

Minnesota Attorney General: Administrative Rules Proceedings

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ATTORNEY GENERAL

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Special Assistant
Attorney General

November 30, 1978

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296-4692

In the Matter of the Proposed Adoption of Amendments to Minnesota Rule DPW - 160 of the Department of Public Welfare Governing the Administration of Public Social Services

The rule amendments to the above-captioned rules have not been approved by this office for the following reasons:

1. In section B.6.b. of Rule 160, the original rule read: "Open meetings shall be held throughout the state to answer questions and receive public comment on the proposed annual plan." The Department proposed to amend the "shall" to "may" and the amendments as adopted reflect this change. However, the Department adopted an additional amendment to this section after the close of the record, which changed "open meetings" to "public meetings." This office rejects both amendments to this section.

   Because the amendment changing "open meeting" to "public meeting" was made after the record closed, there was no opportunity for notice and comment on this substantial amendment and there was no evidence on the record to justify the change. The Department itself acknowledges in its Order at page 2, that "post-record" comments are not a part of the record. Therefore, this "post-record" amendment is improper.

   Once the amendment changing "open" to "public" is rejected, the rule which states "open meetings may be held. . . " must also be rejected. As noted by the Hearing Examiner at page 10 of his Report:

   > Since the Department proposes to change the present 'shall' to 'may' in the Rule, one possible implication of the change is that meetings 'now may be closed' instead of 'shall be open'. It is unreasonable to draft the rule to leave that implication which conflicts with the state open meeting statute, Minn. Stat. § 471.705.

   The record before this office does not refute the Hearing Examiner's conclusion on this point. The Department's explanation at page 7 of its Order that "meetings provided for in Section B.6.b. are not subject

to the Open Meeting Law" is not supported by any legal argument in the record made available to this office. The Department should be cautious when proposing a rule amendment which narrows rights of the public provided in the original rule. In this regard, the Department's affirmative presentation as to the need and reasonableness of the amendment in its Statement of Need or in any other document included in the record received by this office is scanty at best. Altering rights to a public hearing is more than a mere "editorial" change. For these reasons the change from "shall" to "may" is not approved.

Section B.6.b. of Rule 160 must remain in its original form: "Open meetings shall be held throughout the state to answer questions and receive public comment on the proposed annual plan."

2. While this office reserves judgment on the amendment to Rule 160, Section H.9.g., the Department failed to address the Hearing Examiner's Finding at page 21 of his Report regarding the resolution of the local agencies' problems involving the re-determination of eligibility. This office requests a response from the Department to the Hearing Examiner's comment on this matter.

Finally, while this office does not reject the amendment to Rule 160, Section A.2. on its face, we wish to advise the Department that an improper application of the amended section may violate the Administative Procedure Act, as noted by the Chief Hearing Examiner in the Memorandum attached to his Report. This possible conflict warrants the attention of the Department.

Upon the Welfare Department's consideration of this decision, and after any action taken in this regard, these rules may be resubmitted. Three copies of the amended order adopting the rules, together with three copies of the amended rules, must be resubmitted to this office.

Copies of the other requisite documents from the file have been retained by this office.

JEH/bw
Enclosure
cc: Duane Harves
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rule 160 of the Department of Public Welfare Governing the Administration of Minnesota Public Social Service.

SUPPLEMENTAL FINDINGS OF FACT

On August 24, 1978, the Commissioner of Public Welfare issued his Order adopting the Rule in the above-entitled matter. On October 18, 1978, the Chief Hearing Examiner, while determining that a certain deletion from the originally proposed rule was not a substantial change, recommended that a Supplemental Finding of Fact be issued concerning the deletion. Pursuant to that recommendation, the Commissioner of Public Welfare now makes the following

SUPPLEMENTAL FINDING OF FACT

OPTIONAL SERVICES; SECTION C. 4. a.

The Department has deleted the language at Section C. 4. a. (1) which reads, "For families who are in the income eligible categories". Section C. 4. a. (2) is renumbered accordingly to new C. 4. a. (1). The provision was redundant and its deletion is not a substantial change. The deleted provision provided that local agencies could provide the specified service as an optional service. Section C. 3. b. (1) provides that the same service is to be considered a priority service. Thus the deleted provision is subsumed by the latter, higher priority, provision.

Dated: Nov 7, 1978

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Edward J. Dirkswager, Jr.
Commissioner

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rule 160 of the Department of Public Welfare Governing the Administration of Minnesota Public Social Service.

ORDER ADOPTING THE RULE

The above-entitled matter came on for hearing before Hearing Examiner Russell L. Doty, of the State Office of Hearing Examiners, on September 2, 1977, in the Veteran's Service Building, Room D-20, after proper notice as required by Minn. Stat. sec. 15.0412, subd. 4 (Minn. Supp. 1977) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

At the hearing the proposed Rule 160 as published at 1 State Register 60 (July 11, 1977) was considered. The following persons testified for the Department of Public Welfare: Gary Haselhuhn and Herbert Cashdollar. The hearing continued until all interested groups and persons had an opportunity to be heard. Pursuant to the order of the Hearing Examiner, the record remained open for twenty (20) days for the submission of written material.

Based upon all the records and proceedings, the Hearing Examiner made Findings of Fact, Conclusions and Recommendations which are contained in the Report of Hearing Examiner, dated October 24, 1977. The Report is attached hereto as Exhibit A. Pursuant to the requirements of Minn. Stat. sec. 15.0412, subd. 4 (Minn. Supp. 1977) the Report was available to all affected persons for at least five (5) days.

The Hearing Examiner's Findings of Fact are not enumerated but are organized by subject. The Department does not accept all of the findings and suggestions of the Hearing Examiner. For clarity and ease of comparison the Department will address each of the Hearing Examiner's findings according

DEFINITION OF "INCOME ELIGIBLE CLIENT"; SECTION A. 6. m.

The Department accepts this finding of the Hearing Examiner.

"INCOME MAINTENANCE STATUS" DEFINITION; SECTION A. 6. n.

The Department accepts this finding of the Hearing Examiner.

"POSITION OF AUTHORITY" - NEW DEFINITION; SECTION A. 6. v.

The Department has reviewed the recommendation of Eugene J. Johnson, Deputy Director of the Hennepin County Welfare Department, contained on page 3 of his letter of September 1, 1977, to the Hearing Examiner regarding Section H. 6. b. (2). Mr. Johnson states that the language contained in H. 6. b. (2) which restricts provision of protection services without regard to income to children harmed or threatened to be harmed by a parent or guardian is too restrictive and inconsistent with revised federal regulations.

Prior to revision the applicable federal regulation provided as follows:

> (a) FFP is available without regard to income for services directed at the goal of preventing or remedying neglect, abuse or exploitation of children and adults unable to protect their own interests, only as follows:
>
> (1) With respect to children, only when provided with respect to an individual under the age of 18 harmed or threatened with harm by a person responsible for the individual's health or welfare (and for runaways, harmed or threatened with harm by virtue of their status), through non-accidental physical or mental injury, sexual abuse (as defined by State law); or negligent treatment, including the failure to provide adequate food, clothing, or shelter.

45 C.F.R. sec. 228.65 (1976) (emphasis added) ("FFP" stands for Federal Financial Participation).

Paragraph (1) of this provision, pertaining to children, was amended effective January, 1977 to read:

> (1) With respect to children, only when provided to or in behalf of an individual under the age of 18 who is harmed or threatened with harm through non-accidental physical or mental injury, sexual abuse (as defined by State law), or

to the topical organization contained in the Report. Where necessary the Department has made new findings of fact and conclusions. These are included in the body of the discussion.

PROCEDURAL REQUIREMENTS

The Department accepts the findings of the Hearing Examiner.

POST-RECORD COMMENTS

The Department rejects the finding that the written comment of Harry T. Neimeyer, dated October 11, 1977 can be considered as part of the record. Minn. Stat. sec. 15.0412, subd. 4 (1977) expressly limits to 20 days the period the record may be kept open following a public hearing. The record remained open 20 days, or through September 22, 1977, following the public hearing on Proposed Rule 160. Written comments and statements received after September 22, 1977, are not a part of the record herein and cannot furnish the basis for any finding of fact.

BACKGROUND AND GENERAL REASONS FOR RULE CHANGE

The Department accepts the findings of the Hearing Examiner.

DEPARTMENT AMENDMENTS TO PROPOSED CHANGES

The Department accepts this finding of the Hearing Examiner.

RULEMAKING AUTHORITY

The Department accepts this finding of the Hearing Examiner.

ADOPTION OF CHANGES NOT SPECIFICALLY MENTIONED IN OTHER PARTS OF THIS REPORT

The Department accepts this finding of the Hearing Examiner.

SCOPE OF RULE APPLICABILITY; SECTION A.5.

The Department accepts this finding of the Hearing Examiner.

"EMANCIPATED MINOR" DEFINED; SECTION H. 8. c. (4).

The Hearing Examiner found that it is unreasonable for the term "emancipated minor" to be used in Section H. 8. c. (4) without defining the term. The Hearing Examiner recommended a definition based on case law from jurisdictions throughout the country. The Department accepts the finding that the rule should include a definition of emancipated minor, but rejects the definition proposed by the Hearing Examiner. That definition is too detailed and tentative to be administratively workable.

It is reasonable and necessary to add the following definition of emancipated minor at Section H. 8. c. (4).

(4) An emancipated minor. For purposes of this section an emancipated minor is an individual under the age of 18:

(a) who has married; or

(b) who is living apart from his parents and managing his own financial affairs; or

(c) who is seeking one or more of the following Title XX services--family planning, health services, residential treatment for chemical dependency, or counseling related to pregnancy, venereal disease or chemical dependency--

and has:

1. Borne a child; or
2. Wishes to determine the presence of or treat pregnancy, venereal disease, or chemical dependency.

The first two conditions, (a) and (b), are reasonable because they are within the meaning of emancipated minor as defined by Minnesota case law. See In re Fiihr, 289 Minn. 322, 184 N.W.2d 22 (1971), In re Sonnenberg, 256 Minn. 571, 99 N.W.2d 444 (1959). The third condition is reasonable because it encompasses those situations in which minors can give effective consent for medical services pursuant to Minn. Stat. secs. 144.341-343 (1976). In those statutorily specified circumstances the State has conferred upon minors the right to consent to treatment or service; to the extent it has done so it has removed from the parents control over the behavior of the minor. There-

fore, it is reasonable to consider minors emancipated in relation to those services. This definition is consistent with Minnesota case law which holds that emancipation may be partial and limited as to purpose. In re Sonnenberg, supra.

This definition is narrower than the definition proposed by the Hearing Examiner. That definition, particularly in the "may" clauses in the last sentence, is too conditional and vague to be administratively workable. Under that definition it would be too difficult for counties to determine when a minor could be considered emancipated for purposes of Title XX eligibility.

This definition is an insubstantial change which adds clarity to the rule.

GRANVILLE HOUSE PROBLEM; SECTION A. 6. 1.

The Hearing Examiner recommended that Section A. 6. 1. of the rule, which governs host county contracting, be amended specifically to accommodate the problems of Granville House, a halfway house with facilities in Ramsey and Washington Counties. It is unreasonable to promulgate an amendment which applies only to one facility, as proposed by the Hearing Examiner. The amendment is also unreasonable because there is no evidence in the record showing how the amendment might affect other service vendors with facilities or operations located in two or more counties. The amendments proposed by the Hearing Examiner do constitute a substantial change in the rule as proposed. Finally, it is unreasonable and unnecessary to amend this section as recommended by the Hearing Examiner because the Department intends to completely revise the host county contracting provisions as evidenced by the Notice of Intent to Solicit Opinion published at 2 State Register 1916 (April 17, 1968). The Hearing Examiner's recommendations regarding Sections A. 6. 1. and H. 11. c. (5) (c) are rejected. Those sections are adopted as proposed.

negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter. For purposes of this section, runaways are presumed to be harmed or threatened with harm by virtue of their status.

45 C.F.R. sec. 228.65 (1977).

The phrase "by a person responsible for the individual's health or welfare" has clearly been deleted from the revised regulation. Thus, under the federal regulations FFP would be available to abused or neglected children regardless of who caused the harm. Therefore, the Department finds that Section H. 6. b. 2. should be amended as follows:

> The local social services agency shall document by entering into the case record for each child, that the ~~parent or guardian is threatening to harm~~ child is harmed or threatened with harm. Such harm shall be identified as non-accidental physical or mental injury, sexual abuse as defined in Minn. Stat. sec. 626.556, or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter. Harm or threatened harm to a runaway shall also be documented.

This amendment is reasonable or necessary because it is consistent with federal regulations and thus insures the availability of FFP.

It is an insubstantial charge.

DEFINITION OF "SOCIAL SERVICES"; SECTION A. 6. t.

The Department accepts this recommendation of the Hearing Examiner. Section A. 6. t. of the rule is amended accordingly.

OPEN MEETINGS; SECTIONS B. 6. b. and B. 8.

