

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Tibor Gallo, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Tibor M. Gallo

Special Assistant Attorney General

Dated: Jan. 24, 1978

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE MEDICAL ASSISTANCE PROGRAM, RULE 47.	REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on November 4, 1977, before Steve M. Mihalchick, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Public Welfare on December 8, 1977; and

WHEREAS, the Department of Public Welfare has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Public Welfare has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Public Welfare has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Public Welfare has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 19th day
of January, 1978.

DUANE R. HARVES
Chief Hearing Examiner

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

PROCEDURAL REQUIREMENTS

1. On October 4, 1977, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing; and
(c) A proposed Notice of Hearing.

2. On September 26, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 676.

3. On September 30, 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On October 7,1977, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need; and
(g) The Statement of Evidence, including the names of agency personnel to be called.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through November 25, 1977, for the receipt of written comments and statements, the period having been extended by the Examiner's Order of November 10, 1977.

6. The Notice of Hearing as mailed and as published in the State Register, in describing the subjects and issues involved, stated:

> "Present Rule DPW 47 guides the administration of the Medical Assistance Program in Minnesota. The proposed amendment to Rule DPW 47 pertains to relative responsibility as an eligibility factor under the Medical Assistance Program. The proposed amendment makes an applicant who is separated from his/her spouse eligible for Medical Assistance as a separated individual and excludes him/her from the same income eligibility standards while still recognizing that physical separation and expense of

maintaining a residence. It does not require a spouse not needing or receiving a benefit to live on a welfare standard."

STATUTORY AUTHORITY

7. Minn. Stat. § 256B.04, subd. 2, provides the general statutory authority of the Commissioner of Public Welfare to adopt rules to implement the medical assistance program. The amendment proposed in this proceeding is specifically authorized by a 1977 amendment to Minn. Stat. § 256B.06, subd. 1(10). As amended by Laws 1977, Ch. 448, § 6, that clause provides that medical assistance may be paid for any person:

> "Who has continuing monthly expenses for medical care that are more than the amount of his excess income, computed on a monthly basis, in which case eligibility may be established before the total income obligation referred to in the preceding paragraph is incurred, and medical assistance payments may be made to cover the monthly unmet medical need. In licensed nursing home and state hospital cases, income over and above that required for justified needs, determined pursuant to a schedule of contributions established by the commissioner of public welfare, is to be applied to the cost of institutional care. The commissioner of public welfare may establish a schedule of contributions to be made by the spouse of a nursing home resident to the cost of care and shall seek a waiver from federal regulations which establish the amount required to be contributed by the spouse of a nursing home resident;"

NEED AND REASONABLENESS

8. A schedule of contributions is necessary to implement the requirements of the statute.

9. The Department proposes to add the following paragraph to DPW 47 C.5.a.(1);

> "(b) In all cases where separation is due to one spouse's need for care in a nursing home or state hospital the following schedule of contributions shall be applied in determining the responsibility of the non-institutionalized spouse for support, out of his/her own income (earned or unearned).

MONTHLY INCOME	CONTRIBUTION/MONTH
$400 to $449	$ 15
$450 to $499	$ 30
$500 to $549	$ 50
$550 to $599	$ 70
$600 to $649	$ 90
$650 to $699	$150
Over $700	$150 plus 100% of the excess over $700

The Legal Aid Society of Minneapolis, Inc. (Legal Aid) noted that the figure of $150 shown as the contribution per month for income from $650 to $699 was apparently a typographical error and should have read "$120" because $150 would result in a contribution of more than 100% of earned income for people in that bracket. (Pub. Ex. 13a) The amount is out of proportion to the rest of the schedule and should be modified as Legal Aid suggests.

10. The Department based the specific contributions on a typical budget for a husband and wife over 65 years of age living above the "lower level consumption budget" but below the "intermediate level consumption budget" as reported by the Bureau of Labor Statistics. Autumn, 1976, Urban Family Budgets and Comparative Indexes for Selected Urban Areas, U. S. Bureau of Labor Statistics, Release No. 77-369. They also considered welfare income levels, which, for a two-person household is $286 per month.

