

## Chapter HSS 211

## RELIEF OF NEEDY INDIAN PERSONS

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**HSS 211.01 Introduction.** (1) **STATEMENT OF INTENT.** The intent of this rule 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, ss. 49.046 and 49.047, Stats.

(2) **EFFECT OF RULE.** The following rule shall have the full effect and force of law under s. 227.01, Stats. The rule does not repeat the laws related to relief of needy Indian persons. Users of the rule should also be aware of and familiar with the statutory sections related to the rule so that they are knowledgeable about the requirements of the law as well as the rule.

(3) **TO WHOM THE RULE APPLIES.** The rule applies to county welfare agencies, elected tribal governing bodies, and other appropriate Indian organizations appointed by the department to administer the relief of needy Indian persons program.

(4) **DEFINITIONS.** (a) "Department" unless qualified, means the state of Wisconsin department of health and social services.

(b) "Division" unless qualified, means the division of economic assistance of the department.

(c) "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.

(d) "Tribal governing body" means the elected governing body of a federally recognized Indian tribe or band.

(e) "Appropriate Indian organization" means an Indian organization recognized by the local tribal governing body as having the capability of administering relief under s. 49.046, Stats., and appointed by the department with the consent of the local tribal governing body.

(f) "Indian" means any person: 1. whose proportion of Indian blood is one-fourth or more; or 2. who is enrolled in a federally recognized band or tribe of Indians; or 3. who is otherwise recognized by an appropriate tribal governing body as being Indian.

(g) "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.

(h) "County welfare agency" means any county public welfare or social services department created under ss. 46.21 or 46.22, Stats.

(i) "Relief" means aid under s. 49.046, Stats., 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 s. 49.19, (1) (a), Stats., and in addition medical benefits equal to benefits provided under ss. 49.45 and 49.46, 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.

(j) "RNIP group" means those persons who are nonfinancially eligible for relief of needy Indian persons (RNIP) and who are the RNIP payees, all of the persons who are the legal responsibility of the payee, and anyone legally responsible for the payee's child(ren), and who are living in a common living arrangement. Nonfinancially eligible means meeting all of the eligibility criteria not related to the amount of income or other resources, inclusive of ineligibility for aid or benefits under Title XVI of the social security act; ss. 49.19; 49.46 and 49.47, Stats., except that persons under age 21 who are eligible for medical assistance under ss. 49.45 or 49.47, Stats. may be eligible for subsistence payments under this rule.

History: Renum. from PW-PA 20.13 and am., Register, October, 1979, No. 286, eff. 11-1-79.

**HSS 211.02 Administration.** (1) The tribal governing body, 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 ss. 49.046 and 49.047, Stats., this rule and written policies and procedures issued by the department.

(2) A tribal governing body may petition the department at any time for appointment of the tribal governing body or an appropriate Indian organization to administer the program. The department shall begin negotiations no later than 2 months from and shall make the appointment not later than 6 months from the date the petition is received by the department.

(3) The department shall reimburse the necessary and appropriate administrative costs of providing relief to needy Indian persons as contracted for and 100% of the amount of relief provided by the agency appointed by the department to administer relief under this rule. Necessary and appropriate costs include:

(a) Equipment, supplies, and telephone and telegraph costs with all capital and equipment purchases as approved by and ordered through the department;

(b) Rental of office space, based on the fair rental price for the area, including utilities, insurance, maintenance, repairs, and alterations to the premises;

(c) Travel costs for transportation, lodging, meals, and related items incurred by employes on official business and members of an advisory committee, under specified conditions, which shall not exceed the guidelines for reimbursement for non-represented employes of the department.

(4) The department may at any time audit all grants of aid and all records relating to the administration of relief under s. 49.046, 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.

(5) Any agreement entered into by and between the department and a tribal governing body or an appropriate Indian organization whereby a tribal governing body 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 governing body or appropriate Indian organization shall be served upon the presiding officer of the tribal governing body or appropriate Indian organization stating the reasons for termination. The agency may appeal the termination to the secretary of the department and to the courts through the process laid out in ch. 227, Stats. If termination of a contract is not contested, or upheld after contest, the department may contract with any other appropriate Indian organization or county welfare agency in the county or municipality in which the Indian person resides or an appropriate agency of the federal government.