The Department has carefully reviewed the findings and recommendations of the Hearing Examiner regarding Section B. 6. b. which provides for "meetings to receive public comment" on the CASP plan. The Department has also reviewed the written comments of Edith Lallier, Executive Director of Ramsey Action Programs, Inc., which are contained in a letter to the Hearing Examiner dated September 7, 1977.

The Department finds that the term "public meeting" is more appropriate and reasonable in this section than the term "open meeting." Use of the latter term creates confusion by implying that such meetings would be subject to the Open Meeting Law, Minn. Stat. sec. 471.705 (1976). The meetings provided for in Section B. 6. b. are not subject to the Open Meeting Law.

CLIENT ACCESS TO AGENCY METHODOLOGY

The Hearing Examiner recommended that Section E. 5. be amended by adding the underlined language:

> If the application is denied, the individual shall be notified in writing of the reason for denial; ((and)) of his right to appeal to the state agency; and to inspect the contents of all state and local agency files relevant to his case prior to the appeal hearing; and that the local social services agency's methods of assessing need and making service delivery determinations will be made available upon request. Such local agencies shall make that assessment and determination methodology available to the applicant or his representative upon request.

The Department rejects this recommendation because equivalent provisions already exist in Minn. Stat. sec. 256.045 (1976).

CLARIFICATION OF DUTY TO PROVIDE PRIORITY AND OPTIONAL SERVICES; SECTION C. 1. b.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

PRIORITY SERVICE CRITERIA, SECTION C.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

INCONSISTENT LISTING OF SERVICE CATEGORIES, SECTION C. 2., et seq.

The Hearing Examiner found that insofar as Section C. of the rule listed services as mandatory, priority, or optional in a way inconsistent with the Comprehensive Annual Social Services Plan (CASP), the rule was unreasonable. The Department agrees that the rule and the CASP should be consistent. Since

the identification of services as priority, mandatory, or optional in Proposed Rule 160 is consistent with current federal regulations and state law, and since the CASP is amended and published annually and the proposed CASP for 1978-1979 is currently subject to amendment before final adoption on October 1, 1978, it is reasonable to adopt the service categories as proposed in Rule 160, Section C. and to amend the CASP to conform with the rule. Section C. should be adopted as proposed.

SUBACUTE DETOXIFICATION SERVICES NOT WITHIN SCOPE OF RULE; SECTION C. 2. g. (1).

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

SECTION C. 3. C. (2).

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

INDIVIDUALIZED, NON-INSTITUTIONALIZED, ATTENDANT CARE SERVICES; C. 3. f.

It is appropriate and reasonable to specify attendant care in Section C. 3. f. The Hearing Examiner's finding as to this point is accepted and the rule is amended accordingly. It is neither necessary nor reasonable to define attendant care in Rule 160 because none of the specified social services are defined therein, and because there exist independent rules defining and governing each specific social service. Specifically, "attendant care" falls within the definition of homemaking services contained in Minn. Rule DPW 206 (12 MCAR sec. 2:206). Attendant care is also defined in the CASP plan. The Department therefore rejects the finding of the Hearing Examiner which adds a definition of attendant care to the rule.

CLIENT ACCESS TO OWN INFORMATION; SECTION D. 3.

The Hearing Examiner found that the Department's proposed amendment to Section D. 3. was not only unnecessary, but changed the meaning of the section. Prior to amendment the section provided:

> Clients shall have access to information about themselves pursuant to applicable state and federal laws.

The proposed amendment deleted that sentence and added the following provision:

> Information regarding clients shall be collected, used, stored, and disseminated only in accordance with state and federal law.

Based on the recommendation of Edith Lallier, Executive Director of Ramsey Action Programs, Inc., the Hearing Examiner recommended as reasonable and necessary the following provision:

> Clients shall have access to information about themselves and shall have the right to a hearing to correct or delete inaccurate, immaterial or outdated information.

The Hearing Examiner found that this provision constituted a substantial change from the rule as proposed.

The comments of Ms. Lallier reflect a concern that clients have access to their case files, especially in order to prepare for a hearing on an adverse eligibility determination, and in order to correct dated or erroneous information. The Department finds that its proposed amendment to Section D. 3. provides for client access and for correction of the file. The case files of recipients of social services are classified as private pursuant to the Emergency Classification of Welfare Records issued by the Commissioner of Administration on September 8, 1977, pursuant to the Minnesota Data Privacy Act, specifically Minn. Stat. sec. 15.1642, Minn. Supp. 1977. The rights of subjects of private data are contained in Minn. Stat. sec. 15.165 (1976). They include the right to see the data and obtain copies of it, and the right to contest the accuracy and completeness of the data.

The Department's proposed amendment to Section D. 3. is reasonable and necessary because it calls attention to the existence of relevant federal and state law and emphasizes that adherence to these laws is necessary, first of all, for proper delivery of social services, and secondly, in order to qualify for federal funds. At the same time the broad reference to "state and federal law" avoids the need for amending the rule every time the State data privacy law or federal regulations are amended.

OFFICIAL ACCESS TO CLIENT INFORMATION, SECTION D. 4.

The Department accepts this finding of the Hearing Examiner.

EXPLANATION OF RIGHTS; SECTION E. 3.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

CLARIFICATION IN SECTIONS E. 4. a. and E. 4. c.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

RECORD OF SERVICE DENIAL; SECTION E. 5.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

PROMPTNESS OF SERVICE DELIVERY; SECTION E. 6.

The definition of reasonable promptness contained in Section E. 6. a. and b. is confusing. Federal regulations require that if services are provided within 15 calendar days after notification of eligibility the further federal requirement of "reasonable promptness" is met. 45 C.F.R. sec. 228.60 (g) (3) (i) (1977). In order to ensure that Title XX services provided in Minnesota are eligible for federal financial participation (FFP) it is reasonable for the state agency to require that services be delivered within 15 calendar days. Accordingly, Section E. 6. should be amended as follows:

> 6. If application is approved, the local social services agency shall provide the social services with reasonable promptness. Reasonable promptness means:
>
> ~~a. Within 30 days of the application; or~~
>
> ~~b. Within 15 days of the notification that the application has been approved; or~~
>
> a. Within 15 calendar days after the applicant has been notified of his eligibility; or

~~c.~~ b. At an appropriate later date which has been mutually agreed upon by the local social services agency and the applicant.

CLIENT'S RIGHT TO REJECT SERVICES; SECTION F.

The Department accepts the finding of the Hearing Examiner that Section F. is reasonable and necessary. It further accepts the finding that the section should be amended by adding the words "if legally competent" after the word "applicant". The rule is amended accordingly.

TYPOGRAPHICAL ERROR; SECTION G. 2. a.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

INCORPORATIONS BY REFERENCE; SECTION H. 4. c. (2).

The Department accepts this finding of the Hearing Examiner.

BATTERED WOMEN SPECIFIED; SECTION H. 6. a. (1).

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

PROTECTING CHILDREN FROM HARM; SECTION H. 6. b. (2).

See the findings made above under the caption "Position of Authority". The Department rejects the amendments proposed by the Hearing Examiner in favor of its own amendment.

REDETERMINATION OF ELIGIBILITY; SECTION H. 9. g.

The federal regulations implementing Title XX require as a condition for FFP that a state redetermine the eligibility of social service clients at least every six months:

(1) Redetermination of eligibility shall be made for persons whose eligibility is determined on an individual basis:

. . . .

. . . .

(iii) Periodically, but not less frequently than every six months . . . .

45 C.F.R. sec. 228.61 (c) (1) (iii) (1977) (emphasis added).

In Proposed Rule 160 the Department amended Section H. 9. g. by adding the word "maximum":

An individual shall remain eligible for a maximum of six 6 months from the date eligibility was initially ~~established~~ determined.

This is another way of saying that eligibility must be redetermined within six months from the date of initial eligiblity. It is necessary and reasonable for the Department to require redeterminations in a time-span consistent with the federal regulations in order to insure the availability of FFP. The addition of the word "maximum" does not substantially change the meaning or effect of the rule.

In its Statement of Need (p. 6) the Department demonstrated that the primary amendment to sec. H. 9. g. was the Exception clause, which provides for annual redetermination in certain cases. The section is necessary and reasonable and is adopted as proposed.

LOCAL AGENCY USE OF SOCIAL SERVICES FEE; SECTION H. 10.

The Department accepts only the finding of the Hearing Examiner that the proposed amendments to Section H. 10. are necessary and reasonable.

COLLECTION NOTICE INTERVALS; SECTION H. 10. c. (2).

The Department accepts this finding of the Hearing Examiner.

LOCAL SERVICE AGENCY TITLE XX ELIGIBILITY; SECTION H. 10. c. (2).

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

ELIMINATING DOUBLE FEES FOR CERTAIN SERVICES; SECTION H. 10. d. (2).

The comments of the Hearing Examiner regarding this section are duly noted. However, the Department finds that the section is reasonable and necessary as proposed. The section is adopted as proposed.

REFUSING TO ENTER HOST COUNTY CONTRACTS WITH INCOMPETENT PROVIDERS; SECTION H. 11. c. (1).

The Department accepts the finding of the Hearing Examiner that his proposed amendment to Section H. 11. c. (1) represents a substantial change in the rule.

MISCELLANEOUS

1. The Department accepts this finding of the Hearing Examiner.

2. Not applicable.

3. The Department accepts this finding of the Hearing Examiner. The Rule has been amended accordingly.

4. The Department accepts this finding of the Hearing Examiner. The Rule has been amended accordingly.

Having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above-captioned rule and the reasonableness thereof,

NOW THEREFORE, IT IS ORDERED, that those Findings, Conclusions and Recommendations of the Hearing Examiner contained in the Report of the Hearing Examiner which have been accepted by the Department as indicated above are hereby adopted and incorporated herein.

It is further ordered, that this rule identified as Rule 160 of the Rules of the Minnesota Department of Public Welfare is adopted this 24th day of August, 1978, and after this day Rule 160 shall read in its entirety as set forth in the attached Exhibit B, pursuant to the authority vested in me, and pursuant to Minn. Stats. Chapters 15, 252, 256 and 393.

Dated: August 24, 1978

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Edward J. Dirkswager, Jr.

Edward J. Dirkswager, Jr.
Commissioner

Proposed

CORRECTED COPY

MINNESOTA RULE DPW 160 - Administration of Minnesota Public Social Services

A. Introduction

1. This rule governs the administration of publicly funded social services in Minnesota. The authority for the administration of social services is found in Minnesota Statutes, Chapter 256, and other applicable state laws. Authority is also found in Public Law 93-647, as implemented by Title 45 of the Code of Federal Regulations, Part 228. The delivery of public social services in Minnesota is state supervised and locally administered. The authority for this method of delivery is given in Minnesota Statutes, Chapters 393 and 402.

2. The Commissioner of Public Welfare may issue [policy] bulletins and manual material to local social service agencies and other service providers to clarify the provisions of this rule and may prescribe forms to be used in the administration of social services.

3. Social services shall be administered in a manner to ensure the individual and civil rights of applicants and clients. Information regarding individuals shall not be disclosed, except as provided under applicable state law and/or official departmental rules and regulations.

4. This rule is binding on all county welfare boards and human services boards (and their respective agencies) (hereinafter referred to as local social service agencies) in the State of Minnesota administering and providing social services, (the state agency or) other service providers [through] (under) contractual agreement, (to local social services agencies or the state agency) and applicants and clients of social services. [and on the state agency.]

5. Sections A through G of this Rule apply universally to all publicly funded social services regardless of funding source. Section H applies to social services funded through Title XX of the Social Security Act of 1935, as amended.

OK

[5.] (6.) Definitions

a. Applicant: An individual who has directly, or through someone acting in his behalf, made application for social services.

b. Application: [The action by which an individual indicates to an agency in writing his desire to receive social services.] (A request for social services on forms prescribed by the state agency. The application shall contain sufficient information about the applicant to enable the local social services agency to make an eligibility decision. As part of the application process, the applicant shall be informed of his rights and responsibilities as outlined by the state agency.)

Proposed additions are (circled). Proposed deletions are [bracketed].

c. Approved vendor: Providers of social services which are licensed, approved as meeting state licensing standards, or where licensing is not required, meet standards or criteria established by the state agency or local social services agency.

d. Categories of individuals: Grouping of persons on the basis of common characteristics such as recipient status (Aid to Families with Dependent Children, Supplemental Security Income, Minnesota Supplemental Aid), income level, age and physical or mental condition.

e. Comprehensive Annual Services Program Plan (hereinafter CASP Plan): The state social services plan, which is a compilation of all the local social services plans, and which meets the state plan requirements of Title XX of the Social Security Act.

f. Declaration method: Acceptance of an individual's statements regarding the source and amount of his household monthly gross income, and the income maintenance status of any member of the household.

[e.] (g.) Documentation: Written evidence, in addition to signed application and income declaration forms, of income maintenance status or [family] (household) monthly gross income.

[f.] (h.) Federal financial participation (hereinafter FFP): Federal monies available through Title XX of the Social Security Act to be used in payment for social services.

[g.] (i.) Fees: Monies billed and/or collected for the services provided.

[h.] (j.) Geographic area: Locally identified political subdivision of the state covered by a social services plan.