11. The Department estimates the total cost of this provision to be $5,776,000 over the remaining 18 months of the biennium. Of this amount, the State's share would be $2,322,000. The estimated cost was arrived at by considering the current medical assistance caseload plus an estimated portion of those private patients now in nursing homes who would become eligible for some of the benefits of this program. It did not consider any new caseload that would result from this change in policy because the Department had no way to estimate the effect. Laws 1977, Ch. 448, contained an appropriation of $7,100,000 for the biennium for various sections of the Act. The Department determined, after consultation with legislators and legislative staff, that $2,000,000 of that appropriation was to be applied to the program being considered here.

12. There are two separate elements in this matter: First, the conditions of eligibility for medical assistance, and second, the amount of relative responsibility or liability to contribute to the cost of care. Because of the construction of § C.5. of the Rule, and the placement of the new provision, there was some confusion and concern that elibility criteria were being affected. If that were true, there would be instances in which certain coup-

les would be worse off under the new rules. However, at the hearing, the Department made it clear that the proposed amendment had only to do with establishing a schedule of contributions. That is, determining relative responsibility in the particular situation where one spouse is institutionalized in a nursing home or state hospital, and the other is in his or her own home. The amendment has nothing to do with eligiblilty, and eligibility will continue to be determined as it is under the present statute and rule.

13. A number of persons who had been involved in the passage of the legislation testified that the Department had misinterpreted the Act by establishing the contribution schedule based solely on the income of the non-institutionalized spouse. These persons included Representative Linda Berglin, who carried the bill in the House; Pamela Parker of the Nursing Home Residents Advocates, and Eric Ekberg, who represented the Minnesota and Metropolitan Senior Federations. They all pointed out that failure to consider the joint income of the couple would particularly work a hardship where the husband is institutionalized. Typically, those wives who did work were generally paid lower wages than their husbands, and therefore, have lower Social Security and pension benefits. The legislation, itself, is silent on the method to be used to determine contribution, and absent anything else, the Department could have adopted a schedule based on joint income. However, such an interpretation would have the effect of changing the conditions of eligibility, in effect creating a new category of medical assistance recipients. At the hearing, representatives of the Department stated that they believed such an interpretation would be contrary to the Social Security Act. That belief was confirmed in a letter received by the Department on November 15, 1977, from the Medicaid Bureau of the Department of Health, Education and Welfare. That letter states in pertinent part:

> "Your analysis of applicable Federal policy is correct. Income of a Medicaid-eligible institutionalized person which is to be allocated toward the needs of his/her spouse or dependents living in

the community may not exceed the maintenance amount recognized by the State for categorically or medically needy persons, adjusted by family size."

It is axiomatic that Federal statutes and regulations control the administration of the medical assistance program in Minnesota. Thus, the interpretation urged by the sponsors and supporters of the legislation would render the legislation illegal and invalid. The legislature cannot be said to have intended such a result. The interpretation adopted by the Department, on the other hand, has been approved by the federal government, and to the extent possible, carries out the general intention of the legislature (to provide some relief where one spouse is institutionalized) by reasonably distributing the full amount appropriated.

14. Some local welfare agencies testified against the concept of special treatment where separation is due to one spouse being institutionalized. They suggested that such treatment was unfair to other types of medical assistance recipients and would encourage a number of people to enter nursing homes, contrary to the current policy of attempting to maintain and assist persons in their own homes (Pub. Exs. 7, 8 and 11). It must, of course, be pointed that the legislature has established this policy, and the Department must implement it.