(6) Agencies administering the program shall establish written personnel policies which shall be approved by the department. The personnel policies shall be the same as the personnel policies approved by the tribal governing bodies for the administration of other programs under their authority except as indicated in pars. (a) and (b) below. These policies shall cover the following: equal employment opportunity, rights of employes, partisan political activity, conflict of interest, classification plan, compensation plan, recruitment, examination, certification, appointment, personnel records and reports, and layoffs and appeals.

(a) Where the personnel policies of the tribal governing body do not provide a policy for any required part enumerated in sub. (6) above, such policy shall be created by the tribal governing body for the purpose of administering relief under s. 49.046, Stats.

(b) The department, in consultation with the administering agency, shall be responsible for developing the classification and compensation plans required in sub. (6) above.

(7) Administration of relief under s. 49.046, Stats., by any tribal governing body or other Indian organization does not confer jurisdiction over any tribe or Indian organization upon this state.

(8) In all proceedings for judicial review arising from the administration of relief under s. 49.046, Stats., the department shall be the respondent.

**History:** Renum. from PW-PA 20.13 and am. register, October, 1979, No. 286, eff. 11-1-79.

**HSS 211.03 Determination of eligibility.** Agencies appointed by the department to administer the relief of needy Indian persons program shall:

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

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

(3) Determine eligibility for relief on the following criteria:

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(a) No person who is eligible for any of the other assistance programs specified in s. 49.046(1), Stats., shall be determined to be eligible for relief under s. 49.046, Stats., except that persons under 21 years of age who are eligible for medical assistance under ss. 49.46 or 49.47, Stats., may be eligible for subsistence payments under this rule.

b. No person shall be eligible for relief under s. 49.046, Stats. unless that person meets these requirements:

1. Is an Indian person.
2. When an adult who is in the home is an Indian person, the members of the RNIP group who are in need of relief shall also be eligible for relief under s. 49.046, Stats.
3. Resides in Menominee county or on tax-free land in Wisconsin.
4. Is in need of relief.
5. Meets the same vehicle policy requirements as specified in s. 49.19(4) (em), Stats. For purposes of the RNIP program, employment as it pertains to the vehicle policy, means having been employed at least a total of 12 months in the 24 months prior to the current month of application.

(c) Persons under this relief program shall meet the standard of need determined in the same manner as aid under s. 49.19, Stats., with the exception that there need not be a dependent child in the home. Determination shall also be made as to the amount of assets and income to be deemed to the RNIP group in accordance with the procedures specified in subds. 1. and 2. below. This determination applies to the person(s) who is otherwise eligible to be included in the RNIP group except that the person(s) has been voluntarily excluded from the group and to any person(s) who fails to comply with the work experience program requirement in sub. (5) below.

1. Assets to be deemed include all available assets except those exempted or modified as follows:

a. Homestead property, household and personal effects, and one state registered vehicle driven or drawn over the road or a snowmobile are exempt.

b. If two or more state registered vehicles are owned, the one with the highest equity value is exempt.

2. Income to be deemed is any net income over the average of the differences between the area I standards set by s. 49.19(11) (a), Stats., for family sizes 3 and 2, 4 and 3, 5 and 4, and 6 and 5. If 2 persons are excluded or ineligible, the amount over twice the average shall be deemed. Net income is:

a. Gross monthly earned income less the greater of actual work related expenses or a fixed percentage, as determined by the department, of gross income;

b. Plus gross monthly unearned income, less any costs related to the income;

c. Less court ordered child support for a child outside the home.

(d) Eligibility of any one family member for another assistance program specified in s. 49.046 (1), Stats. shall not result in the ineligibility of other family members for relief.

(4) Provide relief 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 RNIP group; and

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

(c) In the absence of other resources, including potential or pending eligibility for aid under s. 49.19, Stats., requires immediate financial assistance.

1. The work experience program requirement found in sub. (5) below shall be waived in such cases.

2. If eligibility is later found for aid under s. 49.19, Stats., accounting procedures shall be followed for reimbursement of aid granted to the agency administering relief under s. 49.046, Stats.

(d) This sub. shall not be construed to require routine verification of information provided by an applicant for the purpose of establishing eligibility for relief under this rule.