[i.] (k.) Gross income: Income, prior to any [exemptions] (deductions) received from wages or salary; net income from self-employment; net farm income; Social Security payments; dividends, interest, rent received, or royalties; General Assistance payments; pensions and annuities; unemployment compensation; worker's compensation; alimony; child support; veteran's pensions; or any combination of the above sources of income.

[j.] (l.) Host county contract: Contractual agreement between a purchase of service vendor and the local social services agency (the host county) where the vendor is located. All other social services agencies wishing to purchase from the vendor are bound by the terms of the host county contract.

[k. Household: An individual, or two or more persons related by blood, marriage, or adoption, and residing in the same domicile.]

[l.] (m.) Income eligible client: An individual who receives social services on the basis of income only, and who is not receiving Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), or Minnesota Supplemental Assistance (MSA).

[m.] (n.) Income maintenance status: An individual whose eligibility for Title XX federal financial participation in services received is based on his receipt of Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), or Minnesota Supplemental Assistance (MSA).

[n. Letter of contract certification: Local social service agency notification to the state agency of county welfare or human service board approval of a purchase of service contract, name of contractor, contract control number, date of effect, services to be provided, gross amount, and unit costs per service.]

o. Local social services agency (also known as local agency): Local agency under the authority of the county welfare or human services board which is responsible for social services.

p. Mandatory services: Services required in state law or federal regulation.

q. Optional services: Services [the availability of which are] available at the discretion of the county welfare or human service board.

r. Priority services: Services the state agency strongly recommends be made available by the local social service(s) agencies, but [are within the] which are available at the discretion of the county welfare or human service(s) board.

s. Provider: Agency or individual delivering services.

t. Social services: Those services which are included in the Minnesota [Annual] Comprehensive (Annual) Services Program Plan[.] (CASP Plan).

u. Source document: [An original] A written statement such as a paycheck stub or birth certificate used to verify income, age, etc.

v. State Administrative Plan: A federal approved statewide plan for the administration of the Title XX Program. The State Administrative Plan establishes the requirements in Section H. 2. of this Rule.

[v.] (w.) State agency: Minnesota Department of Public Welfare.

[w.] (x.) Vendor: Agency or individual from whom services are purchased.

B. State and Local Social Service(s) Planning

1. The [social service] CASP Plan year shall be October 1 through September 30.

2. On or before a date stipulated by the state agency; each local social service(s) agency shall submit to the state agency a plan for service delivery and a budget to support that plan. The plan and budget shall be in accordance with the Local Social Service(s) Plan Guidelines and budget forms prescribed by the state agency.

3. The political entity covered by a local social service(s) plan shall be known as the geographic area. The following criteria shall be followed in establishing geographic areas:

a. A county may designate itself as a geographic area.

b. No political subdivision smaller than a county shall be designated as a geographic area.

c. A political subdivision larger than one county may be designated a geographic area if one of the following conditions is met:

(1) Counties have combined for administrative purposes under a joint powers agreement, executed pursuant to Minn. Stat. 393.01, Subd. 7.

(2) Counties have combined under provision of the Human Services Act, or

(3) Contiguous counties within the same Governor's Economic Region or [counties within] two or more regions have elected by board action to submit a multi-county plan that provides the same services to the same eligibility groups in all counties in that geographic area.

(4) There is a state contract for a service, and that service is available state-wide.

4. Services provided may differ among geographic areas, except for mandatory services, which must be available on a state-wide basis.

5. Priority and optional services included in geographic area plans shall be available to all persons in eligible categories specified in the plan.

6. On or before July 1 of each year, the state agency shall [make available to the general public] publish a proposed [Comprehensive Annual Service Program] CASP Plan for the delivery of public social services. A copy of the proposed plan shall be available from the state or local social services agencies at no cost to any individual on request.

a. There shall be a 45-day period, beginning July 1, for public review and comment on the proposed plan.

b. Open meetings [shall] may be held throughout the state to answer questions and receive public comment on the proposed annual plan.

7. On or before October 1 of each year, the state agency shall publish the final [Comprehensive Annual Service Program] CASP Plan. A copy of the final plan shall be available from the state or local social services agencies at no cost to any individual on request.

8. The CASP Plan may be amended by the state agency on its own initiative or at the request of a local social services agency with state agency approval.

a. The proposed amendment shall be published in all geographic areas affected by the amendment, and there shall be a 30-day public review and comment period on the proposed amendment.

b. The final amendment shall be published in all geographic areas affected by the amendment and shall not be effective earlier than the date of publication.

C. Local Agency Duties and Responsibilities

1. The local social service[s] agency [has the responsibility for provision of] shall provide social services as required by law and the local social service[s] plan. These services may be provided directly by the agency, purchased, or arranged for at no cost to the local social service[s] agency.

a. Mandatory services shall be provided in accordance with the individual service plan to all persons who need them[.] as determined by the local social services agency.

b. Priority and optional services shall be provided to persons requesting them in accordance with the individual service plan. The local social services agency's obligation to provide priority and optional services is limited to the [amount] cost estimates specified in the annual local social service[s] plan.

2. The following services or components of services are mandatory and must be provided by the local social services agency to all persons in each geographic area who need or request them.

a. Adoption [s]ervices

(1) Adoptive home studies on court referred adoption petitions.

(2) Adoptive home studies for applicants wishing to adopt minority or handicapped children.

(3) Placement and follow-up for all children placed under agency auspices.

[b. Day Care Services for Children]

(b.) [(1)] Daytime Activity [Center (DAC)] Services

(c.) [(2)] Day Care Services

(1) For children receiving Aid to Families with Dependent Children (AFDC) whose parents are employed or in training for employment.

[e.] (d.) Family Planning Services

(1) Education or counseling for individuals receiving AFDC.

[d.] (e.) Foster Care Services for Children

[e.] (f.) Health Related Services [including services] required under the Minnesota Hospitalization and Commitment Act

(1) For individuals needing institutional treatment; community alternatives to institutional care for mental illness, chemical dependency or mental retardation; and management of individualized service plans on release from state institutions.

[f.] (g.) Protective Services for Adults

(1) Subacute detoxification services.

(2) Mental retardation guardianship and conservatorship services.

[g.] (h.) Protective Services for Children

[h.] (i.) Residential Treatment Services

(1) For emotionally disturbed children in licensed residential treatment centers or group homes.

(2) For mentally retarded children.

[i.] (j.) Employability Services

(1) For individuals receiving AFDC.

3. The following services, or components of services, are priority services, which are available at the discretion of the county welfare or human services board. [Each local social services agency shall make every effort to provide for these services.] The state agency strongly recommends these services be made available by local social services agencies.

a. Chore Services

(1) For individuals receiving Supplemental Security Income (SSI).

~~b. Day Care Services for Adults~~

~~(1) DAC Services~~

~~c.~~ b. Day Care Services for Children

(1) For children of working parents in income eligible categories.

~~d.~~ c. Family Planning Services

(1) Education or counseling for individuals in the income eligible categories.

(2) Medical services and supplies for individuals in the income eligible categories.

~~e.~~ d. Health Related Services

(1) Other than those required by the Minnesota Hospitalization and Commitment Act~~.~~ as defined in the CASP Plan.

~~f.~~ e. Home Delivered and Congregate Meals

(1) For individuals receiving SSI.

(2) For individuals who are in the income eligible categories.

~~g.~~ f. Homemaking Services

(1) For all adults.

(2) For children during the temporary absence of the parent responsible for their care.

~~h.~~ g. Information and Referral Services

~~i.~~ h. Protective Services for Adults

(1) Other than subacute detoxification services and mental retardation guardianship services.

~~j.~~ i. Residential Treatment Services

(1) Primary treatment for individuals who are chemically dependent.

(2) Halfway house for individuals who are chemically dependent and mentally ill.

[k.] (j) Transportation Services

(1) For individuals receiving SSI.

[l.] (k) Employability Services

(1) For SSI-MSA recipients.

(2) For low-income persons who are income eligible.

4. The following services or components of services shall be made available at the option of the local social service(s) agency.

a. Day Care for Children

(1) For families who are in the income eligible categories.

(2) For families on a fee basis who are not in the income eligible categories.

b. Day Care for Adults

[(1) Other than DAC.]

c. Education Assistance

d. Foster Care for Adults

e. Home Delivered and Congregate Meals

(1) For individuals receiving AFDC.

(2) For individuals on a fee basis who are not in the income eligible categories.

f. Housing Services

g. Legal Services

h. Social and Recreational Services

i. Transportation Services

(1) Other than SSI.

j. Counseling Service(s) for Families and Individuals

D. Client Information for Social Services

1. Information gathered on clients shall be used for the provision of services and the management of the program and shall be limited to the information necessary for these purposes.

2. Clients shall be informed that information on them is collected, used, stored and disseminated.

3. Clients shall have access to information about themselves pursuant to applicable state and federal laws. Information regarding clients shall be collected, used, stored, and disseminated only in accordance with state and federal law.

4. Officials directly related to the provision of service and administration of the program shall have access to client information. These officials may include those of the agency to which the client applies, those of the agency providing service, federal and state auditors, evaluators, and researchers with the authorization of the Commissioner of Public Welfare.

E. Application

1. Each individual wishing to apply for social services shall be given the opportunity to do so without delay. Applications are not to be required for information and referral services.

a. Applications shall not be required for information and referral services.

b. Applications shall not be required for group eligibility. However, the local social services agency shall obtain sufficient information to document the basis for the group eligibility decision. EXCEPTION: Clients requesting family planning services, whether based on group eligibility or individual eligibility, shall make written application in order to document that the request is voluntary.

2. Except as provided for in E. 1. above, each application shall be completed, signed, and dated by the applicant or by a responsible individual acting on behalf of the applicant on an application form prescribed by the state agency. If for reason of age, incompetence, noncooperation or any other valid reason the applicant cannot sign the application, the following may sign in descending order of priority:

a. Legal guardian of the applicant.

b. Relative of the applicant.

c. Friend of the applicant.

d. Agency representative.

3. Each applicant shall be given a written statement of his rights and responsibilities on the form prescribed by the state agency. For those individuals who cannot make use of/or understand the written statement for reasons such as disability, age or education, the agency representative

shall read out loud or interpret the written statement to the individual or to a responsible person acting on behalf of the individual.

4. Each applicant or his representative [must] shall declare his income on a form prescribed by the state agency, and [must] shall sign and date the form. This form need not be completed if:

a. The applicant may receive services without regard to income; or

b. The agency does not intend to claim Title XX Federal Financial Participation (FFP) for the services to be provided; or

c. The applicant may receive services on the basis of group eligibility.

5. The agency shall act promptly on the application. In no instance shall the agency take longer than 30 calendar days to [notify the applicant in writing that his application has been approved or denied.] make an eligibility decision nor shall the agency take longer than 15 days after the eligibility decision to notify the applicant in writing that his application has been approved or denied. The notification date shall be entered in the case record. If the application is denied, the individual shall be notified in writing of the reason for denial and of his right to appeal to the state agency.

6. If the application is approved, the local social services agency shall provide the social services with reasonable promptness. Reasonable promptness means:

a. Within 30 days of the application; or

b. Within 15 days of the notification that the application has been approved; or

c. At an appropriate later date which has been mutually agreed upon by the local social services agency and the applicant.

F. Client's Right to Accept or Reject Services

The applicant shall have free choice to accept or reject an agency assessment of a need for social services or an offer of social services. A refusal to accept social services shall not affect payment of financial assistance under income maintenance programs except in the Work Incentive Program. The local social services agency is not relieved of its statutory responsibility to provide protective services by the refusal of such services by any person who needs such services or acts on behalf of anyone who needs social services. In these instances when a statutorily required service is rejected, the person or his caretaker or guardian shall be given a clear explanation of the possible consequences of that choice.

[F.] (G.) Client Social Services Plan

1. Whether services are provided directly by the local social services agency or through a contract with another provider, there shall be a plan for the provision of services for each family or individual receiving services.

2. The client social services plan shall:

a. [The service plan shall] be developed with the person receiving service. If the client is unable to participate in developing the plan, the plan [is to] shall be developed with the person(s) responsible for him.

b. [The plan must] Identify the needs for service (reasons for agency involvement); the specific services to be provided; and the [goals] objectives to be achieved.

c. [The plan is to] Specify the frequency (weekly, every other week, monthly, etc.) and purpose of contacts between worker and client.

d. [The plan is to] State the anticipated time necessary to accomplish the identified [goals] objectives.

e. [The plan shall] Specify mutually agreed upon times for review of the plan, to assess progress and revise, as necessary. The plan shall be reviewed at least annually.

[G.] (H.) [Implementation of] Title XX of the Social Security Act

1. Goals: Federal financial participation (FFP) under Title XX of the Social Security Act [is] shall be available to the extent Federal funds are allotted for eligible individuals and services [as] which are specified in the local social services plan. [for] Social services [related] shall be provided to achieve the following goals:

a. Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

b. Achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

c. Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests;

d. Preserving, rehabilitating, or reuniting families;

e. Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; or

f. Securing referral or admission for institutional care when other forms of care are not appropriate or providing services to individuals in institutions.

