

## Clearinghouse Rule 09-059



### State of Wisconsin Department of Children and Families

## Emergency Assistance for Needy Families

### DCF 120

The Wisconsin Department of Children and Families proposes an order to amend ss. DCF 120.05(1)(f)6., (2)(c), and (3), 120.08(2), (4), and (5)(intro.); to repeal and recreate ss. DCF 120.06 and 120.07; and to create ss. DCF 120.03 (6m), 120.05(3)(b), (3)(c), (3)(d), and (4), relating to emergency assistance for needy families and affecting small businesses.

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#### **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 (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. Under s. 49.138 (1d) (b), Stats., the term “needy person” has the meaning specified by the Department by rule. 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 proposed 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 Wisconsin Works (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 proposed rule will provide 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 new permanent living accommodation. The W-2 agency will verify eligibility. A payment will be issued when the group obtains a new permanent living accommodation.

#### Financial eligibility

Under the current rule, the W-2 agency's determination of financial eligibility is based on total financial need. Total financial need is determined adding all unpaid expenses for the group and the costs of needs due to the emergency and subtracting all available income and resources. The rule provides a list of 9 types of physical needs due to the emergency. Income is determined in the same manner as the W-2 program, except income from W-2 benefits, kinship care payments, Supplemental Security Income (SSI), and SSI supplemental payments for children of recipients is disregarded. There is a \$3,000 asset limit.

W-2 agencies and others have found this methodology for determining financial eligibility to be confusing, time-consuming, and cumbersome. The proposed rule repeals and recreates the methodology for determining financial eligibility to make it similar to W-2. The proposed rule provides that the gross income of the emergency assistance group may not exceed 115% of the poverty line. The W-2 agency will determine income in the same manner as W-2, with income disregards for kinship care payments and foster care payments if the foster payment is on behalf of a child who is a relative. Foster care payments are added as an income disregard because under the graduated licensing system for foster care in 2009 Wisconsin Act 28, some caretaker relatives who are currently receiving kinship care payments will instead be receiving foster care payments when the new foster care licensing system is implemented in 2010. To facilitate automation of emergency assistance eligibility determination by making it the same as W-2, the proposed rule repeals the exclusion of SSI payments and SSI supplemental payments for children of recipients and changes the emergency assistance asset limit to \$2,500.

#### Payment amounts for types of need other than 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. Under the current rule, the payment amount for 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.
- Financial need.

Maximum payment amount multiplied by number in group. For many years, the maximum payment amount per group member has been \$150. A 2-person group is eligible for a grant of \$300 and a 3-person group is eligible for a grant of \$450. The current grant amounts for homelessness and impending homelessness are insufficient for smaller households to obtain or retain a permanent living accommodation. 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 09, Emergency Assistance grants issued to smaller size families of 2 to 3 members were 55.2% of total grants.

The proposed 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	(2 x 258; 3 x 172; or 4 x 129)
5 members	\$645	(5 x 129)
6 members	\$660	(6 x 110)
7 + members	\$770 plus \$110 for each additional member more than 7	

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.

Amount requested by the group. The proposed rule repeals the “amount requested by the group” as an option for the payment amount to ensure that families do not receive a smaller payment because they were not informed of the full payment for which they were eligible.

Financial need. Under the current rule, when a payment is based on financial need, the amount is determined by adding all unpaid expenses for the group and the costs of needs due to the emergency and subtracting all available income and resources. The rule provides a list of 9 types of physical needs due to the emergency.

The proposed rule provides for payment amounts based on financial need that are specific to the type of need. For need due to impending homelessness, a payment based on financial need would be the amount of unpaid rent and related late fees and court costs. For need due to homelessness, a payment based on financial need would be the amount of the first month’s rent, security deposit, and necessary household items. For need due to fire, flood, or natural disaster, the payment based on financial need would be the total need in any of the following categories: temporary housing, first month’s rent and security deposit, clothing, food, medical care, transportation, necessary appliances and household items, and necessary home repairs.