(5) Work experience program. Every person who is an applicant for or a recipient of relief under s. 49.046, Stats. and not employed 100 hours or more a month after the effective date of this rule shall also comply with the work experience program requirement under s. 49.047, Stats., as a condition of eligibility for relief except as the person may be exempted below. A work experience program is a program authorized and sponsored by the body appointed to administer relief consisting of a minimum of 15 hours per week participation in a work experience or a training program which may lead to gainful employment and shall include performance of any work not prohibited by law, but shall not be operated so as to supplant regular employes of the administering entity or other municipal, county or state governmental units. Liability for any benefits legally recoverable under the worker's compensation law in ch. 102, Stats. apply to the agency administering a work experience or training program.

(a) Registration exemptions. No person shall be required to register for participation in any work experience or training program if such person is:

1. Under age 16.

2. Attending school full time, as defined by the school, with written verification of attendance by a school official.

3. Ill or injured with medical evidence that the illness or injury prevents participation in a work experience or training program for more than 30 days but less than 90 days.

4. Incapacitated with medical evidence that the incapacitation prevents entry into a work experience or training program for at least 90 days.

5. A person whose presence in the home is required because of the illness, injury, or incapacitation of a relative as specified in s. 852.03 (2), Stats. or any member of the RNIP group.

6. A person who is an adult in an RNIP group in which another adult in the group is employed 100 hours a month or more or has been accepted in a work experience or training program:

7. A person who is an adult caretaker of a child (ren) under age 6, in an RNIP group in which another adult is not exempt from the requirements under subd. 5. above and has been excluded from the RNIP group because of failure to comply with the requirements under sub. (5) above.

8. A temporary exemption, not to exceed 60 days, may be granted while awaiting receipt of requested medical or psychological reports or other specialized information.

9. A person who is provided emergent assistance in sub. (4) above.

(b) Voluntary registration. Any recipient of relief who is exempted from registration for or participation in a work experience or training program on the basis of any of the criteria in par. (a) above may voluntarily register for and participate in a work experience or training program. The penalties provided for in par. (d) below shall not, however, apply should the otherwise exempt recipient withdraw from a work experience or training program.

(c) Registration for employment. Any person who is required to register for and participate in a work experience or training program shall also be required to register with the state employment security division of the department of industry, labor and human relations and accept any suitable offer of employment. Registration shall initially occur at the time of application and for continuing eligibility at the time of redetermination of eligibility in accordance with the schedule in sub. (6) below.

(d) Failure to comply. Any person who is required to register for and participate in a work experience or training program and fails to comply with this requirement shall not be eligible for relief for a period of 60 days from the date of denial, discontinuance, or reduction unless:

1. The person agrees to comply with the requirement of the work experience or training program prior to or within 10 days after the date of notification of denial, discontinuance, or reduction.

2. The person becomes exempt in accordance with the criteria under sub. (5) (a) above.

(e) If the person who refuses to register or participate is the payee, another adult in the RNIP group shall be made the payee. If there is no other adult in the RNIP group, a protective payee shall be appointed as provided for in HSS 211.04 (1) (c) below.

(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 within 90 days after initial eligibility is first determined and no later than every 6 months thereafter.

**History:** Renum. from PW-PA 20.13 and am., Register, October, 1979, No. 286, eff. 11-1-79.

**HSS 211.04 Payments.** (1) Payment shall be made by check payable to one of the following:

(a) An eligible person.

(b) A person judicially appointed as the legal representative of such eligible person under ch. 880, Stats.

(c) A protective payee or vendor payee.

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

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

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

(5) Initial payment and medical benefits. The initial payment shall be made within 30 days of the date relief is applied for. The initial payment shall include maintenance needs from the first day in the month in which relief is applied for and eligibility is shown to exist except for registration for participation in the work experience program. Certification shall be made for medical benefits up to 3 months prior to the month of application if eligibility existed during any such prior period. Medical benefits shall be continued for 4 months following the month in which ineligibility for a money payment is caused by increased hours of or income from employment if a money payment was received in at least 3 of the 6 months immediately preceding the month of ineligibility and at least one person included in the money payment is employed.

(6) Timing of payments other than the initial payment. (a) Payment shall be made in the month for which the grant in aid is designated, either in the full amount of the monthly payment or in 2 or more installments.

(b) 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.

(c) 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.

