

CR 82-88

CERTIFICATE

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

RECEIVED
AUG 30 1982
4:30
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department, do hereby certify that the annexed rules relating to hearings on relief from institutional charges were duly approved and adopted by this department on August 30, 1982.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such 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 30th day of August, A.D. 1982.



Donald E. Percy, Secretary
Department of Health and Social Services

SEAL:

11-1-82

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING AND ADOPTING RULES

To repeal PW-CD 30 and to create HSS 20, relating to hearings when a county or the state believes that it is improperly charged for the cost of a person's care at an institution operated by the department.

Analysis Prepared by the Department of Health and Social Services

When a county or the state believes that it has been improperly charged for the cost of someone's care at an institution operated by the Department, the county or the state may seek relief from the charges by asking for a hearing by the Department under s. 46.106(4), Stats. Chapter PW-CD 30 of the Wisconsin Administrative Code provides rules to implement s. 46.106(4), Stats., but it is badly outdated and is in part duplicative of the administrative hearing parts of ch. 227, Stats.

Since establishment a few years ago of the Chapter 51 system of community mental disability boards, commitments have been made to these boards rather than directly to institutions of the Department. In consequence, there are no new legal settlement disputes related to charging for care at Department institutions, and therefore the only cases to which this chapter applies are old cases.

This order repeals ch. PW-CD 30 and replaces it with updated, reorganized, corrected and leaner rules in ch. HSS 20, while basically retaining current procedures for this type of hearing. The new chapter is renumbered into the HSS series because all rules of the Department are being brought together in that series for the convenience of the users of the Code and because the letters "PW" and "CD" denote organizations that no longer exist.

Pursuant to authority vested in the Department of Health and Social Services by ss. 46.106(4) and 227.014(2), Stats., the Department hereby repeals and adopts rules interpreting s. 46.106(4), Stats., as follows:

SECTION 1. Chapter PW-CD 30 of the Wisconsin Administrative Code is repealed.

SECTION 2. Chapter HSS 20 of the Wisconsin Administrative Code is created to read:

CHAPTER HSS 20
HEARINGS ON RELIEF FROM
INSTITUTIONAL CHARGES

HSS 20.01 PURPOSE AND AUTHORITY. This chapter applies to charges for cost of care at institutions operated by the department. It provides procedures for a hearing by the department when a county or the state believes that it is improperly charged for the cost of care of a person at a department institution. The chapter interprets and implements s. 46.106(4), Stats., and is promulgated under authority conferred by s. 227.014(2), Stats. Except as otherwise provided in this chapter, the hearing procedures of ch. 227 apply to appeal of institutional charges.

HSS 20.02 DEFINITIONS. In this chapter:

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

(2) "Office of administrative hearings" means the department's office of administrative hearings which provides examiners who conduct administrative hearings under ss. 227.064 and 227.07 to 227.13, Stats.

HSS 20.03 APPLICATION FOR RELIEF. (1) FORM. The application for relief, which need not be verified, shall in substance be as follows:

STATE OF WISCONSIN: BEFORE THE STATE DEPARTMENT
OF HEALTH AND SOCIAL SERVICES

_____,

vs.

Docket _____

(1) _____ County, under the provisions of s. 46.106 (4), Stats., hereby makes application for relief from charges for the care of _____ at the _____.

(2) That _____ was adjudged _____ by the Hon. _____, Judge of the _____ on the _____ day of _____, 19_____, and was committed to the _____ as a charge of _____ County;

(3) That at time of said commitment _____ had a legal settlement (or residence under old law) in _____ and such charges should have been assessed against _____;

(4) That affidavits and other proper evidence (specify) are attached hereto in support of this application;

(5) Wherefore, _____ County prays for an order granting _____ County relief from any erroneous charges heretofore paid or to be charged and to order all such charges assessed against _____.

Date

xCounty

By:

(signed)

(2) FILING. An application for relief shall be mailed to the office of administrative hearings and served by mail on the respondent county or state attorney general's office, as appropriate.

Note: The mailing address of the office of administrative hearings is P.O. Box 7875, Madison, WI 53707.