2. State Administrative Plan Requirements:

a. The Minnesota Department of Public Welfare shall be the designated state agency for Title XX.

b. State and local funds shall be included in meeting the cost of the program.

c. Personnel administration shall be governed by rules of the State Merit System or respective county civil service system.

d. The use and disclosure of information on applicants and clients shall be safeguarded.

e. There shall be no requirements as to residency or citizenship in respect to eligibility for Title XX federal financial participation in costs of services provided.

f. Standards for institutions and foster homes shall be established by state licensing rules.

g. Standards for child day care services shall be established by state licensing rules.

h. A system of fair hearings shall be established under which an applicant may appeal denial, reduction, or termination of service.

i. The State Administrative Plan shall be amended when necessary.

j. Amendments to the State Administrative Plan shall be submitted to the Social and Rehabilitation Service of the Department of Health, Education, and Welfare by the State Department of Public Welfare.

k. Records shall be maintained and reports made to the federal agency as required by federal regulations.

l. The aggregate state expenditures for social services shall not be reduced below the aggregate expenditures for the fiscal year ending June 30, 1973.

3. Federal social service funds shall be apportioned to the local social service agencies on the basis of a formula developed by the Commissioner of Public Welfare.

4. Eligible Categories: Title XX shall be available for all mandatory priority and optional services provided to eligible categories of individuals and families, when these services and categories are included in the local social services plan. Eligible categories of individuals are as follows:

[5. FFP is available for services provided to the following categories of individuals, for services included in the local social service plan:]

a. Income Maintenance Eligible Categories:

(1) Current recipients of Aid to Families with Dependent Children (AFDC).

(2) All individuals, not in the AFDC grant, including stepfathers, but excluding foster parents, who are adult caretakers of children receiving AFDC.

(3) Recipients of Supplemental Security Income (SSI) or Minnesota Supplemental Assistance (MSA).

b. Income Eligible Categories:

(1) Individuals and families eligible without a fee.

(2) Individuals and families eligible with a fee.

(3) Individuals and families whose eligibility is determined on a group basis as specified in Section H. 5. of this Rule.

c. Eligible Without Regard to Income:

(1) Individuals receiving information and referral services.

(2) Individuals receiving services as stated in 45 CFR 228.65 directed toward the goal of protection[.] as specified in Section H. 6. of this Rule.

(3) Minors who voluntarily request family planning services as specified in Section H. 7. of this Rule.

5. Group Eligibility

a. Local social services agencies have the option to include in the geographic area plan group determination of eligibility for social services as provided in and subject to federal regulations for Title XX.

6. Services Directed Toward the Goal of Preventing or Remedying Neglect, Abuse, or Exploitation Without Regard to Income

a. Adults

(1) Title XX funds shall be available for services provided to adults who are unable to protect their own interests because of the actions or inactions of themselves or others which may result in injury, neglect, maltreatment, or exploitation.

(2) The local social services agency shall document by entering into the case record for each adult the circumstances which lead the agency to believe the adult is subject to or in risk of being abused, neglected or exploited. A social services plan shall be developed that is directed toward protecting the adult or assisting the adult in protecting his interests.

(3) No later than six months after the case has been opened, and every six months thereafter while the case remains open, the local social services agency shall reevaluate and document the continued need for services for preventing or remedying neglect, abuse, or exploitation of the adult. The approriateness of the social services plan shall be reassessed at the same time.

(4) FFP shall be available without regard to income for the following services and activities for adults in need of protection:

(a) Identification of adults who are in need of protection.

(b) Provisions for the receipt and response to reports.

(c) Substantiation of the allegations.

(d) Counseling services with the adult or others responsible or interested in the adult's welfare when provided by the local social services agency.

(e) Assistance in arranging alternative living arrangements, medical care, legal services, and other services in the community.

(f) Assistance in arranging for guardianship, conservatorship, and commitment, or for providing advocacy, including legal services to assure the adult of rights and entitlements.

(g) Emergency homemaking not to exceed 30 days.

(h) Money management services.

(5) Eligibility for other social services in the CASP Plan which are directed to this goal shall be established on the basis of income maintenance status, income status, or group eligibility.

b. Children

(1) Title XX funds shall be available to prevent or remedy child neglect, abuse or exploitation. Title XX funds shall also be available for runaways harmed or threatened with harm by virtue of their status as runaways.

(2) The local social services agency shall document by entering into the case record for each child, that the parent or guardian is threatening to harm; is harming the child; or is failing to provide for the protection, care, and supervision expected by the community. Harm or threatened harm to a runaway shall also be documented.

(3) No later than six months after the case has been opened and every six months thereafter while the case remains open, the local social services agency shall reevaluate and document the continued need for services to prevent or remedy neglect, abuse or exploitation of a child. The appropriateness of the social services plan shall be reassessed at the same time.

(4) FFP shall be available without regard to income for the following services and activities for children in need of protection.

(a) Identification and social/medical diagnosis of such a child or condition.

(b) Provision for the receipt and response to reports.

(c) Substantiation of the allegations.

(d) Counseling services for families and individuals when provided by the local social services agency.

(e) Emergency shelter not to exceed 30 days in any six-month period which may be consecutive or may accumulate over more than one stay.

(f) Arranging for the provision of other services, when essential to the protection of the child.

(g) Legal representation or advocacy for the child.

(h) Court ordered social services with the exception of maintenance and medical costs which are not integral and subordinate, when the court absolves the family from making any payment or the payment established by the court does not meet the full cost of the services.

(i) All appropriate social services in the CASP Plan which are necessary to protect runaways harmed or threatened with harm.

(j) Emergency homemaking services not to exceed 30 days.

(k) Money management services.

(5) Eligibility for other social services in the CASP Plan which are directed to this goal shall be established on the basis of income maintenance status, income status, or group eligibility.

7. Family Planning Services

a. Title XX FFP shall be available for family planning services provided at the option of the local social services agency to minors (under age 18) who voluntarily request such services.

b. When a minor requests family planning services, he shall be informed that his parents need not be contacted in order for him to receive services. The local social services agency shall contact the minor's parents regarding his receipt of family planning services only with the written consent of the minor.

8. Household:

a. The following individuals living in the same domicile shall be considered a household for purposes of determining eligibility for Title XX funding:

(1) Spouses.

(2) Parents and their dependent children.

b. Household members (parents and their children under age 18) temporarily absent from the household in settings such as residential treatment, foster care, and school shall be considered members of the household.

c. The following individuals shall be considered a one-person household for purposes of determining eligibility for Title XX:

(1) An adult living alone.

(2) An adult living with individuals other than a spouse or dependent children.

(3) A child living with a relative other than a parent or legal guardian.

(4) An emancipated minor. < definition see HE, 6

(5) A child whose parental rights are terminated.

(6) A child living in adoptive placement prior to finalization of the adoption.

(7) A child who is not living with his parents or legal guardian and who is seeking confidential services (social services related to determining or treating pregnancy, venereal disease, alcohol and other drug abuse as provided for in Minnesota Statute 144.343).

(8) A minor child regardless of living arrangement who receives family planning services as specified in H. 7. of this Rule.

(9) A child who is not living with his parents but whose parents are under a juvenile court order to contribute to his support as a result of a finding of dependency, neglect, or delinquency.

[9. Household Monthly Gross Income b. Monthly gross income means the total monthly income before deductions received by all family members age 14 or over.]

What?

a. Sources of monthly gross income and definitions are ~~shall be~~ as follows:

(1) Money, Wages or Salary - i.e., total money earnings received for work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece-rate payments, cash bonuses earned, before deductions are made for taxes, bonds pensions, union dues, and similar purposes.

(2) Net Income from Self-Employment - i.e., gross receipts minus expenses from one's own business, professional enterprise, or partnership. Gross receipts include the value of all goods sold and services rendered. Expenses include costs of goods purchased, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes), and similar costs. The value of salable merchandise consumed by the proprietors of retail stores is not included as part of net income.

(3) Net Farm Income - i.e., gross receipts minus operating expenses from the operation of a farm by a person on his/her own account as as owner, renter, sharecropper. Gross receipts include the value of all products sold, government crop loans, money received from rental of farm equipment to others, and incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include cost of feed, fertilizer, seed, and other farming supplies, cash wages paid to farmhands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes (not state and federal income taxes), and similar expenses. The value of fuel, food or other farm products used for family living is not included as part of net income. Form DPW-21 may be used to document farm income.

(4) Social Security - includes Social Security pensions and survivors' benefits, and permanent disability insurance payments by the Social Security Administration prior to deductions for medical insurance and railroad retirement insurance checks from the U.S. Government.

(5) Dividends, Interest (on Savings or Bonds), Income from Estate or Trusts, Net Rental Income or Royalties - include dividends from stockholdings or membership in associations, interest on savings or bonds, periodic receipts from estates or trust funds, net income from rental of a house, store, or other property to others, receipts from boarders or lodgers, and net royalties.

(6) General Assistance - means a state and locally administered maintenance program for persons who cannot qualify for AFDC, SSI, or other income maintenance programs.

(7) Pensions and Annuities - include pensions or retirement benefits paid to a retired person or his/her survivors by a former employer, or by a union, either directly or through an insurance company, periodic receipts from annuities or insurance.

[(8) Unemployment Compensation - means compensation received from government unemployment insurance agencies or private companies during periods of unemployment and any strike benefits received from union funds.

(9) Worker's Compensation - means compensation received periodically from private or public insurance companies for injuries incurred at work. The cost of this insurance must have been paid by the employer and not by the person.

(10) Alimony.

(11) Child Support.

(12) Veterans' Pensions - means money paid periodically by the Veterans' Administration to disabled members of the Armed Forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training, as well as so-called "refunds" paid to exservicemen as GI insurance premiums.

e. b. Exclusions from Monthly Gross Income - Excluded from computation of monthly gross income are the following:

(1) Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims,

(2) Payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under Section 21(a) of the Act;

(3) Money received from sale of property, such as stocks, bonds, a house, or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds would be counted as income from self-employment);

(4) Withdrawals of bank deposits;

(5) Money borrowed;

(6) Tax refunds;

(7) Gifts;

(8) Lump sum inheritances or insurance payments;

(9) Capital gains;

(10) The value of the coupon allotment under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons;]

[(11) The value of USDA donated foods;

(12) The value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;

(13) Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(14) Earnings of a child under 14 years of age (no inquiry shall be made);

(15) Loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs;

(16) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act; and

(17) Home produce utilized for household consumption.]

[6.] (9.) Determination of Eligibility for Title XX FFP

a. Different methods of determining eligibility for Title XX funds may be implemented for different services, categories of individuals, and geographic areas.

b. Through official county welfare/human services board action, each geographic area shall establish methods of determining eligibility.

c. At a minimum, such method shall be the declaration method, with the exception that when a local social services agency has reason to believe a client is giving false information, the agency may then require the client to document the information.

d. When the documentation method is used:

[a. Documentation of Income]

(1) FFP [is] (shall be) available only to meet the cost of services provided to clients whose income maintenance status or [family] (household) monthly gross income has been documented.

(2) Adequate documentation shall include written evidence of income maintenance status or [family] (household) monthly gross income in addition to the signed application and income declaration forms. This written evidence shall include either:

(a) A copy of a source document [(original written statement such as a paycheck stub used to verify income)] filed in the case record; or

(b) A written statement by the worker which specifies the content of the source document.

(3) Failure on the part of an applicant to cooperate in documenting income shall be acceptable grounds for delay beyond 30 days in processing an application or denial of eligibility for Title XX FFP in services requested.

(4) Contact with other individuals or agencies shall [not] be made only without the prior written permission of the applicant and shall [only] be made only when there is no other way to document income.

(5) If an applicant declares that income is received as cash without a receipt, the [client] local social services agency shall [be] requested [] the client to secure a receipt from the employer.

(6) If documentation cannot be obtained in any other manner, [contact] the local agency shall contact [with] the employer [by the agency is required,] after gaining the written permission of the applicant. If a purchase of service contract permits the vendor to document eligibility and if contact with a third party is necessary, the vendor shall inform the applicant that the applicant has the right to have the local social services agency, rather than the vendor, make the contact.

[b.] e. Applicant declaration of household size shall be accepted without documenting evidence, unless there is reason to question the declaration, in which case birth certificates or other documentation is required.

[e.] f. Time Period for Determination of Eligibility for Title XX FFP:

(1) Income maintenance status shall be [verified for] based on the month of application for services or the month prior to application for services.

(2) [Family] Household monthly gross income shall be based on either:

(a) Prospective monthly gross income for the month in which application for services is made; or

(b) An average monthly amount estimated over any six (6) consecutive month period in which the month of application is included.

[d.] g. An individual shall remain eligible for a maximum of six [(6)] months from the date eligibility was initially [established,] determined. [However,] Eligibility may be [reassessed] redetermined at any time by the local social services agency.

EXCEPTION: Eligibility shall be redetermined annually for individuals whose household monthly gross income is derived exclusively from pensions, Social Security, or SSI, or a combination of these.

