, under the Governor's Emergency Order #23, which remained in effect for the duration of the public health emergency declared in Executive Order #72, which expired on May 11, 2020. The proposed emergency rules will enable the Department to extend the amendments beyond the expiration of the Governor's emergency authority.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule will be posted to solicit economic impact comments.

Fiscal Estimate:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Agency contact person:

Mindy Allen, Administrative Rules Coordinator, Department of Veterans Affairs, Office of the Secretary, P.O. Box 7843, Madison, WI 53707-7843, Phone: (608) 264-6085, Email: DVAAdminRules@DVA.Wisconsin.gov

Place and deadline for submission of comments:

Comments may be submitted to the contact information listed above no later than the date of the public hearing. The date, time, and place of the public hearing will be published in the Wisconsin Administrative Register.

TEXT OF RULE

SECTION 1. VA 2.01 (1) (d), (e), and (i) are amended to read:

VA 2.01 (1) (d) “Available liquid assets” means cash on hand, including cash in checking, savings, money market or similar accounts, ~~cash value of life insurance policies, liquid investments, including stocks and bonds and amounts deposited in any retirement plans,~~ owned, either jointly or solely, by the applicant or the applicant’s family.

(e) “Declaration of aid” means a written determination regarding the availability of county, state, or federal aid administered by the county for an applicant. ~~A declaration of aid must be signed by a county official authorized to determine whether aid is available for an applicant and the applicant’s family and whether the applicant has accepted the aid available.~~

(i) “Description of benefits” means a written determination that an applicant is eligible for health care aid or subsistence aid or both. ~~A description of benefits expires 90 days after the date of eligibility is established and printed by the department unless extended by the department.~~

SECTION 2. VA 2.01 (1) (k) is repealed.

SECTION 3. VA 2.01 (2) (a), (b) 1. and 3., and (3) (a) and (b) are amended to read:

VA 2.01 (2) (a) *Forms required.* A grant application shall be submitted on a department approved form. It may be submitted through a county veterans service officer, through any other department authorized agent, or directly to the department, either manually or electronically. The application shall specify the type of care being requested and if the care requested is subsistence aid, the application shall be submitted no later than the 91st day following the verified loss of income due to illness, injury or natural disaster. ~~A declaration of aid shall be submitted with the application. The declaration shall state that the applicant has applied for all aid offered through or administered by the county, including aid from the federal or state government and shall list all assets available to the applicant or the applicant’s family. If requested by the department the applicant shall submit evidence establishing that all other available aid has been applied for and accepted. The department may request additional verification~~

~~of any information provided in the application. The department shall notify the applicant or applicant's county veterans service officer if any required documentation is missing or if further verification is required to make a decision on the applicant's eligibility. The department shall terminate an application if such documentation or verification does not arrive at the department's central office within 30 days of that notification.~~

(b) 1. 'All applicants.' ~~Except for applicants who are eligible under subd. 3., the applicant's income shall not exceed 180 percent of the federal poverty guidelines, in effect on the date the application arrives at the department's central office, for the number of family members living in the primary residence. An applicant may apply for subsistence aid, health care aid, or both. Applications approved by the department shall have the balance of the maximum available aid allocated towards each type of aid requested, unless the applicant indicates a lesser amount in writing. Applications shall be denied if no unallocated funds are available at the time of application. The department shall indicate on each description of benefits the type of health care or subsistence aid authorized, the date the department confirmed that the applicant was eligible for the grant, a date 90 calendar days from that date, the unallocated amount available for each type of aid and for the cumulative limits of this section, and the amount of aid being authorized. No more than one description of benefits may be outstanding at any time, except where all health care providers have submitted binding quotes prior to the issuance of more than one description of benefits, and are willing to accept payment from this program in full for any service rendered to the applicant in accordance with the description of benefits. The department shall pay the lesser of the actual cost of services invoiced or the binding quote submitted by the health care provider. No payment shall be made by the department unless an itemized written invoice is received by the department within 60 days of the expiration date, or any approved extension of that expiration date, as identified in the applicable description of benefits. Authorized applications for health care aid may not be withdrawn without the agreement of the provider of the health care aid.~~

3. 'Spouses and dependents of activated or deployed members.' Spouses and dependents of a member of the U.S. armed forces or of the Wisconsin National Guard claiming eligibility shall submit evidence that the service member has been deployed or activated, that due to the activation or deployment a loss of income has occurred, ~~that an economic emergency has occurred during the activation or deployment,~~ and that the spouse and dependents are residents of the state.

(3) (a) *Health care aid.* ~~A health care provider may provide health care within 90 days after the department confirms that the applicant is eligible only after a description of benefits has been transmitted to the applicant or the county veterans service officer. The department may accept a second application for the health care listed on the first description of benefits if the department receives a statement from the health care provider, within 7 calendar days before the expiration listed on the first description of benefits, that the health care authorized is still being provided and that the patient will not incur costs.~~

(b) *Subsistence aid.* Subsistence aid is available for the 90-day period following the date of the verified loss of income due to illness, injury, or a natural disaster. ~~Applications may be made for any 30-day period within the 120 days following the date of the verified loss of income.~~ No more than 3 30-day periods of subsistence aid may be granted for any verified loss of income due to illness, injury, or natural disaster. Subsistence aid shall be limited to the difference between the amount of earned and unearned income available before the loss of income and the earned and unearned income being received after the loss of income, subject to the limitations under s. 45.40 (1m) (b) and (3), Stats. The applicant shall verify the loss of income by submitting verification of income forms, certified public accounting statements, or any other evidence the department deems credible. Illness or injury shall be verified in writing on a form approved by the department. When the department has evidence that the incapacitation will cause an income loss for 90 days or longer, subsistence grants will be prorated for each of the 30-day periods unless the department determines that an alternate distribution of the grant would benefit the applicant. If the loss of income is the result of alcohol or other drug abuse, the applicant shall verify current participation in an approved treatment program.

SECTION 4. INITIAL APPLICABILITY. This rule first applies retroactively to applications submitted on May 12, 2020.

SECTION 5. EFFECTIVE DATE. This emergency rule shall take effect following publication in the official state newspaper pursuant to s. 227.24 (1) (c), Stats.

(END OF RULE TEXT)

Dated May 21, 2020

Agency



Mary M. Kolar, Secretary
Department of Veterans Affairs