15. Legal Aid suggested that the amount of discretion held by the local agencies in assessing liability should be made clear. They state:

"Existing Rule 47 C.5. suggests that the local agency should determine the amount a responsible relative is able to contribute without causing undue hardship to himself or his immediate family. The proposed addition to the Rule then sets uniform standards which "shall be applied" in all cases when separation is due to one spouse's need for care in a nursing home. It would seem appropriate to provide in the Rule standards which are classified as a guide to assessing financial responsibility so that the local agency retains discretion to avoid particular hardship situations. For example, if a man is disabled and leaves a wife who earns $500 per month, the amount of the financial contribution by the wife would be the same ($50) regardless of the number of children being supported by the working wife. The local agency should retain enough discretion to decide that waiver of a contribution is appropriate for a family of four living on $500 each month." (Pub. Ex. 6 at 5)

Legal Aid then suggests that the words ". . . the following schedule of contributions shall be applied in determining the responsibility . . . ." in the proposed rule should be changed

to ". . . the following schedule of contributions shall be applied as a guide to determining the responsibility . . . ."

The Examiner finds that the Rule, as proposed, is not unreasonable. It is consistent with state and federal law and promotes efficiency in administration. It also implements the 1977 legislation to the extent possible. The Examiner would suggest, however, that Legal Aid's proposal just cited should be adopted. While the existing rule requires the local agency to determine whether contribution can be made without undue hardship, the structure of the Rule makes it unclear as to whether that requirement applies to the amendment proposed here. The language proposed by Legal Aid would clarify that. Further, such a hardship exception is reasonable because, as stated by the Department, the contribution schedule was determined based on the needs of two persons, a husband and wife, both over 65. It did not take into consideration the situation mentioned by Legal Aid, that of the non-institutionalized spouse also supporting a number of children.

LEGAL AID'S PROPOSAL TO RE-STRUCTURE THE RULE.

16. As has been noted several times previously, the structure of § C.5., and the placement of the new provision, causes some difficulty in distinguishing eligibility criteria from contribution standards. Because of this confusion, and in light of recent case law on the subject of eligibility and contribution, Legal Aid submitted a proposed revision of § C.5. that clearly delineates between eligibility criteria and contribution standards (Pub. Ex. 6). The proposal is, for the most part, simply a re-structuring of existing provisions of this section of Rule 47 as affected by court decisions. There were, however, two changes suggested that differ from the existing rule. First, a provision was added regarding eligibility of a minor who does not live in the same household as the parent; second, Legal Aid suggested that the monthly contribution should be stated as a percentage of monthly income rather than in incremental dollar amounts. In its post-hearing comments (Dept. Ex. M), the Department stated that the provision regarding minors living outside of the parents' house-

hold was contrary to statute. As to the suggestion that contribution be computed by percentage, the Department stated that it preferred to stay with a published schedule because it is simpler and easier to administer. It would also make computer monitoring of county action possible, which is an important consideration for the Department's efficiency goals. Except for those two provisions, however, the Department stated, "We could be very comfortable with the Legal Aid proposal." They went on to note that except for those two provisions, there would be no substantive difference between the administration of the rule proposed by the Department and the re-structured rule proposed by Legal Aid.

17. In response to the Department's comments, Legal Aid submitted a revised proposal deleting the provision about the minor in a separate household and reinstating the contribution schedule as proposed by the Department (Pub. Ex. 13c, attached hereto).

18. The Department is reluctant, however, to adopt Legal Aid's proposal because they desire to implement the new contribution schedule as soon as possible and are fearful that the changes proposed by Legal Aid would later be found to be a substantial change or beyond the scope of the notice by the Chief Hearing Examiner or the Attorney General. Any such determination could delay the implementation of the change by months.

Normally, the Examiner would not recommend that a rule be re-structured just for the sake of the change. Restructuring sometimes causes unintended results. However, after reviewing the record carefully, it appears that many persons and local welfare agencies have misinterpreted and misapplied the provisions of the existing rule and that the confusion is compounded by the addition of the proposed amendment. The Examiner concludes, therefore, that the proposal offered by Legal Aid should be adopted because it is a significant improvement over the existing rule.

