

**Publication Date:** April 9, 2009

**Effective:** April 22, 2009 through September 18, 2009

**Hearing Date:** June 11, 2009

**State of Wisconsin - Department of Children and Families  
EMERGENCY RULE**

The Wisconsin Department of Children and Families orders the repeal of s. DCF 120.07(note); the amendment of ss. DCF 120.05(1)(f)6. and (3), 120.07, 120.08(4) and (5)(intro.); and the creation of ss. DCF 120.05(3)(b) and (4), 120.07(1)(note) and 120.07(2)and (2)(note), relating to emergency assistance for needy families.

**Finding of Emergency**

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The recent large increase in foreclosures has caused tenants living in rental properties that are in foreclosure to lose their housing. Under the current rule, these tenants are not eligible for Emergency Assistance due to impending homelessness and would only be able to receive assistance if they became homeless. This emergency rule will allow these tenants to receive assistance for impending homelessness and avoid the additional expense and trauma of homelessness.

The current maximum payment amounts for Emergency Assistance due to homelessness and impending homelessness are insufficient to allow a smaller family to obtain or retain a permanent living accommodation. Increasing the payments for smaller households immediately will help them obtain or retain a permanent living accommodation with fewer resources from other sources and may prevent homelessness for these families.

The current rule has no maximum payment amount for Emergency Assistance due to an energy crisis. All other categories of assistance have a maximum payment based on group size. This emergency rule requires that families first exhaust resources available through the Wisconsin Home Energy Program and sets a maximum payment amount for assistance available for Emergency Assistance due to energy crisis to make better use of the program's limited funds.

**Analysis Prepared by the Department of Children and Families**

**Statutory authority:** Sections 49.138 and 227.11 (2) (a), Stats.

**Statutes interpreted:** Section 49.138, Stats.

**Related statutes or rules:** Section 846.35, Stats., as created by 2009 Wisconsin Act 2; Section 16.957, Stats., and Chapter Adm 45

**Explanation of agency authority**

Section 49.138, 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. There are 6 criteria under which a family may be considered to be homeless or to be facing impending homelessness. One of these criteria is if the family is without a fixed, regular, and adequate nighttime residence.

The Department shall establish the maximum amount of aid to be granted, except for cases of energy crisis, per family member.

**Summary of the rule**

**Eligibility for tenants facing impending homelessness because of a foreclosure action**

Under the current rule on Emergency Assistance, a group in rental housing that is facing impending homelessness because of a foreclosure action against their landlord is not eligible for assistance to obtain a new permanent living accommodation. To be eligible for Emergency Assistance for impending homelessness a group must be experiencing a financial crisis that makes it very difficult to make a rent payment, mortgage payment, or property tax payment and have been notified that they will be required to leave their current housing if they do not make that payment immediately.

In 2008, foreclosure filings in Wisconsin were 62% higher than in 2007 and were 249% higher than in 2006. The Joint Center for Housing Studies estimates that investor-owned one- to four-family rental properties account for nearly 20% of all foreclosures nationally. Despite the fact that low income families generally know that Emergency Assistance is not available for renters losing their housing due to a foreclosure action against the owner, at least 18 families in this situation have applied for Emergency Assistance at Milwaukee W-2 agencies in recent months.

Renters of properties in foreclosure can be even more vulnerable to homelessness than owners because tenants often have limited notice of the foreclosure and few resources to allow them to obtain replacement housing quickly. Until the recent enactment of s. 846.35 Stats., as created by 2009 Wisconsin Act 2, there was no requirement of notice to tenants in foreclosure of residential rental property. Section 846.35, Stats., provides that the plaintiff in an action for foreclosure of residential rental property must notify the tenant at filing of the action, when judgment is entered, and when the hearing to confirm the sale of the property has been scheduled. In addition, a tenant may retain possession of the rental unit for up to 2 months after the end of the month in which the sale of the property is confirmed. These new protections for tenants apply to foreclosure actions that are commenced on or after March 5, 2009. The timeline for a foreclosure action can vary widely with the redemption period ranging from 3 to 12 months. Tenants facing removal from foreclosed properties for at least the next 4 months will clearly not be covered by s. 846.35, Stats.