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

(e) Payments correcting any prior underpayments may be made any time prior to the end of the twelfth month following the month in which any such underpayments were made.

(7) The provisions in sub. (5) above, shall not prevent:

(a) Continuing relief when an eligible recipient moves from one RNIP administering jurisdiction to another.

(b) Adjustments on order of the department, made in accordance with s. 49.50(8), Stats.

(c) 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.

(8) Checks shall be endorsed by the payee's signature except that persons unable to write shall endorse their checks either by mark or by fingerprint in the presence of 2 witnesses who shall append their signatures and addresses.

(9) Relief payments shall not supplement money payments to persons receiving assistance under programs specified in s. 49.046(1), Stats.

(10) Overpayment. Overpayment is that amount of a payment to which a recipient of relief is not entitled.

(a) Excess amount of payments ordered continued pending a fair hearing when the fair hearing decision is subsequently adverse to the recipient are overpayments.

(b) Excess amount of payments received when the agency's advance notice period of adverse action extends into the next month are not overpayments.

(c) Recoupment from the relief grant shall not be done for overpayments made prior to the effective date of this rule unless court ordered.

(d) Recovery may be waived when the amount of the overpayment is less than \$12 as the cost to collect exceeds the amount to be recovered.

(e) 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 relief by reducing the monthly relief grant within the following criteria:

a. Persons having no earned income shall not have their relief grant reduced unless the overpayment was due to a willful error, as defined in 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 relief grant reduced more than  $\frac{1}{2}$  of the  $\$30 + \frac{1}{2}$  earned income disregard plus \$10 when the overpayment is due to willful error, as defined in c. below, on the part of the recipient, or  $\frac{1}{2}$  of the  $\$30 + \frac{1}{2}$  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 relief grant.

### 3. Court ordered payments.

4. Persons no longer receiving relief 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.

(f) Agencies shall establish separate files regarding recovery of overpayment sufficient to meet reporting requirements of the department.

(11) Funeral expenses. On the death of a recipient of relief under s. 49.046, Stats. if the estate of the deceased is insufficient to pay the funeral and burial expenses and the actual cemetery charges, such expenses and charges shall be paid by the agency administering relief to such persons as the agency directs. For purposes of reimbursement, the funeral and burial expenses for the deceased may not exceed \$300 except in unusual circumstances approved by the agency. The state shall reimburse the agency, for funeral and burial expenses, the lesser of \$300 or the amount of such expenses not paid by the estate of the deceased and other persons. In addition, the state shall reimburse the agency fully for actual cemetery charges.

**History:** Renum. from PW-PA 20.13 and am. Register, October, 1979, No. 286, eff. 11-1-79.

**HSS 211.05 Records and reports.** The elected tribal governing body, Indian organization or county welfare agency administering relief under s. 49.046, 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 s. 49.046, 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 s. 49.046, Stats., open to inspection at reasonable hours by authorized representatives of the department.

**History:** Renum. from PW-PA 20.13 and am. Register, October, 1979, No. 286, eff. 11-1-79.

**HSS 211.06 Fair hearings.** Applicants for or recipients of relief shall have the same rights of fair hearing and review as set forth in s. 49.50, Stats., and the Wis. Adm. Code, section PW-PA-20.18. These rights apply equally to the work experience program requirement in HSS 211.03 (5), above.

**History:** Renum. from PW-PA 20.13 and am. Register, October, 1979, No. 286, eff. 11-1-79

**HSS 211.07 Limitations on providing information.** (1) **CUSTODY OF RECORDS.** (a) Agency records shall be safely kept.

(b) Records shall not be removed from the files and offices except when in the custody of a responsible official or employe of the agency,

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provided that records may be sent by certified mail to the department upon the department's request.

(2) **INSPECTION OF RECORDS.** (a) 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.

(b) A record of permissions granted shall be maintained by the agency.

(c) 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.

(3) **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:

(a) To other agencies administering relief or public assistance.

(b) To assist recipients to obtain hospital or medical care services.

(c) To assist applicants or recipients or their families to obtain assistance and services to lessen or eliminate public dependency.

(d) To assure economical expenditures of public funds.

(4) **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:** Renum. from PW-PA 20.13 and am. Register, October, 1979, No. 286, eff. 11-1-79.