19. As to the concerns expressed by the Department, the Examiner concludes that the proposed change is easily within the scope of the notice quoted in Finding No. 6. Further, the Examiner believes that the re-structuring of the rule would not

constitute a substantial change as that term is applied in Minn. Rule HE 108. That is, it does not (1) affect classes of persons not represented at the previous hearing; (2) go to a new subject matter of significant substantive effect; (3) make a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing, or (4) result in a rule fundamentally different from that contained in the Notice of Hearing. The proposed re-structuring was fully explored at the hearing and in post-hearing comments. It was supported at the hearing by the Senior Advocates Division of Legal Assistance of Ramsey County and in post-hearing comments by the Minneaplis Age and Opportunity Center (Pub. Ex. 10). No one spoke in opposition to it.

The Examiner has reviewed the proposed change with the Chief Hearing Examiner who agrees that it would not be a substantial change.

RECOMMENDATION

That the Rule in the form proposed by Legal Aid be adopted.

Dated this 8th day of December, 1977.

STEVE M. MIHALCHICK
Hearing Examiner

RULE AS ADOPTED

REVISION OF DPW RULE 47 C. 5.

C. Eligibility Factors Under the Medical Assistance Program

5. Relative Responsibility. Within the limitations provided by state law and this rule, the spouse of an applicant and the parent of an applicant under 18 years of age shall be financially responsible for the cost of medical services.

a. In determining an applicant's eligibility for medical assistance, the income and resources of a responsible relative shall be considered in the following manner:

(1) Income and resources of spouses living together in the same household are to be considered available one to the other without proof of actual contribution. Income and resources of a parent are to be considered available to a child under 18 years of age.

(2) If an applicant for or recipient of medical assistance does not reside in the same household as a spouse, only the income and resources actually contributed by the spouse may be considered in determining medical assistance eligibility for the applicant or recipient.

b. In determining the liability of a financially responsible relative, the local welfare agency shall proceed in the following manner:

(1) When the local welfare agency determines that a responsible relative is able to contribute without undue hardship to himself or his immediate family but refuses to contribute, the local welfare agency shall exhaust all administrative procedures to obtain that relative's contribution. When such procedures fail, the local welfare agency shall consult its county attorney regarding possible legal action.

(2) In all cases when spouses are separated due to one spouse's need for care in a nursing home or state hospital, the following schedule of contribution shall be applied to determine the responsibility of the non-institutionalized spouse for support, out of his/her own income (earned or unearned). The local welfare agency may vary the contribution schedule for a specific case on a showing of undue hardship.

MONTHLY INCOME	CONTRIBUTION/MONTH
$400 to $449	$ 15
$450 to $499	$ 30
$500 to $549	$ 50
$550 to $599	$ 70
$600 to $649	$ 90
$650 to $699	$120
Over $700	$150 plus 100% of the excess over $700

(3) If the responsible relative fails to contribute support, after the local welfare agency notifies him of his obligation to do so, the local welfare agency shall notify the county attorney in an effort to commence legal action against that relative.

(4) The amount of support recoverable from a responsible relative (other than an absent parent) shall not exceed the amount of assistance paid on behalf of the recipient.

(5) The local welfare agency shall not withhold, delay or deny Medical Assistance because a responsible relative deemed able to contribute fails or refuses to accept financial responsibility.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD JR. DIRKSWAGER, JR.
COMMISSIONER OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE MEDICAL ASSISTANCE PROGRAM, RULE 47

FINDINGS OF FACT

The above-entitled matter came on for hearing before the Commissioner of Public Welfare on the 4th day of November, 1977, at 9:00 AM in the State Office Auditorium, St. Paul, Minnesota, after proper notice required by M.S. Chapter 15, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I find the following:

The Commissioner of Welfare adopts the findings of fact of the Hearing Examiner 1 through 14 and those parts of 15 except "that Legal Aids proposal just cited should be adopted". The Commissioner finds that use of the term "guide" might also be misinterpreted and therefore adds the following sentence to C5b.(2) "The local welfare agency may vary the contribution schedule for a specific case on a showing of undue hardship". This provides the requisite latitude to accomodate only those cases where application of a different contribution is necessitated by a finding of undue hardship.