HSS 20.04 RECEIPT OF THE APPLICATION. (1) DOCKET. Upon filing of the application with the office of administrative hearings, the proceeding shall be docketed and assigned a number. The applicant shall be notified of the docketing and number. This number shall be placed by the parties on all papers thereafter filed in the proceeding.

(2) ANSWER AND ISSUE. (a) The answer, which need not be verified, shall fully set forth a statement of the reasons upon which respondent relies to defeat the proceeding. Failure to make such answer within 20 days after service of application shall constitute a default.

(b) The proceedings shall be deemed to be at issue when an answer is filed or when 20 days after service of the application upon respondent has expired, whichever occurs first.

(3) AMENDMENT. Either party may amend the party's application or answer at any time before the hearing, by consent of the adverse party or by leave of the department. An original and 3 copies of such amendment shall be filed with both the office of administrative hearings and the adverse party. All motions to amend must be accompanied by the proposed amendments.

HSS 20.05 SCHEDULING AND NOTIFICATION OF HEARING. (1) When a proceeding has been placed upon the calendar for hearing, the department shall notify the parties of the time and place of the hearing not less than 10 days before the hearing.

(2) Parties shall arrange to have their witnesses in attendance at the time and place designated in the notice of the hearing, and exhibits shall be ready for presentation at that time. The unexcused absence of a party at the place and hour set for hearing shall not be occasion for adjournment or delay.

(3) In case the respondent fails to submit an answer as required by s. HSS 20.04 (2) or fails to appear at a hearing at the time and place scheduled, the charges shall be taken as true and the department may make findings and enter an order on that basis. The default of a party in answering or in appearing shall not preclude the department from hearing the matter, taking such evidence as the hearing examiner shall deem necessary and proper, and disposing of the matter.

HSS 20.06 HEARING. (1) CONDUCT. All hearings shall be conducted and presided over by a hearing examiner of the office of administrative hearings.

(2) EVIDENCE. All evidence, testimony and exhibits shall be of reasonable probative value to the subject matter of the hearing and all immaterial, irrelevant or unduly repetitious evidence, testimony or exhibits may be excluded. The following do not constitute evidence:

- (a) The application;
- (b) Statements of counsel;
- (c) Unidentified and unauthorized documents and letters;
- (d) Affidavits which have not been submitted to the opposing party and approved by that party to be submitted as evidence; and
- (e) Briefs and written arguments.

(3) STIPULATIONS. All stipulations or agreements in reference to a matter which is the subject of a hearing or entered into at a hearing shall be either dictated at length into the record, or reduced to writing, signed by the persons or parties stipulating and filed as a part of the record of the proceedings. Controversies or matters which may be the subject or cause for a hearing may be disposed of by stipulation, agreed settlement or consent orders.

(4) BRIEFS. The hearing examiner may require that briefs be submitted either before or after the hearing and may designate the manner of filing and serving the briefs.

(5) MOTIONS. Except during the hearing, motions shall be made in writing and signed by the party appearing in the proceedings. At least 5 days notice shall be given to the department and to the adverse party by registered mail or by personal service.

(6) CONTINUANCES. Continuances and adjournments of hearings may be ordered by the hearing examiner or may be granted by the hearing examiner on motion of either party filed in writing and showing good and sufficient cause for continuance or adjournment.

(7) COSTS. No costs of the proceedings may be recovered.

The repeal and rules contained in this order shall take effect on the first day of the month following publication of the rules in the Wisconsin Administrative Register, as provided in s. 227.026(1), Stats.

Department of Health and
Social Services

Dated: August 30, 1982

By: 

Donald E. Percy
Secretary

SEAL:



State of Wisconsin \

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE SECRETARY
1 WEST WILSON STREET
P.O. BOX 7850
MADISON, WISCONSIN 53707

RECEIVED

AUG 30 1982

Revisor of Statutes
Bureau

August 30, 1982

Mr. Orland Prestegard
Revisor of Statutes
411 West, State Capitol
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in section 227.023, Stats., there is hereby submitted a certified copy of HSS 20, administrative rules relating to hearings on relief from institutional charges.

These rules are being submitted to the Secretary of State as required by section 227.023, Stats.

Sincerely,

Donald E. Percy
SECRETARY

Enclosure