This emergency rule provides that a group in rental housing that is facing impending homelessness because of a foreclosure action against their landlord will be eligible for Emergency Assistance to obtain a new permanent living accommodation. To be eligible for assistance, the group must have received written or oral notice that they will be removed from their rental housing because of a foreclosure action against the owner, the removal of the group from the rental housing is scheduled to occur within 30 days, and the group needs emergency assistance to obtain a permanent living accommodation. The Wisconsin Works agency will verify eligibility.

Payment amounts for types of need other than energy crisis

Section 49.138, Stats., provides that the Department shall establish the maximum amount of aid to be granted, except for cases of energy crisis, per family member. Under the current rule, the payment amount for cases of need due to fire, flood, natural disaster, homelessness, and impending homelessness is the lowest of the following:

- The total of the maximum payment amount per group member multiplied by the number of members of the Emergency Assistance group.
- The amount requested by the group.
- The total financial need due to the emergency.

For many years, the maximum payment amount per group member has been \$150.

In 2008, there were 10,458 Emergency Assistance grants issued and 93% were cases of need due to homelessness or impending homelessness. The current grant amounts for homelessness and impending homelessness are insufficient for smaller households to obtain or retain a permanent living accommodation. A 2-person group is eligible for a grant of \$300 and a 3-person group is eligible for a grant of \$450. The Department's analysis of housing costs for low-income families found that average rental costs are higher than \$470 for the smallest households in the counties where a majority of Emergency Assistance grants are issued, and rent does not increase proportionally with each new group member. Housing costs for families with 2 – 4 members are similar, and housing costs for families of 5 or more are similar with some increases for larger families. In SFY 08, Emergency Assistance grants issued to smaller size families of 2 to 3 members were 57% of total grants.

This emergency rule changes the payment amounts that eligible families will receive by increasing the amounts for smaller size families and decreasing the amounts for larger size families. The amounts were arrived at by attempting to make the overall fiscal impact cost neutral and within the existing amount of funds allocated for the Emergency Assistance program. The maximum payment amounts will be \$258 per group member when the group is 2 members, \$172 per group member when the group is 3 members, \$129 per group member when the group is 4 or 5 members, and \$110 per group member when the group is 6 or more members. This will result in the following total payment amounts:

2 to 4 members	\$516
5 members	\$645
6 members	\$660
7 + members	\$110 for each additional member

Notice of changes to the maximum payment amounts will be published in the Administrative Register.

The rule complies with the statutory requirement that the Department establish the maximum amount of aid to be granted per family member by having different maximum payment amounts for members of groups of different sizes.

### Energy crisis

Under the current rule, an Emergency Assistance group is eligible for assistance if need has resulted from an emergency due to energy crisis, including lack of or imminent loss of essential home heating, with an immediate threat to the health or safety of the group either existing or likely to exist. The payment amount is the amount requested by the group or the total financial need due to the emergency. Financial need may include heating fuel, electricity, and repair or replacement services necessary to obtain or maintain the basic heat and electricity requirements of an average household.

There is currently no maximum payment amount for Emergency Assistance based on need due to an energy crisis. For all other types of need, there is a maximum payment amount based on group size. The average Emergency Assistance grant for all types of need is approximately \$512. Some grants for energy crisis have been as high as \$3,300. From July 2007 to September 2008, approximately 6% of Emergency Assistance grants for energy crisis were \$1,000 or above, totaling over \$41,000.

This emergency rule establishes a maximum payment amount per group for cases of need due to energy crisis. The initial maximum payment amount will be \$500 and changes to that amount will be announced in the Administrative Register. A group is eligible for assistance if the group meets the following criteria:

- The group needs financial assistance to obtain or maintain basic heat and electricity.
- The lack or imminent loss of heat or electricity is or is likely to be an immediate threat to the health or safety of the group.
- The energy crisis is due to reasons beyond the control of an adult member of the group or constitute good cause as determined by the W-2 agency.
- The group has exhausted resources available through the Wisconsin Home Energy Assistance Program (WHEAP) and assistance available through local utility companies as required by the Public Service Commission.

The WHEAP program had \$147 million available for low income energy assistance this heating season. The total Emergency Assistance available for all types of emergency for FY 09 was initially \$6 million. Another \$1 million was added in 2009 Wisconsin Act 2.

### Summary of factual data and analytical methodologies

The policy changes in this rule are based on recommendations of a workgroup comprised of representatives of W-2 agencies and advocacy groups.