[8.] (10.) Social Services Fee

a. When Title XX FFP is claimed for service provided to individuals and families who are income eligible without a fee, no social services fee shall be charged to the client.

b. When a local social services agency wishes to claim FFP for services provided to individuals and [families] households who are income eligible with a fee, a social services fee shall be charged according to the state-wide fee schedule in the [Comprehensive Annual Services] CASP Plan.

c. Local social services agencies shall make a reasonable effort to collect fees charged. Evidence of a reasonable effort shall exis[s] if the local social services agency documents that at least 90% of the fees imposed have been collected. If this test cannot be documented, then a reasonable effort shall exists if the following conditions are met and documented:

(1) A bill is rendered or notice given to the client at the time of eligibility determination of the fee amounts and dates due; and

(2) At least three collection notices are given in person or by mail to the client, usually at 30-day intervals. Title XX eligibility is lost if the fee remains delinquent after three collection notices have been given. Title XX eligibility cannot be regained until a plan of payment has been agreed upon and implemented by the client and the agency.

d. The fee charged shall be the amount indicated on the [statewide] appropriate fee schedule, in the CASP Plan, except that no fee shall exceed the actual cost of all the services in the service plan.

(1) [No fees] for residential services for emotionally disturbed, [and] mentally retarded, and epileptic children shall [exceed $60 per month. (See Rules DPW-30 and DPW-33).] be consistent with Minnesota cost of care laws and rules.

(2) When services are being provided in addition to residential services for emotionally disturbed and mentally retarded and epileptic children, two fees shall be computed and imposed, one for residential services and one for all other services received.

[9.] (11.) Purchase of Service Contracting

a. General Provisions

(1) The local social services agency shall deliver social services subject to FFP under Title XX by direct delivery, by purchase, or by arranging the services at no cost to the agency.

(2) As an alternative to providing such services directly and if not available without cost to the agency, the local social services agency may purchase services from public, nonprofit or proprietary agencies, or from individuals who have been designated as approved vendors.

(3) Services purchased with the intention of claiming FFP must be listed in the [Comprehensive Annual Services Program] (CASP) Plan.

(4) At the option of the local social service(s) agency, these same policies and procedures may be utilized for purchased services not subject to FFP.

b. Administrative Requirements

(1) The local social service(s) agency shall:

(a) Claim FFP only for services purchased through a written contract. Every purchase of service contract whether major or limited contract, shall be completed, signed and approved by the county welfare or human services board prior to the provision of services.

[(b) Submit to the state agency a Letter of Contract Certification which includes a statement of board approval, name of contractor, contract control number, date of effect, services to be provided, gross amount, and unit costs per service. This letter shall be submitted on all approved major and limited contracts negotiated with agencies and facilities by the local social service agency. It is not necessary to submit information on services purchased from individuals.]

[(c)] ((b)) Be responsible for client eligibility for purchased services; however, the local agency may make provision in the contract for the provider to make a determination of eligibility.

[(d)] ((c)) Be responsible for the development of a client service plan based on the needs of the individual and the ability of the provider to meet those needs.

[(e)] ((d)) Be responsible for monitoring purchased services and evaluating contract performance.

[(f)] ((e)) Purchase only from approved vendors.

(2) Case record requirements for direct services shall apply to purchased services.

(3) The local social service(s) agency shall maintain an administrative file for each contract which contains:

(a) A copy of the signed and completed contract. [and Letter of Contract Certification.]

(b) Copies of correspondence between the provider and the local agency.

[(c) A list of reimbursement eligible persons served to date under the terms of the contract.]

[(d)] ((c)) Evidence that the [certification] (determination) of reimbursement eligibility and authorization of approval of (client social services) [service] plan have been made.

[(e)] ((d)) Copies of monitoring and evaluation reports.

[(f)] ((e)) Copies of correspondence between the local agency and the state agency related to the contract.

[(g)] ((f)) Copies of fair hearings, complaints, grievances, and inquiries related to contract performance.

[(h)] ((g)) Financial, statistical, and social services reports specified in the contract.

c. Host County Contracting

(1) The local social services agency of the county in which an approved provider is located shall negotiate and administer host county purchase of service contracts on behalf of any other local social services agency wishing to purchase services.

(2) All local social services agencies shall abide by the terms of the host county contract.

(3) The host county shall assume responsibility for monitoring and evaluation of the contract.

(4) The host county shall make available, on the request of other [public] (local) social services agencies, copies of the host county contract.

(5) The following exceptions apply:

(a) The host county need not enter a contract unless there is at least one other local agency wishing to purchase from the provider; and

(b) Each local social services agency within the area served by an Area Mental Health Board may contract directly with the Area Board; however, if a local social services agency outside of the geographic area served by the Area Board wished to purchase services, the host county policy applies.

d. Technical Assistance

(1) The local social services agency shall provide technical assistance and information to potential providers, draft contracts for purposes of negotiation, and assist providers in matters of record-keeping, statistical reporting, and determination of rates of payment.

DR/hfa

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Joanne E. Hinderaker
Special Assistant Attorney General

DATE: January 12, 1979

FROM : John L. Kirwin JK
Special Assistant Attorney General

PHONE: 296-6628

SUBJECT: Proposed Amendments to Minnesota Rule DPW-160.

I have reviewed your memo of November 30, 1978, in which you withhold your approval of Proposed Amendments to Minnesota Rule DPW-160. On the bases outlined below, we request that you reconsider this matter and approve the Proposed Amendments, as originally submitted to you.

Since the time when the Proposed Amendments were originally submitted to you, the Department of Public Welfare has located a list of persons who indicated at the Hearing that they wished to be advised when the Rule was submitted to you. Since this was not done at the time of our original submission to you, we are giving notice to such persons as of this date.

The bases for our request for reconsideration are as follows:

1. Section B.6.b. of the original Rule 160 provides that "Open meetings shall be held throughout the state to answer questions and receive public comment on the proposed annual plan." You found that the Department's proposed amendments to this Rule were invalid and unacceptable.

   The amendment originally proposed changed the "shall" to "may" in the above-quoted provision. You object to that change for two reasons. First, you find that the Department did not make a showing of the need for and reasonableness of the proposed amendment. Secondly, you find that the proposed change gives the department discretion as to whether or not to hold "open" meetings, and therefore brings the Rule into possible conflict with the "Open Meeting Law," Minn. Stat. Section 471.705(1978).

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JAN 15 19
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

The Department did make a showing of the need for and reasonableness of the proposed amendment during the record period after the hearing. I am enclosing for your information and review a copy of a letter from Herb Cashdollar of the Department of Public Welfare to the Hearing Examiner, during the record period. In the last paragraph of page 6 of that letter, Mr. Cashdollar explains that the Department felt it unwise to make the meetings in question mandatory with the local agencies, because the meetings had often been poorly attended and were not considered to be effective mechanisms to solicit public response. It should be noted that the rule provides for other methods of soliciting input from concerned persons.

Regarding the "open meeting" issue, the proposed amendment was intended to make the holding of the meetings discretionary with the local agencies, and not to make the "open" nature of the meetings discretionary. The Hearing Examiner felt that the Rule, with the proposed amendment, conflicted with the Minnesota Open Meeting Law. That law, Section 471.705, provides that certain types of meetings described in the law shall be open to the public. The term "open meeting" is not a defined term or a term of art in the statute. Rather, the statute itself defines what meetings it covers.

It is clear from the above that the Open Meeting Law, rather than Rule 160, specifies what meetings are subject to the requirements of the Open Meeting Law. The amendatory language clearly did not, on its face, provide for violations of the Open Meeting Law.

Because of the controversy at the Hearing regarding the relationship of the meetings described in Section B.6.b. to the Open Meeting Law, the department changed the term "Open" to "Public" in the rule adopted by the Commissioner and forwarded to you. The Department believes this change was not substantial, or even substantive, but was only made to eliminate a source of confusion. As discussed above, the relationship of the meetings in question to the Open Meeting Law is determined by that statute, and not by Rule 160. In addition, if the meetings are required by the Open Meeting Law to be open to the public, there is certainly nothing in the term "public meeting" that is inconsistent with the Open Meeting Law. The requirement of that statute is that such meetings be "open to the public . . . ." The term "public meeting" is consistent with, not contrary to, that requirement.

2. Your second reason for withholding approval of Rule 160 is that the Department fails to address the Hearing Examiner's Finding at page 21 of his Report, regarding Section H.9.g. The Examiner found that he had requested the Department to meet with certain persons, resolve a problem and report back to the Examiner, and that the Department had failed to do so. On that basis, the Examiner found that the Department had failed to meet its burden of demonstrating reasonableness of the proposed section.

   We are not aware that the reasonableness of a rule depends on the Department's compliance with the Hearing Examiner's suggestion that it meet with certain persons.

   At the hearing, the persons noted in the Examiner's Report indicated that it was their understanding that eligibility must be determined on the last day of the six month period, and not before or after that date. Agency staff at the hearing told them that this was not the case, and Section H.9.g. could not be clearer when it says "Eligibility may be redetermined at any time by the local social services agency." The Section is clear and reasonable.

   Additionally, it should be noted that the Department's burden was to demonstrate the reasonableness of the proposed amendments, and not the reasonableness of the section of the rule which had been validly promulgated earlier. The Examiner's comments do not relate to the proposed amendments.

3. Although you did not reject the rule on this basis, you cautioned the Department concerning the danger of an improper application of Section A.2. of the rule, concerning the issuance of bulletins and manual material. It is the Department's position that the validity of any such bulletins and manual material with respect to the Administrative Procedure Act would depend on the content and effect of such bulletins and manual material, and not on any reference to such material in Rule 160.

Based on the foregoing, the Department of Public Welfare requests that you approve the Proposed Amendments to Rule DPW-160 as submitted to you.

Your consideration is appreciated.

JLK:ham

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

OFFICE OF THE
COMMISSIONER
612/296-2701

GENERAL
INFORMATION
612/296-6117

September 21, 1977

Mr. Russell Doty
Hearing Examiner
1045 Grand Avenue
Saint Paul, MN 55105

RE: DPW Rule 160

Dear Mr. Doty:

Here are the comments of the Department of Public Welfare on the testimony and comments we have seen to date. If there are late arriving written comments, we would appreciate the opportunity to review and comment.

Exhibit P-1, Otter Tail County:

Mr. Solomonsen recommends that Rule 160 be changed to specify the procedure for notification of application approval, i.e., by mailing the client the yellow copy of Form DPW-1950.

In the opinion of the Department of Public Welfare the specific procedural forms used to meet administrative standards found in Rules are not the proper subject of rule-making. Current Department internal management procedures permit counties to use Form DPW-1950 to notify clients of application approval, as Mr. Solomonsen recommends.

Exhibit P-2, St. Louis County:

Mr. Wangensteen objects to counties losing Title XX funds if a client still refuses to pay a fee after three monthly collection notices have been received.

It is not within the Department's authority to allow indefinite Title XX eligibility for a client who is required to pay a Title XX fee but does not do so. Title XX Regulations (Exhibit N), 45 CFR 228.62 read clearly that Federal financial participation (FFP) is available for certain client categories only if a fee is imposed; and the state must establish methods for collection and maintain evidence of a reasonable effort to collect the fee. The Department has taken a very liberal view of this requirement by permitting Title XX eligibility to continue for three months after the fee becomes delinquent. We believe that a more liberal policy could jeopardize Title XX funds by Federal audit. Besides, a more liberal policy would not mean additional Title XX funds to the state or to St. Louis County since the full Federal allotment to the state is being used.

RECEIVED SEP 22 1977

Further, Mr. Wangensteen objects to Section H. 10 d (2) which requires that a fee for residential treatment of emotionally disturbed, mentally retarded, or epileptic children be kept separate from all other Title XX fees for services.

The Department is bound by this duality of fees in order to make Title XX funds available for residential treatment for these children. Minnesota Statute 252.27, as amended by the 1977 Legislature, sets a statutory maximum of $125 on parental financial liability; therefore, the statewide Title XX fee schedule cannot apply to residential treatment for these children but must apply to all other Title XX services the child's family may receive. The Department agrees that dual fees is not an ideal situation but sees no other way to handle the problem.

Mr. Wangensteen's question about the definition of emancipated minor will be discussed later.

Finally, Mr. Wangensteen objects to making developmental achievement services (DAC services) mandatory for adult mentally retarded persons, because of the cost of such a requirement.

As the Department pointed out in testimony on September 2, it was never our intent to make these services mandatory at this time through Rule 160. Developmental achievement services for adults was made mandatory by Rule DPW-185 (Exhibit L) which was promulgated in March 1977. At this time, we merely propose to bring Rule DPW-160 into conformity with Rule DPW-185.

Exhibit P-3, State Senator B. Robert Lewis:

Senator Lewis asks how priority services were decided by the Department and suggests that the rationale for these decisions be made part of the Rule.

