

Clearinghouse Rule 23-073

State of Wisconsin Department of Children and Families

Emergency Assistance Program Integrity

DCF 101.23, 120

The Wisconsin Department of Children and Families proposes to amend ss. DCF 101.23 (9) (a), 120.04, and 120.08 (1) and to create ss. DCF 101.23 (1) (d) (Note), 120.03 (1m), (4m), and (5m), and 120.085, relating to Emergency Assistance program integrity.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 49.195 (3) and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 49.138 (1d), (1m), (4) (a), and (5), 49.195 (3) and (3m), and 49.85, Stats.

Related statutes and rules: DCF 101.23

Explanation of Agency Authority

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. The department shall give that

person an opportunity for a review following the procedure specified under s. 49.152, Stats., if the person received the overpayment under s. 49.141 to 49.161, and for a hearing under ch. 227. 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 if the agency considers it necessary to effectuate the purpose of the statute.

Summary of the Rule

The proposed rules provide procedures for the collection of overpayments of Emergency Assistance under s. 49.138, Stats. The department will recover an overpayment from an emergency assistance group if the department determines that the overpayment resulted from a misrepresentation by a group member regarding any fact that had an effect on the group's eligibility for, or the amount of, the emergency assistance granted.

After providing notice of the overpayment determination and the opportunity for a hearing under ch. 227, Stats., the department will attempt to recover the overpayment by entering a repayment agreement with the group. If the department does not receive the group's payment on the debt by the due date 3 times over the life of the repayment agreement, the debt will be considered delinquent. If the debt is delinquent, the department may recover the overpayment by certifying the debt to the Department of Revenue for setoff against any state tax refunds or credits owed; warrant and execution under s. 49.195 (3m), Stats., if the amount owed is more than \$300; or any other legal means.

The department will recover an overpayment from a Wisconsin Works agency (W-2 agency) if the department determines that the overpayment is the result of an error made by the agency. The department will provide notice of the overpayment determination to the W-2 agency with notice that the department will be offsetting the overpayment amount from any payments otherwise due under the agency contract with the department. The notice shall be provided at least 30 days prior to the offset. The W-2 agency may request a review of the overpayment determination following the dispute resolution procedures in the agency contract.

If the department's initial attempt at recovery is unsuccessful, the department may collect by certifying the debt to the department of revenue for setoff against any state tax refunds or credits owed, warrant and execution under s. 49.195 (3m), Stats., or any other legal means.

Liability for overpayments is limited to one year after the W-2 agency or the department discovers an administrative error and 6 years after the W-2 agency or the department discovers a client error.

The proposed rules also extend the time period in which the W-2 agency may determine eligibility from 5 days to 10 days and repeals a provision that states that verification may not delay the provision of assistance.

Summary of Factual Data and Analytical Methodologies

The rule is based on ss. 49.138 (5) and 49.195, Stats., Wisconsin Works overpayment provisions in s. DCF 101.23, contracts with Wisconsin Works agencies, and federal requirements for the Temporary Assistance for Needy Families program.

Summary of Related Federal Law

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.

Comparison to Adjacent States

The department did not find comparable rules in the adjacent states.

Effect on Small Businesses

The proposed rule does not affect small businesses as defined in s. 227.114 (1), Stats.

Analysis Used to Determine Effect on Small Businesses

The Emergency Assistance program is administered by Wisconsin Work agencies and none of these agencies is a small business as defined in s. 227.114 (1), Stats.

Agency Contact

Tonya Kristiansen, TANF Policy Section Manager, (608) 422-6265, tonya.kristiansen@wisconsin.gov.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Elaine Pridgen, Department of Children and Families, 201 W. Washington Ave, P.O. Box 8916, Madison, WI, 53708-8916 or dcfpublichearing@wisconsin.gov. The comment deadline is January 29, 2024.

Text of Rule

SECTION 1. DCF 101.23 (1) (d) (Note) is created to read:

DCF 101.23 (1) (d) Note: See s. DCF 120.085 for policies on the collection of Emergency Assistance overpayments.