Impending homelessness due to foreclosure. Section 49.138 (1m) provides that a family is homeless or facing impending homelessness if the family is not in a fixed, regular, and adequate residence. A family is not in a fixed, regular, and adequate residence if they have been notified that they will be removed from their rental housing due to a foreclosure action against the owner and the removal of the group is scheduled to occur within 30 days.

The statistics on the increase in foreclosures in Wisconsin are from *Home foreclosures up 81% in U.S., 62% in Wisconsin*, <http://www.madison.com>, January 15, 2009.

The estimate on the number of foreclosures that are one- to four-family rental properties is by Nicolas P. Retsinas, Director of the Joint Center for Housing Studies, quoted on the website of the National Coalition for the Homeless, <http://www.nationalhomeless.org/foreclosure/index.html>, March 9, 2009.

Payment amounts. The Department analysis of the housing costs of low-income families is based on data from the Food Share program for December 2007.

The executive budget bill, 2009 Assembly Bill 75, includes a proposal to eliminate the requirement that the maximum payment amount set by the Department be based on family size. The Department's Bureau of Working Families is implementing the new payment amounts based on the current statutory language to not delay necessary assistance to smaller low-income families.

Energy crisis. Section 49.138 (1m), Stats., provides that the Department shall establish the maximum amount of aid to be granted, except for cases of energy crisis, per family member. The statute is silent on whether the Department may establish a maximum payment amount based on any criteria other than per family member for cases of need due to energy crisis. The rule establishes a maximum payment amount per group regardless of group size.

**Summary of related federal requirements**

Emergency Assistance is a Temporary Assistance to Needy Families (TANF) program option available to states under previous Aid to Families with Dependent Children (AFDC) statutes to provide short-time assistance to needy families with children. Wisconsin chose to continue the Emergency Assistance program when Wisconsin repealed the AFDC program and accepted federal TANF block grant funds.

There are no federal requirements related to this emergency rule, except that TANF funds must be used to provide assistance to families with children.

**Comparison with rules in adjacent states**

None of the adjacent states appear to have an Emergency Assistance program that is as similar to the AFDC-related Emergency Assistance program as that of Wisconsin. These states do have a variety of crisis assistance and prevention programs that are administered in different ways. The programs are generally not limited to families with children.

**Agency contact person**

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**SECTION 1. DCF 120.05 (1) (f) 6. and (3) are amended to read:**

**DCF 120.05 (1) (f) 6.** An energy crisis, ~~including lack of essential home heating or imminent loss of essential home heating, with an immediate threat to the health or safety of the group either existing or likely to exist~~ as determined under sub. (4).

**(3) ELIGIBILITY DUE TO IMPENDING HOMELESSNESS.** An emergency assistance group shall be considered to be facing impending homelessness for purposes of determining nonfinancial eligibility under sub. (1) if ~~the~~ either of the following apply:

(a) The emergency assistance group is experiencing a financial crisis that makes it very difficult to make a rent payment, mortgage payment, or property tax payment and the group has been notified that it will be required to leave its current housing if it does not make that payment immediately.

~~(a)~~ 1. The W-2 agency shall determine that the emergency assistance group is experiencing a financial crisis due to reasons that are either beyond the control of an adult member of the group or that constitute good cause as determined by the W-2 agency.

~~(b)~~ 2. The W-2 agency shall verify that the financial crisis was caused by one or more of the following:

~~1a.~~ Loss of employment that does not include voluntarily leaving appropriate employment without good cause.

~~2b.~~ Substantial loss of wages due to illness or injury of a group member, domestic violence, lack of child care, a transportation breakdown, or a reduction of work hours by an employer.

~~3c.~~ Loss of income due to a second parent leaving the group.

~~4d.~~ Exceptional, unexpected, and necessary expenses that are not the responsibility of a third party, such as car repair expenses necessary for transportation to work or medical expenses required to be paid.

~~5e.~~ Loss of W-2 benefits due to a sanction that is subsequently overturned through the dispute resolution process under s. 49.152, Stats.

~~6f.~~ Other reasonable circumstances as determined by the W-2 agency.

~~(a)~~ 3. The W-2 agency shall verify that the emergency assistance group has received at least one of the following notices:

~~1a.~~ A notice terminating tenancy for failure to pay rent that meets the minimum requirements of s. 704.17, Stats.

~~2b.~~ A summons and complaint for an eviction action which is based on failure to pay rent.