#### 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 lowest of 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 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 proposed rule establishes a maximum payment amount per group for 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 has exhausted resources available through the Wisconsin Home Energy Assistance Program (WHEAP), assistance available through local utility companies as required by the Public Service Commission, and any other available energy resources.
- The group needs financial assistance to obtain or maintain heat, electricity, water, or sewer service provided by a utility company.
- The lack of, or imminent lack of, utility service providing heat, electricity, water, or sewer 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 WHEAP program had \$147 million available for low-income energy assistance this past heating season. The total Emergency Assistance available for all types of emergency for FY10 is \$6.5 million.

#### Clarifications on impending homelessness

Section 49.138 (1m), Stats., provides that a family is to be considered homeless, or to be facing impending homelessness, if any of 6 listed criteria apply. The criteria for homelessness and impending homelessness in s. DCF 120.05 are in separate subsections. The subsection on homelessness list two criteria that are currently defined to *mean* homelessness even if the family is not homeless. The proposed rule adds the following two criteria to the subsection on impending homelessness to ensure that W-2 agency staff understand that a family does not have to be homeless if these criteria apply:

- The group has to leave its current housing it is uninhabitable as determined by the local building inspector, the local health department, or other appropriate local authority and the group needs emergency assistance to obtain a new permanent living accommodation.
- A member of the group was subject to domestic abuse as defined under s. 968.075 (1) (a), Stats., and the group needs emergency assistance to obtain a new permanent living accommodation or retain a current permanent living accommodation.

If either of these two criteria apply and the group is facing impending homelessness, payment is issued according to the same payment schedule as other impending homelessness provisions. If the group needs emergency assistance to obtain a new permanent living accommodation, the payment is issued when the accommodation is obtained. If a group needs emergency assistance to retain a current permanent living accommodation, the payment is issued within 5 working days after receiving a completed application.

#### 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.

#### 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.

*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 rule, except that TANF funds must be used to provide assistance to families with children.

#### **Effect on small businesses**

The proposed rule will affect small businesses as defined in s. 227.114 (1), Stats., but will not have a significant economic impact on a substantial number of businesses.

#### **Analysis used to determine effect on small businesses**

W-2 agencies will be affected by the proposed rule, but the effect will be minimal. Agency representatives have requested these changes.

#### **Agency contact person**

Rebecca Swartz, Bureau of Working Families, (608) 266-1717, [rebecca.swartz@wisconsin.gov](mailto:rebecca.swartz@wisconsin.gov).

#### **Place where comments are to be submitted and deadline for submission**

Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or [elaine.pridgen@wisconsin.gov](mailto:elaine.pridgen@wisconsin.gov). The comment deadline is September 2, 2009.

**SECTION 1. DCF 120.03 (6m) is created to read:**

**DCF 120.03 (6m)** “Poverty line” means the poverty line as defined and revised annually under 42 USC 9902 (2).

**SECTION 2. DCF 120.05 (1) (f) 6., (2) (c), 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).~~

**(2) (c)** The group ~~has to leave or~~ has already left its current housing because it is uninhabitable as determined by the local building inspector, the local health department, or other appropriate local authority.

**(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~~ any 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. The W-2 agency shall verify the following:

~~(a) The W-2 agency shall determine that the~~ 1. 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) The W-2 agency shall verify that the~~ 2. 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.

~~(e)~~ ~~The W-2 agency shall verify that the~~ 3. 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.

**Note:** Section 799.40 (4), Stats., provides: “The court shall stay the proceedings in a civil action of eviction if the tenant applies for emergency assistance under s. 49.138. The tenant shall inform the court of the outcome of the determination of eligibility for emergency assistance. The stay remains in effect until the tenant’s eligibility for emergency assistance is determined and, if the tenant is determined to be eligible, until the tenant receives the emergency assistance.”

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

**DCF 120.05 (3) (b) 1.** The emergency assistance group has received written or oral notice that the group 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 is required for foreclosure actions commenced on or after March 5, 2009.