The Commissioner adopts findings 16 through 19 but modified as follows:

In this findings 16 and 17, the Hearing Examiner noted the Department's objection to that portion of the Legal Aid proposal dealing with a minor in a separate household. Legal Aid's subsequent proposal deleted the last sentence in C.5. a. (2) in order to overcome the problem, as the Hearing Examiner notes. However, I find that the last sentence in C.5.a.(1) must also be modified so that the intent in (1) and (2) are consistent. Therefore, I find that C.5.a.(1) must be modified to the form in the amended rule as adopted.

I find the $150 contribution required at income level $650 to $699 to be excessive and adopt a contribution of $120.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Edward J. Dirkswager, Jr.
State Welfare Commissioner

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE MEDICAL ASSISTANCE PROGRAM, RULE 47

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Steve M. Mihalchick, Hearing Examiner of the State of Minnesota on the 4th day of November, 1977, at 9:00 AM in the State Office Building Auditorium, St. Paul, Minnesota, after proper notice required by M.S. Chapter 15, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules and the reasonableness thereof.

NOW, THEREFORE, IT IS ORDERED that these rules identified as DPW Rule 47 C 5. are adopted this 19th day of December, 1977, pursuant to authority vested in me by Minnesota Statute Chapter 256 B.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Edward J. Dirkswager, Jr.
STATE WELFARE COMMISSIONER

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OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing the Medical Assistance Program, Rule 47.

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, 1745 University Avenue, St. Paul, MN 55104 and in support thereof the Minnesota Department of Public Welfare (hereinafter DPW) will introduce the following evidence:

The DPW witnesses will testify that the proposed amendment is needed as a result of Chap. 448, Minnesota Sess. Laws, 1977. The testimony as to the reasonableness of the specific monetary contributions required by the proposed amendment will rely upon statistical data developed by the U.S. Bureau of Labor Statistics and by DPW.

We may call one or more of the following expert witnesses to testify:

Robert Baird - Assistant Commissioner, Bureau of Income Maintenance, DPW
L. Irving Peterson - Welfare Supervisor, DPW
Richard Neuman - Director of Research & Statistics, DPW
Warren Nyhus - Supervisor, Medicaid Policy and Planning, DPW

We intend to introduce the following manuals, books, scientific treatises, and other documentary evidence:

Autumn 1976 Urban Family Budgets and Comparative Indexes for Selected Urban Areas, U.S. Bureau of Labor Statistics, Release No. 77-369

Monthly Statistical Summary of Public Assistance Trends, July, 1976 - September, 1977, Minnesota Department of Public Welfare.

Dept's Exhibit No. K
File No.
Date

We will be citing the following statutes and case law:

42 U.S.C. § 1396 et seq., (Title XIX U.S. Social Security Act);
45 C.F.R. Subtitle B, Chap. II;
Minn. Stat. § 256B.01 et seq. (1976);
Minn. Sess. Laws, 1977, Chap. 448.

October 7, 1977

Edward J. Dirkswager, Jr.
Acting Commissioner

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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing the Medical Assistance Program, Rule 47.

STATEMENT OF NEED

The above-captioned rule is an amendment to Minnesota Department of Public Welfare (hereinafter DPW) Rule 47 (12 MCAR § 2.047). Rule 47 was promulgated effective September 13, 1977. It has not previously been amended. The rule regulates DPW's participation in the federal Medical Assistance Program as goverened by 42 U.S.C. § 1396 et seq., 45 C.F.R. Subtitle B, Chap. II, Minn. Stat. Chap. 256B (1976).

The need to adopt the proposed amendment arises from a legislative mandate:

> . . . The commissioner of public welfare may establish a schedule of contributions to be made by the spouse of a nursing home resident to the cost of care . . .

Minn. Sess. Laws, 1977, Chap. 448, Sec. 6, subd. 1(10).

The schedule of contributions proposed by DPW in response to the legislative mandate is a reasonable one. The specific contributions required are based on a typical budget for a husband and wife over 65 years of age living above a "lower level consumption budget," but below an "intermediate level consumption budget." (See, U.S. Bureau of Labor Statistics Report cited in DPW's Statement of Evidence). Statistics developed by DPW have also been taken into consideration.