~~3c.~~ A notice of foreclosure for failure to pay property taxes or a mortgage.

~~4d.~~ A summons and complaint for a foreclosure action that is based on failure to pay property taxes or a mortgage.

~~5e.~~ A writ of assistance, notice of sale, or other verifiable documentation that a foreclosure judgment has been entered against a member of the emergency assistance group and the group will be required to vacate the premises imminently.

**SECTION 2. DCF 120.05 (3) (b) and (4) are created to read:**

**DCF 120.05 (3) (b) 1.** The emergency assistance group has received written or oral notice that they will be removed from their rental housing because of a foreclosure action against the owner.

Note: Under s. 846.35 (1) (a) 3., Stats., as created by 2009 Wisconsin Act 2, formal notice to the tenant of the date and time of the hearing to confirm the sale of the property will be required for foreclosure actions commenced on or after March 5, 2009. This notice will not be required for some tenants facing impending homelessness because of a foreclosure during the effective period of this emergency rule.

2. The removal of the group from the rental housing is scheduled to occur within 30 days.

3. The group needs emergency assistance to obtain a permanent living accommodation.

4. The W-2 agency has verified subd. 1. to 3.

**(4) ELIGIBILITY DUE TO ENERGY CRISIS.** An emergency assistance group is eligible for assistance due to an energy crisis if all of the following apply:

(a) The group needs financial assistance to obtain or maintain basic heat and electricity.

(b) The lack of or imminent loss of heat or electricity is or is likely to be an immediate threat to the health or safety of the group.

(c) The energy crisis is due to reasons beyond the control of an adult member of the group or constitute good cause as determined by the W-2 agency.

(d) The group has exhausted resources available through the Wisconsin Home Energy Assistance Program and assistance available through a local utility company as required by the public service commission.

Note: For more information on the Wisconsin Home Energy Assistance Program (WHEAP), call 1-866-HEATWIS (1-866-432-8947) or click on the “where to apply” tab at <http://www.homeenergyplus.wi.gov/>. For more information on assistance required by the Public Service Commission, contact 800-225-1129 or <http://psc.wi.gov>.

**SECTION 3. DCF 120.07 is amended to read:**

**DCF 120.07 Payment amount.** ~~The (1)~~ In cases of fire, flood, natural disaster, homelessness, and impending homelessness, the emergency assistance payment shall be the lowest of the following 3 amounts:

~~(1a)~~ The total of the maximum payment amount per group member for that group size multiplied by the number of members in the emergency assistance group.

~~(2b)~~ The amount requested by the group.

~~(3c)~~ The total financial need due to the emergency, as determined in s. DCF 120.06 (1).

**SECTION 4. DCF 120.07 (note) is repealed.**

**SECTION 5. DCF 120.07 (1) (note) is created to read:**

Note: For cases of need due to fire, flood, natural disaster, homelessness, and impending homelessness, the maximum payment amount per group member is the following:

\$258 per group member when the group is 2 members.

\$172 per group member when the group is 3 members.

\$129 per group member when the group is 4 or 5 members.

\$110 per group member when the group is 6 or more members.

Changes to the maximum payment amounts will be announced in the Administrative Register.

**SECTION 6. DCF 120.07 (2) and (2)(note) are created to read:**

**DCF 120.07 (2)** In cases of need due to energy crisis, the emergency assistance payment shall be the lowest of the following:

(a) The maximum payment amount for the group.

(b) The total financial need due to the emergency, as determined in s. DCF 120.06 (1).

Note: For cases of need due to an energy crisis, the maximum payment amount per group is \$500. Changes to the maximum payment amount will be announced in the Administrative Register.

**SECTION 7. DCF 120.08 (4) and (5) (intro.) are amended to read:**

**DCF 120.08 (4)** If the emergency assistance group's eligibility is due to homelessness under s. DCF 120.05 (2) or impending homelessness under s. DCF 120.05 (3) (b), the agency shall issue a payment, following the eligibility determination, within 5 working days of the date that the group notifies the agency that a permanent living accommodation has been obtained.

**(5) (intro.)** Emergency assistance payments for impending homelessness under s. DCF 120.05 (3) (a) may be issued to obtain a new permanent living accommodation or retain a current permanent living accommodation.

**SECTION 8 . EFFECTIVE DATE.** This rule shall take effect on April 22, 2009, as provided in s. 227.24 (1) (c), Stats.