In effect, priority services were identified by a process of elimination. They are those services identified in the Comprehensive Annual Services Program Plan (CASP Plan) which are not made mandatory by Federal Law and Regulation or State Law and Rule. A further but less important distinction is made between priority services and optional services, the former being those non-mandatory services which have a significant history of service delivery or state funding not common to the optional services. These criteria for designating mandatory, priority and optional services appear each year in the CASP Plan.

Senator Lewis recommends that "battered women" be explicitly included at Section H. 6. a. on page 13.

In the Department's opinion, Section H. 6. a. includes any and all adults who are unable to protect their own interests and who are in danger of injury, neglect, maltreatment or exploitation. This would certainly include battered women. We recommend against explicitly including battered women as a category since no other category of adults in need of protection is included in Section H. 6. a.

Also, Senator Lewis recommends that protective services for battered women be made a mandatory service at Section C. 2. g.

The Department cannot accept this recommendation since, as stated earlier, only those services required by Federal Law and Regulation or State Law and Rule are identified in Rule 160 as mandatory services. To our knowledge there is no law or regulation which requires local social service agencies to provide services to adult battered women. But, since the state has funded programs for battered women in Laws of 1977, Chapter 428, a case could be made for including services for battered women as a priority service at Section C. 3. h. under Protective Services for Adults. However, we question the wisdom of making this a priority service for local welfare agencies since the Legislative appropriation is to the Department of Corrections rather than to the Department of Public Welfare.

Exhibit P-4, Minnesota Governor's Planning Council on Developmental Disabilities:

As pointed out by Ms. Fithian, there is a typographical error on page 11, G. 2. a. The second sentence should read, "If the client is unable to partici-page in developing the plan, the plan shall be developed with the person(s) responsible for him."

On page 21 at H. 10. (2) the word "usually" is used since not all counties have a fee billing procedure established at strict 30-day intervals. The Department could accept deletion of the word "usually".

Exhibit P-5, Legal Aid Society of Minneapolis:

The Department supports Mr. Fargione's recommendation to change C. 3. f. on page 7 to read "f. Homemaking Services including attendant care."

Exhibit P-6, John E. Derus, Hennepin County Commissioner:

As above, the Department supports the inclusion of attendant care in Rule-160.

Exhibit P-7, Acting Commissioner Dirkswager's letter:

No comment.

Exhibit P-8, Granville House Inc.:

Ms. Christiansen has recommended a substantive change in the host county policy at Section H. 11. c. on page 23 to permit a waiver of the policy for circumstances such as hers. The Department of Public Welfare is sympathetic to the problems of Ms. Christiansen, and we are hopeful that a solution can be found short of amending Rule-160. Dialogue has begun among Department staff, Ms. Christiansen and her attorney, and Washington and Ramsey Counties.

Exhibit P-9, Hennepin County Welfare Department:

Mr. Eugene Johnson suggests that Section A. 5. on page 1 be deleted and to restrict applicability of Rule-160 only to those services paid for by federal funds.

The Department of Public Welfare cannot accept this recommendation for the reasons given in detail on pages 1 and 2 of the Statement of Need. It is imperative that the Department, as the supervisory agency of county welfare departments, be permitted to set minimum statewide administrative standards regardless of funding source to assure uniform administration and equitable treatment of clients. This is what Rule-160 attempts to accomplish.

Mr. Johnson criticizes the definition of social service at Section A. 6. t. and argues that it is theoretically possible to include in the definition services such as CETA.

The Department does not believe it is theoretically possible to include irrelevant services in the CASP Plan on the strength of Rule 160, as Mr. Johnson suggests. The inclusion of such irrelevant services is beyond the scope of this Rule. As the Department testified in Public Hearing on September 2 and as supported by Mr. Stan Keeley speaking for the Minnesota Association of Mental Health Programs: This Rule is binding only on those services and programs known as welfare department social services. The Rule is not binding on income maintenance programs, mental health center programs, health department programs or CETA programs unless there happens to exist a Title XX purchase of service contract between the welfare department and those other programs.

Mr. Johnson recommends that the group eligibility procedures be more detailed at Section E. 1a. Mr. Johnson does not recommend what those detailed procedures should be.

The detailed group eligibility procedures which are binding on all states can be found in the Title XX Regulations (45 CFR 228, Exhibit N) and are not in the Department's opinion proper subject for rule-making.

In respect to E. 4. a. c. the Department supports Mr. Johnson's recommendation to delete the word "may" and to substitute the word "will only".

Mr. Johnson suggests that the limitations be removed from Sections H. 6. a. and b. (4) so that virtually all of the Title XX services identified in the CASP Plan can be provided without regard to the client's income.

The Department rejects this suggestion for the reasons detailed at the top of page 5 of the Statement of Need. For the state to adopt the very liberal interpretations Hennepin County urges would subject unnecessarily a very large portion of Minnesota's annual Title XX claim of $46 million to possible federal audit exception without making available to the state additional Title XX funds.

At Section H. 6. b. (2) Mr. Johnson recommends that the child's parent or guardian be deleted as an exclusive source of harm to children in need of protection.

Mr. Johnson is reading Section H. 6. b. (2) too narrowly. The Section reads "...that the parent or guardian is threatening to harm; is harming the child; or is failing to provide for the protection, care, and supervison expected by the community. (Emphasis added.) This Section, as it now stands, recognizes that parents or guardians are the primary providers and protectors of their children; and it is only when this trust breaks down that the state can lawfully intervene. The Section as proposed by the Department in no way restricts the liberalized Federal Regulation to which Mr. Johnson refers.

Finally, Mr. Johnson offers extensive objection to listing of services as mandatory, priority, and optional in Rule 160 and the CASP Plan in as much as Rule 160 does not in every instance offer a total picture of the Minnesota program.

This apparent inconsistency is understandable since the Department has never intended to enumerate and define in Rule 160 all possible client target groups, social services and their detailed components and standards. There exists for each social service described in the CASP Plan a separate Rule or proposed Rule which sets forth its definition, components, and minimum administrative standards. It is to these separate Rules and the CASP Plan that one must turn to answer all of Mr. Johnson's concerns.

Stanley J. Keeley Letter (September 9, 1977):

Mr. Keeley has made two excellent suggestions which the Department supports with one minor modification.

First, he suggests that the language in Section A. 5 be changed to reflect the true intent and scope of Rule 160, that being the traditional social services administered by county welfare boards. Mr. Keeley suggests that A. 5. read: "Sections A through G of this Rule apply to county welfare boards and those human service boards which assume the responsibility for mandated social services that would be provided by county welfare board". Then strike the phrase "regardless of funding source" and let the second sentence stand. The Department believes that this recommendation can be improved further without changing Mr. Keeley's intent by striking the word "mandated". This could be interpreted incorrectly to mean that this Rule does not apply to priority and optional services.

Secondly, Mr. Keeley recommends that detoxification services be deleted as a mandatory service for local social services agencies on page 6 (f) (g) (1) since it is the Community Health Program Board which is responsible.

The Department agrees. At the Public Hearing on September 2 the Department incorrectly identified the county welfare board as the responsible board. The Department has examined Minnesota Statute 254A.08 (1976) and recognizes that the requirement to provide a detoxification program lies with the Community Mental Health Board. However, the statute does not refer specifically to the county board of commissioners as being responsible for the local share of funding. Minnesota Statute 254A.08, Subd. 3 reads in part, "Effective January 1, 1977 up to 75 percent shall be provided by the counties served and by client fees...".

Since most counties have provided the local match through their welfare accounts, detoxification was listed as a mandatory service. Since the Statute does not specify that the county welfare board must pay for these services, the Department is willing to delete this service from the mandatory list.

Testimony of Marina Vork (September 2, 1977):

The Department supports Ms. Vork's recommendation that C. 1. b. on page 5 be corrected to read (1st sentence): "Priority and optional services shall be provided to persons requesting them in accordance with the individual service plan to all persons who need them as determined by the local social services agency." This corrects an oversight in the proposed changes and clarifies that the same policy applies to priority and optional services as to mandatory services.

Diane Ahrens Letter (September 6, 1977):

No comment.

Ramsey Action Programs, Inc. Letter (September 7, 1977):

In respect to Ms. Lallier's comment that the new language of Section A. 6. b. is not adequately implemented at Section E. 3., the Department believes that Section E. 3. essentially accomplishes the purpose of notifying the client of his rights and responsibilities and helping the client to understand them. It is the obligation of the local social services agency to do whatever is necessary to help the client understand his rights and responsibilities. Attached to this letter is a copy of DPW-1400a which is given to every social services applicant in the state which adequately covers several areas including appeals, privacy, right to service, prompt eligibility determination and access to records.

Ms. Lallier recommends that opportunities for written and oral testimony by the public and background information by the state on the CASP Plan be incorporated into Section B.

In the opinion of the Department it would not be wise to impose such a requirement, which is not required by Federal Regulations, on the State Department of Public Welfare or on local social services agencies. During the first two years of the Title XX Program, the Department experimented with very limited success by holding publicized open meetings in various parts of the state to explain the Title XX Program and the proposed CASP Plan and to invite comments from the public. These meetings were poorly attended and were finally discontinued while more effective mechanisms were considered. The Department encourages, but does not require, local social services agencies to hold open forums to accomplish the results Ms. Lallier suggests. The experience of local agencies has been mixed; but they have generally been disappointing. It would be a mistake to mandate at this time open forums in Rule 160 without more successful demonstrations of this method of public participation in the CASP planning process.

Finally, Ms. Lallier makes several recommendations in respect to client information and access to records and right of clients to contest the accuracy of records.

The Department believes that Rule 160 is adequate in this respect. It should not be necessary to reiterate in Rule 160 Federal and State Laws/Regulations on these subjects. The handout (DPW-1400a) referred to earlier and attached to this letter, adequately informs applicants and recipients of these requirements.

Health Related Services (C. 2. f. Page 6):

The question has arisen if the Department intended to restrict these mandatory services by deleting the words "including services".

The language as proposed is what the Department intended. Only health related services required by the Minnesota Hospitalization and Commitment Act are mandatory. Other health related services are properly included as priority services at Section C. 3. d. (4) on page 7.

Secretary of State's Mailing List:

A question was raised about the sixth sheet of the Secretary of State's mailing list. Attached to this letter is the sixth sheet on which appears the name of Kathleen Meyerle along with an affidavit signed by Ms. Meyerle stating that she received by mail notice of hearing.

Extended Comments by the Department:

Attached to this letter is a memorandum from Barbara D. Gill, Special Assistant Attorney General,which addresses specific questions raised by witnesses and the Hearing Examiner.

Cost Estimates:

The question was raised if Section C regarding mandatory services would require a cost estimate of additional local agency expenditures pursuant to Chapter 443.

In the opinion of the Department, a cost estimate is not required since these proposed changes in Rule 160 do not create additional mandatory services. Other than editorial changes, the only significant change proposed is the inclusion of Developmental Achievement Services for adults. But as discussed earlier in this letter, this change is proposed solely to bring Rule 160 into conformance with Rule 185 which first made this service mandatory.

Sincerely,

Herb Cashdollar, Supervisor
Service Plan Administration
Division of Social Services

HC:mah
cc: Witnesses
Attachments:
(1) DPW-1400a
(2) Sixth mailing sheet
(3) Affidavit
(4) Gill memo

Additional Names for General Mailing List

Meyerle, Kathleen, 345 Ramsey St., St. Paul, 55102

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 160 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ADMINISTRATION OF MINNESOTA PUBLIC SOCIAL SERVICE

AFFIDAVIT OF RECEIPT OF NOTICE OF HEARING

K. A. Meyerle, being duly sworn, deposes and says:

That she received in the United States mail a copy of the Notice of Hearing for the above entitled matter.

Further affiant saveth not.

KAREN J. GRAVES
NOTARY PUBLIC - MINNESOTA
ANOKA COUNTY
My Commission Expires June 13, 1984

Kathleen A Meyerle

Subscribed and sworn to before me this

15 day of September, 1977.

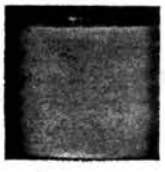
Karen Graves

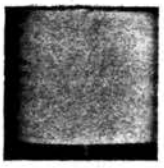
RIGHT TO ACCESS TO RECORDS: Your individual rights include the following:

- The right to know what kind of information is being maintained and whether you are the subject of any data.
- The right to be informed of the purpose for, or intended use of, any information requested from you by a state governmental agency.
- The right to be informed whether or not you are legally required to supply requested data, and what consequences might arise if you refuse the request.
- The right to be informed of any change in the purpose of, or the intended use of, any information you have supplied.
- The right to contest the accuracy of any data of which you are the subject.
- The right to have disputed data withheld from disclosure except under conditions of demonstrated need—and then only if your statement of disagreement is included with the disclosed data.
- The right to be shown at no cost any data of which you are the subject, unless the information is specifically classified as confidential by law (eg., adoption records, foster care and day care licensing records; information directly related to a criminal investigation by a police agency; information of a medical and/or psychiatric nature used as a basis for diagnosis by a licensed physician; and, in the case of child abuse, the name of the individual who reports alleged abuse shall be disclosed only (a) by the local welfare agency if the report is found to be unsubstantiated or (b) by the local welfare agency upon court order if the report is found to be substantiated.