SECTION 2. DCF 101.23 (9) (a) is amended to read:

DCF 101.23 (9) (a) *Creation of lien.* 1. If a debt for repayment of an overpayment under s. 49.138 (1), 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) or s. DCF 120.085 (1) (b) are pending and the time for requesting a review has expired, the department may issue a warrant directed to the clerk of circuit court of any county.

SECTION 3. DCF 120.03 (1m), (4m), and (5m) are created to read:

DCF 120.03 (1m) “Client error” means an error caused by an individual who is a member of an emergency assistance group reporting incorrect information or failing to report information due to a misunderstanding or mistake that results in an overpayment of emergency assistance.

(4m) “Intentional program violation” has the meaning given in s. 49.001 (3m), Stats.

(5m) “Misrepresentation” includes an intentional program violation and a client error.

SECTION 4. DCF 120.04 is amended to read:

DCF 120.04 Application. Application for emergency assistance shall be made on a form prescribed by the department. Upon receipt of a completed application, the agency shall verify

that the emergency was due to fire, flood, natural disaster, homelessness, impending homelessness, or an energy crisis. An agency shall consider the application complete if the application includes a legible name; address, if available; reason for the emergency; signature by the applicant or the applicant's representative and has been completed to the best of the applicant's or representative's ability. ~~Verification of eligibility shall not delay the provision of assistance.~~

SECTION 5. DCF 120.08 (1) is amended to read:

DCF 120.08 (1) The agency shall determine eligibility for emergency assistance within 5 10 working days after receiving a completed application. If the group is found eligible, the agency shall issue a payment to the emergency assistance group within the same 5 10 working days, except as provided in subs. (4) and (5). The payment may be made in the form of cash, a voucher, or a vendor payment.

SECTION 6. DCF 120.085 is created to read:

DCF 120.085 Overpayments. (1) MISREPRESENTATION. (a) The department shall recover an overpayment of emergency assistance from the emergency assistance group that was overpaid if the department determines that the overpayment resulted from a misrepresentation by a group member regarding any fact that had an effect on the group's eligibility for, or the amount of, the emergency assistance granted.

(b) The department shall send a notice of the overpayment determination to the emergency assistance group's address as it appears on the records of the department. The notice shall include the amount and reason for the overpayment and the opportunity for a hearing under ch. 227, Stats.

Note: Neither s. 49.138 (4) (a) nor 49.195 (3), Stats., authorize a review by the W-2 agency.

(c) The department shall attempt to recover the overpayment by entering a repayment agreement with the emergency assistance group. If the department does not receive the group's payment on the debt by the due date 3 times over the life of the repayment agreement, the debt shall be considered delinquent.

(d) If a debt is delinquent under par. (c) and no appeal rights are pending and the time for requesting a hearing has expired, the department may recover the overpayment in any of the following ways:

1. Certification of the debt to the department of revenue under s. 49.85, Stats., for setoff against any state tax refunds or credits owed under s. 71.93, Stats.
2. Warrant and execution under s. 49.195 (3m), Stats., and s. DCF 101.23 (9) if the amount owed is more than \$300.
3. Any other legal means.

(2) ADMINISTRATIVE ERROR. (a) The department shall recover an overpayment of emergency assistance from a W-2 agency if the department determines that the overpayment is the result of an error made by the agency.

(b) The department shall provide notice of the overpayment determination to the W-2 agency with notice that the department will be offsetting the overpayment amount from any payments otherwise due to the W-2 agency under s. 49.143, Stats. The notice shall be provided at least 30 days prior to the offset.

(c) The W-2 agency may request a review of the overpayment determination following the dispute resolution procedures in the agency contract with the department under s. 49.143, Stats.

(d) If the department's initial attempt at recovery of the overpayment under par. (b) is unsuccessful, the department may use any of the following collection methods:

1. Certification of the debt to the department of revenue under s. 49.85, Stats., for setoff against any state tax refunds or credits owed under s. 71.93, Stats.

2. Warrant and execution under s. 49.195 (3m), Stats.,

3. Any other legal means.

(3) LIMIT ON LIABILITY. Liability for overpayments shall be limited to the following:

(a) One year after the W-2 agency or the department discovers an administrative error.

(b) 6 years after the W-2 agency or the department discovers a client error.

SECTION 7. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.