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 new permanent living accommodation.

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

(c) The group has to leave its current housing because it is uninhabitable as determined by the local building inspector, the local health department, or other appropriate local authority and the group needs emergency assistance to obtain a new permanent living accommodation.

(d) A member of the group was subject to domestic abuse as defined under s. 968.075 (1) (a), Stats., and the group needs emergency assistance to obtain a new permanent living accommodation or retain a current permanent living accommodation.

**(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 has exhausted resources available through the Wisconsin Home Energy Assistance Program, assistance available through a local utility company as required by the public service commission, and any other available energy resources. In this paragraph, “exhausted resources” means either that the group has been denied services from the other sources or other funding sources do not cover the full cost of the group’s energy crisis.

(b) The group needs financial assistance to obtain or maintain heat, electricity, water, or sewer service provided by a utility company.

(c) The lack of, or imminent lack of, utility service providing heat, electricity, water, or sewer is or is likely to be an immediate threat to the health or safety of the group.

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

Note: For more information on the Wisconsin Home Energy Assistance Program (WHEAP), call 1-866-HEATWIS (1-866-432-8947) or click on “where to apply” at <http://www.homeenergyplus.wi.gov/>. For more information on utility assistance required by the Public Service Commission, see PSC 113, PSC 134, and PSC 185. For concerns about utility service, contact the Public Service Commission at 800-225-7729 or <http://psc.wi.gov/apps35/complaint/default.aspx>.

**SECTION 4. DCF 120.06 and 120.07 are repealed and recreated to read:**

**DCF 120.06 Financial eligibility.** To be eligible for emergency assistance, all of the following conditions shall be met:

**(1) INCOME.** The gross income of the emergency assistance group may not exceed 115% of the poverty line. The agency shall determine the amount of income available to the group in accordance with s. DCF 101.09 (3) (b), except any of the following grants received in the month of the emergency is not counted:

(a) Kinship care payments under s. 48.57 (3m) or (3n), Stats.

(b) Foster care payments under s. 48.62, Stats., if the payment is on behalf of a child who is a relative.

**(2) ASSETS.** The assets of the emergency assistance group may not exceed \$2,500 in combined equity value. The agency shall determine the amount of assets available to the group in accordance with s. DCF 101.09 (3) (a).

**DCF 120.07 Payment amounts. (1)** An emergency assistance payment for impending homelessness, homelessness, fire, flood, or natural disaster, the emergency assistance payment shall be the lowest of the following 2 amounts:

(a) 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.

Note: The maximum payment amount per group member for impending homelessness, homelessness, fire, flood, or natural disaster 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.

(b) The total financial need due to the emergency, as follows:

1. The financial need due to impending homelessness shall be unpaid rent and related late fees and court costs.

2. The financial need due to homelessness shall be the first month's rent, security deposit, and necessary household items.

3. The financial need due to fire, flood, or natural disaster shall be the total need in all of the following:

a. Temporary housing.

b. First month's rent and security deposit.

c. Clothing.

d. Food.

e. Medical care.

f. Transportation.

g. Necessary appliances and household items.

h. Necessary home repairs.

**(2)** The emergency assistance payment for energy crisis shall be the lowest of the following:

(a) The maximum payment amount for the group.

(b) The amount needed to obtain or maintain essential utility service.

Note: The maximum payment amount for energy crisis is \$500. Changes to the maximum payment amount will be announced in the Administrative Register.

**SECTION 5. DCF 120.08 (2), (4), and (5) (intro.) are amended to read:**

**DCF 120.08 (2)** The agency shall notify the applicant in writing of the eligibility determination. If the application is denied, the notice shall include reasons for the denial and information about the opportunity to appeal that decision under ~~s. DCF 101.22~~ s. DCF 120.10.

**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) or (c), 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) or (d) may be issued to obtain a new permanent living accommodation or retain a current permanent living accommodation.

**SECTION 6. EFFECTIVE DATE.** This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.