IT IS YOUR RESPONSIBILITY:

- To fully report circumstances affecting eligibility for social services.
- To provide proof of income to establish eligibility.
- To report any subsequent changes in circumstances which impact eligibility.
- To cooperate with subsequent agency efforts to assess the appropriateness of eligibility process.





YOUR RIGHTS AND RESPONSIBILITIES

CIVIL RIGHTS: You have the right to complain if you feel you have been discriminated against because of race, religion, national origin, sex, or age. Complaints may be registered with:

Department of Human Rights
State Office Building
St. Paul, Minnesota 55155

Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155

Social & Rehabilitation Service
Department of Health, Education, and Welfare
Washington, D.C. 20201

RIGHT TO APPEAL: If you feel you have been unfairly denied or excluded from a service program, not given your choice of service, or told you must participate in a social service program, you may appeal for a Fair Hearing. An appeal form may be obtained from the county welfare agency or from the Appeals Office, Department of Public Welfare, Centennial Office Building, St. Paul, Minnesota 55155.

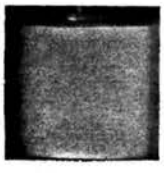
RIGHT TO SERVICE: You have the right to be informed of all services, including income maintenance, available to you.

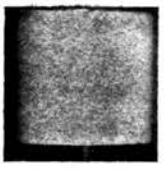
RIGHT TO PRIVACY: Information requested by this agency is considered priviledged and will be kept private. It may be reviewed by the county welfare agency, the Department of Public Welfare, or representatives of the federal government to determine your eligibility for federal social service funding or to evaluate the quality of service you receive.

RIGHT TO FAMILY PLANNING SERVICES: If you are an adult or minor AFDC recipient, you have the right to family planning services if you request these services. However, family planning services are not limited to only AFDC recipients.

RIGHT TO PROMPT ELIGIBILITY DETERMINATION: You have the right to have your eligibility determined within 30 days.

–OVER–





#485 Dept of Public Welfare

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 11-13 Temporary Rule _____

Resubmitted and Received 1/12/79

DUE DATE 12/1

a. Returned to Agency w/o filing w/Secy of State 12/1/78
b. Approved _____ Date Sent Back to Agency _____

- -

Rule Amendments

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable n/a
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable n/a
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓ (in Supp Report)
    (ii) Permission to Incorporate by Reference, where applicable _____
15. Certificate of Compliance with Rulemaking Procedures n/a
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable n/a
17. Petition by Public, where applicable n/a.

ADMIN 1000 (Rev. 1/78) STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : John L. Kirwin
Special Assistant
Attorney General

DATE: November 30, 1978

FROM : Joanne E. Hinderaker
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Amendments to Minnesota Rule DPW - 160 of the Department of Public Welfare Governing the Administration of Public Social Services

The rule amendments to the above-captioned rules have not been approved by this office for the following reasons:

1. In section B.6.b. of Rule 160, the original rule read: "Open meetings shall be held throughout the state to answer questions and receive public comment on the proposed annual plan." The Department proposed to amend the "shall" to "may" and the amendments as adopted reflect this change. However, the Department adopted an additional amendment to this section after the close of the record, which changed "open meetings" to "public meetings." This office rejects both amendments to this section.

Because the amendment ~~changed from~~ changing "open meeting" to "public meeting" was made after the record closed, and there was no evidence in the record to justify the change, there was no opportunity for notice and comment on ~~the~~ this substantial amendment. The Department itself acknowledges in its Order at page 2, that "post-record" comments are not a part of the record. ~~Comments similarly,~~ Therefore, this "post-record" amendment ~~are not a part of the record and are~~ is improper.

Once the amendment changing "open" to "public" is rejected, the rule which states "open meetings may be held." must also be rejected. As noted by the Hearing Examiner at page 10 of his Report:

> "Since the Department proposes to change the present 'shall' to 'may' in the Rule, one possible implication of the change is that meetings 'now may be closed' instead of 'shall be open'. It is unreasonable to draft the rule to leave that implication which conflicts with the state open meeting statute, Minn. Stat. § 471.705.

~~This office must agree with~~ The record before this office does not refute the Hearing Examiner's conclusion on this point. The Department's explanation at page 7 of its Order that "meetings provided for in Section B.6.b. are not subject to the Open Meeting Law" is ~~not~~ not supported by any legal argument in the record, ~~made available to this office.~~ The Department should be cautious when proposing a rule amendment which narrows rights of the public provided in the original rule. In this regard, the Department's ~~fails to make any~~ affirmative presentation as to the need and reasonableness of the amendment in its Statement of Need or in any other document included

DRAFT

Affecting rights to public hearing is more than a mere "editorial" change.

in the record received by this office. ~~Therefore~~ For these reasons, the change from "shall" to "may" is not approved. is scanty at best.

Section B.6.b. of Rule 160 must remain in its original form: "Open meetings shall be held throughout the state to answer questions and receive public comment on the proposed annual plan."

2. While this office reserves judgment on the amendment to Rule 160, Section H.9.g., the Department failed to address the Hearing Examiner's Finding at page 21 of his Report regarding the resolution of the local agencies' problems involving the re-determination of eligibility. This office requests a response from the Department to the Hearing Examiner's comment on this matter.

Finally, while this office does not reject the amendment to Rule 160, Section A.2. on its face, we wish to advise the Department that ~~the~~ an improper application of the amended section may violate the Administrative Procedure Act, as noted by the Chief Hearing Examiner in the Memorandum attached to his Report. This possible conflict warrants the attention of the Department.

Upon the Welfare Department's consideration of this decision, and after any action taken in this regard, ~~please~~ resubmit ~~three~~ Three copies of the amended order adopting these rules may be the rules, together with three copies of the amended rules, to this office. not be resubmitted

Copies of the other requisite documents from the file have been retained by this office.

JEH:mb

Enclosure

cc: Duane Harves
Chief Hearing Examiner

DPW-78-002-RLD

EXHIBIT A



STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE
DIVISION OF SOCIAL SERVICES

In the Matter of the Proposed Adoption of Rule 160 of the Department of Public Welfare Governing the Administration of Minnesota Public Social Service.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Russell L. Doty, duly appointed as Hearing Examiner in this matter, on September 2, 1977, in the Veterans' Service Building, Room D-20, West 12th Street and Columbus Avenue, St. Paul, Minnesota.

The hearing was originally scheduled to be held on August 19, 1977, but the hearing date was changed by the Department of Public Welfare in order to correct a problem with the original notice.

This proceeding is a rules hearing held pursuant to Minn. Stat. Ch. 15 to determine whether proposed rule amendments should be adopted. Copies of this Report will be available for review from the Division of Social Services of the Minnesota Department of Public Welfare and from the Office of Hearing Examiners.

Members of the Agency panel included: Herb Cashdollar, Supervisor, Division of Social Services, and Gary Haselhuhn, Director of the Division of Social Services.

ORAL APPEARANCES: Herb Cashdollar, Supervisor, Division of Social Services; Barbara D. Gill, Special Assistant Attorney General; John Gendler, Assistant Hennepin County Attorney; Jim Hobbs, Supervisor, Todd County Social Services; Robert Barrett, representing Stearns County Social Services; Michael Fargione, Attorney at Law, representing Wayne and Leah LaBar; Wayne LaBar; Carol Eastwood representing the Washington County Welfare Department; Darlene Morse representing herself; Dagny Christiansen representing Granville House, Inc.; Stanley J. Keeley, Program Director, Washington County Human Services, Inc.; Stanley A. Groff, representing the Dakota County Welfare Board; Tim McCormick representing the Hennepin County Planning Department; Marina Vork representing Pine County Social Services.

POST-REPORT PROCEDURE.

Pursuant to Minn. Stat. § 15.0412, subd. 4, upon request, this Report shall be available for at least five days for review by all affected individuals.

The Department of Public Welfare shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days after the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. Within ten calendar days, the Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412. Thereafter, the Department shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon the entire record and proceeding herein, the Examiner makes the following:

FINDINGS OF FACT

PROCEDURAL REQUIREMENTS

1. On July 18, 1977, the Division of Social Services filed the following documents with the Chief Hearing Examiner (Ex. A):

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

2. On July 11, 1977 and August 1, 1977, Notices of Hearing and a copy of the proposed rules were published at 1 State Register 60-73 (Ex. B) and 2 State Register 160.

3. On July 29, 1977, the Division of Social Services 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. (Exs. I and J)

The Division also filed an affidavit to clear up a misunderstanding and verify that service to the Secretary of State's list was complete.

4. On August 5, 1977, the Division of Social Services filed the following documents:

(a) The Order for Hearing (Ex. D)
(b) The Notice of Hearing as mailed (Ex. C);
(c) The Affidavit of Receipt of the Secretary of State's list (Ex. I);
(d) The Affidavits of Mailing and Additional Mailing (Exs. I and J)
(e) The Secretary of State's Certificate and list (Exs. I and J);
(f) The Statement of Need (Ex. G):
(g) The Statement of Evidence, including the names of witnesses to be called (Ex. F); and
(h) The Certificate of Delivery of Secretary of State's list (Ex. I).

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

5. The record remained open through September 22, 1977 for the receipt of written comments and statements.

POST-RECORD COMMENTS

Three written comments were received subsequent to the close of the record on September 22, 1977. The September 27, 1977 letter of Marshall R. Whitlock, Executive Secretary of the Legislative Commission to Review Administrative Rules, comments on the material from the Department of Public Welfare not submitted until the September 22nd deadline. While the comments are appreciated, the record was complete enough to deal with the concerns raised by Mr. Whitlock without the Examiner's having to utilize his post-record comments. (See discussion on §§ B.6. and B.8.) However, the Department of Public Welfare is directed to consider Mr. Whitlock's letter as a comment upon the Examiner's Report to be considered by the Department after the filing of the Report.

Also submitted after the deadline was a letter dated September 23, 1977, from James E. Wiechers, Acting Director of the Hennepin County Department of Public Welfare. The State Department of Welfare is directed to consider Mr. Wiechers' letter as a comment on the Examiner's Report and to carefully evaluate the points raised in the Wiechers' and Whitlock communications.

An October 11th comment submitted by Harry T. Neimeyer, attorney for Granville House, will be considered by the Examiner because there was adequate testimony at the hearing concerning

the issue and Mr. Neimeyer would have submitted his comments reiterating the testimony in a more timely fashion if it had not been represented by a Welfare Department spokesman at the hearing that the matter could probably be resolved without a rules change. Discussions to solve the problem were unsuccessful. Unfortunately, Mr. Neimeyer did not realize they would be unsuccessful until after comments were due. Granville House should not be prejudiced by its willingness to engage in reasonable discussions. See comments on proposed § A.6.1. below for further discussion.

BACKGROUND AND GENERAL REASONS FOR RULES CHANGES.

This Rule was first promulgated in October of 1976, and the Department now finds it necessary to improve the Rule's clarity based on initial experience with it and to bring it into conformance with several changes that have occurred in the Title XX federal program. These changes in the Rule will allow Minnesota to take advantage of several improvements and options in the federal social services program administered by the Department of Health, Education and Welfare.

DEPARTMENT AMENDMENTS TO PROPOSED CHANGES.

At the hearing, the Department submitted five recommended amendments to the previously noticed rule (Ex. K, see attached). The amendments are reasonable and necessary and their adoption is recommended.

RULE-MAKING AUTHORITY

This rule is promulgated pursuant to the broad powers granted the Commissioner of Public Welfare through Minn. Stat. §§ 256.01, subd. 4; 252.27, subd. 2; and 393.07, subd. 4.

ADOPTION OF CHANGES NOT SPECIFICALLY MENTIONED IN OTHER PARTS OF THIS REPORT.

The record established that all of the proposed amendments to Rule 160 which have not been otherwise discussed in this Report were necessary and reasonable and their adoption is recommended.

SCOPE OF RULE APPLICABILITY; SECTION A.5.

The following reasonable and necessary amendment to proposed § A.5. was recommended by Stanley J. Keeley, Program Director of

the Washington County Human Services, Inc. (see posthearing letter of September 9), and was endorsed with one minor modification by the Department to correct unreasonable previous wording. The modified wording is recommended here: (In all of the following discussions, underlining denotes the Examiner's additions to the proposed Rule; circles denote the Department's proposed additions to the existing rule; double brackets denote the Examiner's deletions from the proposed Rule; and single brackets denote the Department's proposed deletions from the existing rule.)

> 5. Sections A through G of this rule apply to county welfare boards and those human service boards which assume the responsibility for [[universally to all publicly funded]] social services that would be provided by county welfare boards. [[regardless of funding source.]] Section H applies . . . as amended.

"ATTENDANT CARE" DEFINED; SECTION A.6.d.

It is recommended that a new definition of "attendant care" be added here. See discussion of C.3.f. below for details.

"EMANCIPATED MINOR" DEFINED; SECTION A.6.i.