The use of the proposed schedule of contributions would result in non-institutionalized non-recipient spouses retaining

Dept's Exhibit No. J
File No.
Date

a significantly larger portion of their monthly income than is possible under existing law.

Thus, while honoring the Federal requirement that DPW stipulate relative responsibility for one's spouse, 42 U.S.C. § 1396a(a)(17)(D), and while meeting the state legislature's mandate to specify the amount to be contributed, DPW's proposed schedule reduces the financial burden on persons residing in the community whose income is only marginally in excess of their basic needs.

Edward J. Dirkswager, Jr.
Acting Commissioner

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STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE MEDICAL ASSISTANCE PROGRAM, RULE 47

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

ROBERT J. HAMPER, being first duly sworn, deposes and says:

1) That he is an employee of the Special Services Division, Department of Public Welfare, State of Minnesota.

2) That on the 29th day of September, 1977, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 29th day of September, 1977, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Robert J. Hamper

Subscribed and sworn to before me
this 3rd day of October
1977.

Dolores Evenson

DOLORES EVENSON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Oct. 27, 1983

Dept's Exhibit No. G
File No.
Date

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EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE MEDICAL ASSISTANCE PROGRAM, RULE 47

CERTIFICATE OF DELIVERY
SECRETARY OF STATE
LIST

I hereby certify that the attached 491 Labels 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 10:00 o'clock A. M. this 29th day of September, 1977, have requested pursuant to M. S. 19 74 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Cheri L. Mattson

Dept's Exhibit No. H
File No.
Date

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EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE MEDICAL ASSISTANCE PROGRAM, RULE 47

AFFIDAVIT OF MAILING

Robert J. Hamper, being first duly sworn, deposes and says:

That on the 30th day of September, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Robert J. Hamper

Subscribed and sworn to before me this
3rd day of October, 1977.

Dolores Evenson

DOLORES EVENSON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Oct. 27, 1983

Dept's Exhibit No. I
File No.
Date

RECEIVED
OCT 4 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE MEDICAL ASSISTANCE PROGRAM, RULE 47

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held in the State Office Building Auditorium, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota, on Friday, November 4, 1977, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Edward J. Dirkswager Jr.

Edward J. Dirkswager, Jr.
Acting Commissioner

Date: September 16, 1977

Dept's Exhibit No. B
File No.
Date

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OCT 4 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE MEDICAL ASSISTANCE PROGRAM, RULE 47.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the State Office Building Auditorium, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota, on Friday, November 4, 1977, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Steve Mihalchick, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104 (612) 296-8112, either before the hearing or within five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

Present Rule DPW 47 guides the administration of the Medical Assistance Program in Minnesota. The proposed amendment to Rule DPW 47 pertains to relative responsibility as an eligibility factor under the Medical Assistance Program. The proposed amendment makes an applicant who is separated from his/her spouse eligible for Medical Assistance as a separated individual and excludes him/her from the same income eligibility standards as a couple. The proposed amendment also makes possible partial support of a spouse while still recognizing that physical separation and expense of maintaining a residence. It does not require a spouse not needing or receiving a benefit to live on a welfare standard.

Copies of the proposed rule are now available and one free copy may be obtained by writing to L. Irving Peterson, Department of Public Welfare, Fourth Floor, Centennial Office Building, St. Paul, Minnesota, 55155. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rule is contained in Minn. Stat. 256B.04 Subd. 2 and Chapter 448 of Minnesota Session Laws of 1977. A "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. Chapter 10A requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally an individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, phone number (612) 296-5615.

EDWARD J. DIRKSWAGER, JR.
Acting Commissioner

Dated: September 13, 1977

Dept's Exhibit No. C
File No.
Date

Rec'd 10/11/77 JA

PROPOSED AMENDMENT TO RULE 47 - MEDICAL ASSISTANCE

Rule DPW-47 which was published in the State Register on September 6, 1977, (2 S.R. 353-381) is unchanged except for the following addition of material at c.5.a.(1).

C. Eligibility factors under the medical assistance program.

5. Relative responsibility. Within the limitations provided by state law and this rule, the spouse of an applicant or the parent of an applicant under 18 years of age shall be charged with the cost of medical services before Medical Assistance shall be available. The local welfare agency shall not withhold, delay or deny Medical Assistance because a responsible relative deemed able to contribute fails or refuses to accept financial responsibility. When the local welfare agency determines that a responsible relative is able to contribute without undue hardship to himself or his immediate family but refuses to contribute, the local welfare agency shall exhaust all available administrative procedures to obtain that relative's contribution. When such procedures fail, the local welfare agency shall consult its county attorney regarding possible legal action.

a. The local welfare agency shall assess the income and resources of an applicant, together with that of his/her spouse, in determining eligibility for Medical Assistance, subject to the following limitations:

(1) If spouses are living separately, the local welfare agency may determine that the marital relationship has experienced a breakdown likely to make spousal support impractical.

(a) Where there is joint ownership of either real or personal property in excess of statutory allowances, the local welfare agency cannot conclude that a total breakdown of the marital relationship has taken place.

(b) In all cases where separation is due to one spouse's need for care in a nursing home or state hospital the following schedule of contributions shall be applied in determining the responsibility of the non-institutionalized spouse for support, out of his/her own income (earned or unearned).

MONTHLY INCOME	CONTRIBUTION/MONTH
$400 to $449	$ 15
$450 to $499	$ 30
$500 to $549	$ 50
$550 to $599	$ 70
$600 to $649	$ 90
$650 to $699	$150
Over $700	$150 plus 100% of the excess over $700

(underlining indicates additions)

Depts Exhibit No. D
File No.
Date

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REVISION OF DPW RULE 47 C. 5.

C. Eligibility Factors Under the Medical Assistance Program

5. Relative Responsibility. Within the limitations provided by state law and this rule, the spouse of an applicant and the parent of an applicant under 18 years of age shall be financially responsible for the cost of medical services.

a. In determining an applicant's eligibility for medical assistance, the income and resources of a responsible relative shall be considered in the following manner:

(1) Income and resources of spouses living together in the same household are to be considered available one to the other without proof of actual contribution. Likewise, income and resources of a parent are to be considered available to a child under 18 years of age living together with the parent in the same household.

(2) If an applicant for or recipient of medical assistance does not reside in the same household as a spouse, only the income and resources actually contributed by the spouse may be considered in determining medical assistance eligibility for the applicant or recipient.

b. In determining the liability of a financially responsible relative, the local welfare agency shall proceed in the following manner:

(1) When the local welfare agency determines that a responsible relative is able to contribute without undue hardship to himself or his immediate family but refuses to contribute, the local welfare agency shall exhaust all administrative procedures to obtain that relative's contribution. When such procedures fail, the local welfare agency shall consult its county attorney regarding possible legal action.

(2) In all cases when spouses are separated due to one spouse's need for care in a nursing home or state hospital, the following schedule of contributions shall be applied as a guide to determining the responsibility of the non-institutionalized spouse for support, out of his/her own income (earned or unearned).

MONTHLY INCOME	CONTRIBUTION/MONTH
$400 to $449	$ 15
$450 to $499	$ 30
$500 to $549	$ 50
$550 to $599	$ 70
$600 to $649	$ 90
$650 to $699	$120
Over $700	$150 plus 100% of the excess over $700

(3) If the responsible relative fails to contribute support, after the local welfare agency notifies him of his obligation to do so, the local welfare agency shall notify the county attorney in an effort to commence legal action against that relative.

(4) The amount of support recoverable from a responsible relative (other than an absent parent) shall not exceed the amount of assistance paid on behalf of the recipient.

(5) The local welfare agency shall not withhold, delay or deny Medical Assistance because a responsible relative deemed able to contribute fails or refuses to accept financial responsibility.

Pub Cas Exhibit No. 13c
File No.
Date