Miles J. Wangensteen, Director of the St. Louis County Social Service Department asked that a definition of "emancipated minor" be included in the rule for use with § H.8.c.(4). (Ex. P-2) The Minnesota Department of Public Welfare is continuing to seek a clarification of this term from the United States Department of Health, Education and Welfare as it is used in connection with 45 C.F.R. § 228.1, 42 Fed. Reg. 5849 (January 31, 1977). That regulation states "emancipated minors . . . may be considered one-person families by the state" for purposes of determining eligibility under Title XX. If a person qualifies as a one-person household for Title XX eligibility, the income of that person, and that person only, is considered when determining eligibility and any fees which might be assessed. It is unreasonable for the rule to contain a reference to "emancipated minor" without defining that term so it can be used.

Until the Department of Health, Education and Welfare forwards a precise definition of "emancipated minors," it will be reasonable and necessary for the Department to insert the following definition into its regulation:

i. "Emancipated minor" means a child who has not reached his or her age of majority and whose parents have relinquished authority over the care, custody and control of the child which confers on the child the right to his own earnings and which terminates any duty of service the child may owe to its parents. Emancipation includes but is not limited to the following situations: (1) the marriage of a minor child with parental consent; (2) the child's enlistment in the military service with parental consent (at least for the period of the enlistment); and (3) the parents' consent to the child's release for adoption. Depending upon the circumstances, emancipation: (1) may be complete, partial, conditional, absolute or limited as to time or purpose, and (2) may be inferred from an arrangement that terminates the parents' legal duty to support the child. However, emancipation may also occur if parental rights and control have been terminated without relieving the parent of the legal obligation to furnish necessary support.

This definition is based upon a summary of the case law in the area. See, In re Sonnenberg, 99 N.W.2d 444, 256 Minn. 571 (1959) (a useful discussion of Minnesota law even though the statutes with which it deals have been repealed); Wurth v. Wurth, 313 S.W.2d 161, 164 (Mo. App.); Wayne County Dept. of Social Services v. Schultz, 366 N.Y.S.2d 845, 847, 81 Misc.2d 603; Town of Tunbridge v. Town of Eden, 39 Vt. 17, 20 (consent to adopt constituting emancipation); Baker v. Baker, 41 Vt. 55, 57 (consent to enlist constituting emancipation). For cases where marriage has constituted emancipation, see Town of Sherburne v. Town of Hartland, 37 Vt. 528, 529 (male) and Town of Fremont v. Town of Sandown, 56 N. W. 300, 303 (female). Since the definition is merely restating present case law, it is not a substantial change in the rule.

GRANVILLE HOUSE PROBLEM; SECTION A.6.1.

Granville House is a halfway house for chemically dependent persons. Its administrative offices and personnel are located in Ramsey County. It has one treatment facility, Dickman House, in Washington County, and one in Ramsey County, Team House. Seventy percent of its clients are Ramsey County residents. Its Washington County operation had been located in Ramsey County up until 1972, when, due to the demand for the expansion of its facilities, and the unavailability of additional space for its program in Ramsey County, it moved a portion of its facilities to Washington County. It has continued to contract with Ramsey County.

Washington County has been extremely cooperative, but it does not have the financial resources to be able to provide the supporting services that Ramsey County presently provides to persons benefiting from Granville House. Services which are provided by Ramsey County include:

(1) Employment affiliation with the Ramsey County Welfare Department Employment Services--this includes comprehensive testing on each Granville Resident, plus employment counselling and referral;

(2) Adult Basic Education courses through the St. Paul School System which enable women treated at Granville House to receive their high school equivalency diplomas;

(3) Sexuality counselling for Granville women provided by the staff of the Ramsey County Medical Health Center;

(4) Psychiatric services for all Granville women offered by the St. Paul-Ramsey Hospital.

A problem arose in 1976 when the State Department of Public Welfare instigated a policy in the Rule 160 definition of "host county contract" that facilities, such as Granville House, located in a particular county must have a purchase-of-service contract with that host county. This policy creates a difficulty for Granville because of the location of its dual facilities.

It would have a great deal of difficulty locating only in Ramsey County because of zoning restrictions. If it locates all of its facilities in Washington County, it will likely lose the services that accompany its present contract with Ramsey County (Ex. P-8).

It is reasonable and necessary that the Ramsey County contract be allowed to continue since 70% of the Granville House constituency comes from Ramsey County. If Granville House is deemed to be hosted by both Washington and Ramsey Counties, it will have to deal with two separate boards of commissioners, two separate welfare departments, two separate mental health centers

and two separate contracts. It is not necessary, indeed, it is unreasonable to require Granville House to use its precious administrative and staff time to engage in this duplicative administrative effort. As it reads, the present rule is unreasonable.

In order to remedy this situation, it is necessary and reasonable for the Department of Public Welfare to adopt the following amendments to proposed §§ A.6.l. and H.11.c.(5)(c):

> [(j.] [[1.]] n. "Host county contract"[[:]] means contractual [[Contractual]] agreement between a purchase of service vendor and the local social services agency (the host county) where the vendor is located. The vendor shall be deemed to be located in any county in which either its administrative offices and personnel are located or its treatment facility is located. All other social services agencies wishing to purchase from the vendor are bound by the terms of the host county contract.
>
> * * *
>
> H.11. Purchase of Service Contracting
>
> c. Host County Contracting
>
> (5) The following exceptions apply:
>
> (c) Where prior to the adoption of this rule there existed a purchase of service contract between a local social services agency and a provider whose treatment facility is located in a different county, where the majority of the clients served are residents of the county in which the contracting local social services agency is located, where the county in which the treatment facility is located is unable to provide the technical assistance provided by the local social services agency and where the county in which the treatment facility is located is unwilling to serve as a host county, the existing contractual relationship shall be allowed to continue and the county in which the local social services agency is located shall serve as the host county until such time as it shall decide to terminate the contractual relationship with the approved provider.

This change does not substantially alter the proposed rule under the criteria set out in Rule HE 108 because it only applies to Granville House and it merely continues an existing practice.

DEFINITION OF "INCOME ELIGIBLE CLIENT"; SECTION A.6.m.

Eugene J. Johnson, Deputy Director of the Hennepin County Department of Public Welfare, submitted a definition for income eligible client which was not opposed by the agency (Ex. P-9). Since it seems to be clearer than the one in the existing rule, it is reasonable and necessary that it be adopted. The change reads as follows:

[l.][(m.) Income eligible client: An individual who receives social services on the basis of income only, and who is not receiving Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), or Minnesota Supplemental Assistance (MSA).]]

p. "Income eligible client" means an individual needing and receiving social services whose income level is the basis for allowing the agency to claim federal financial participation (FFP) under Title XX.

"INCOME MAINTENANCE STATUS" DEFINITION; SECTION A.6.n.

The person who suggested the change to this section did not sustain the burden of making clear exactly what changes he wished. Therefore, his recommendation cannot be acted upon.

"POSITION OF AUTHORITY" - NEW DEFINITION, SECTION A.6.v.

A new definition of "position of authority" should be added here to aid in protecting children from harm. See, § H.6.b.(2) discussion for suggested language.

DEFINITION OF "SOCIAL SERVICES"; SECTION A.6.t.

Eugene Johnson advocated that the definition of social services be expanded to identify specific services which it encompasses (Ex. P-9). This expansion is reasonable and necessary but for somewhat different reasons than those cited.

As presently worded, the definition of "social services" adopts by reference all services in the Minnesota Comprehensive Annual Services Program Plan. That is unreasonable because, in order for the uninitiated--indeed in order for even the professional--to understand what services are encompassed by the regulation, it is necessary for him to find a copy of the Comprehensive Annual Services Program Plan--something which is not in evidence in these proceedings. The definition would be far more useful if the services were precisely enumerated. If the Department wishes the flexibility of amending its list of services without having to wait the requisite time period to achieve a rule change, the present flexibility can be left intact by modifying § A.6.t. as follows:

[[t.]]v. "Social Services''[[:]] means [[T]] those services which are included in the Minnesota [Annual] Comprehensive [Annual] Services Program Plan[.] (CASP Plan). Such services include but are not limited to: (an enumeration of the Comprehensive Annual Services Program Plan services should appear here). Social

services do not include income maintenance programs, mental health center programs, health department programs or CETA programs unless there happens to exist a Title XX purchase of service contract between the Welfare Department and those other programs.

OPEN MEETINGS; SECTIONS B.6.b. and B.8.

Section B.6.b., as worded, indicates "Open meetings may be held. . . ." Since the Department proposes to change the present "shall" to "may" in the Rule, one possible implication of the change is that meetings "now may be closed" instead of "shall be open." It is unreasonable to draft the rule to leave that implication which conflicts with the state open meeting statute, Minn. Stat. § 471.705.

Also, it was expressed by Edith Lallier, Executive Director, of the Ramsey Action Programs, Inc., that access to the Plan amendment decision-making procedures in § D.8.a. could be improved. Those suggestions are necessary and reasonable and they apply equally as well to the decision-making procedure concerning the comments solicited on the annual revision of the statewide Comprehensive Annual Services Program Plan, set forth in § B.6. In order to avoid any future misunderstanding regarding the wording (in § B.6.b.) that implies a conflict with the state open meeting statute, and in order to maximize public access to the decision-making process concerning annual review or other amendment of the Comprehensive Annual Services Program Plan, it is necessary and reasonable that the following wording be adopted beginning at § B.6.:

[[b. Open meetings [shall] may be held throughout the state to answer questions and receive public comment on the proposed annual plan.]]

b. [[7. On [or before]] Before October [[1]] 2 of each year, . . . on request.

7. [[8.]] The CASP Plan may. . . approval.

a. The proposed amendment shall . . . amendment.

b. Final . . . publication.

8. When dealing with the review and comment periods found in §§ B.6. and B.7., above, some method shall be devised to allow the public affected by the proposed annual plan, or plan amendment, to make written or oral comment, or both, on them and to have their questions concerning the plan answered.

a. Upon the request of the state, or a local agency, or of ten affected persons, open meetings shall be held in the affected area to answer questions and receive public comment on the proposed action.

1. Such meetings shall be scheduled at locations and times so that the meetings are accessible to the greatest number of affected persons.

2. Timely notice of such meetings shall be made in the local media, whether that be newspapers, radio, or other. Once the minimum legal notice is satisfied, other more simplified notice should be given in these media calculated to attract attention to the meeting.

3. Some method of noticing parties not generally reached by traditional notice, e.g., the poor, the elderly, the foreign-speaking, etc., shall be devised when necessary or when requested by a client group.

b. The state or local agency proposing the plan or amendment shall be required to provide background information upon the proposed changes in a timely fashion when requested to do so.

This amendment accommodates the Department's concern that poorly attended hearings will be fruitless by allowing for other methods of comment and communication when that will be more appropriate and less costly. Yet, the wording insures the public's right to interact with its government and affect its decisions.

The amendment recognizes that traditionally required methods of notice often are laid out in a format that does not attract attention or are so encumbered with detail that readers are not encouraged to read through the notice. Once the traditional legally required notice is given, abbreviated notices containing the basic what (meeting on (subject)), when, where and where to call to find out more, should be used to maximize public exposure and meeting attendance or written comment.

Because the results of this change are fundamentally different from those contained in the Notice of Hearing, this change should be considered substantial and noticed for future hearing.

CLIENT ACCESS TO AGENCY METHODOLOGY; SECTION C.

Edith Lallier's suggestion that § C. be amended to ensure that local agencies are required to give the client access to the methodology used in making need and service delivery determinations is necessary and reasonable, but is more properly

placed in § E.5. To accomplish that, the last sentence of § E.5. should be amended to read:

> If the application is denied, the individual shall be notified in writing of the reason for denial; [[and]] of his right to appeal to the state agency; and to inspect the contents of all state and local agency files relevant to his case prior to the appeal hearing; and that the local social services agency's methods of assessing need and making service delivery determinations will be made available upon request. Such local agencies shall make that assessment and determination methodology available to the applicant or his representative upon request.

CLARIFICATION OF DUTY TO PROVIDE PRIORITY AND OPTIONAL SERVICES; SECTION C.1.b.

The Department suggested language to clarify the duty to provide certain services, but the syntax in that language was cumbersome. In lieu of the wording suggested by the Department to alleviate the concerns Marina Vork and Eugene Johnson expressed regarding § C.1.b.; the following amendment is necessary and reasonable to clarify the section's meaning:

> b. Priority and optional services shall be provided to persons requesting them if a need for them is determined by the local social services agency in accordance with the individual service plan. The local (social services) agency's obligation to provide priority and optional services is limited to the [amount] (cost estimate[[s]]) for each service specified in the annual local social service plan.

The Department may also want to deal with the resource allocation problem which could arise if a plan cost estimate for a specific service were low while another cost estimate for another service were high. Specifically, when that occurs, can funds allocated to be spent for one service (where the costs were overestimated) be shifted to be spent for another service (where costs were underestimated) if it appears during the course of any fiscal year that such action would be desirable. Also, the Department is requested to give Mr. Johnson a clarification on what language either authorizes or prevents an agency from knowingly planning to serve less individuals than it has the funds to serve. That clarification was not included in the Department's post-hearing comments.

PRIORITY SERVICE CRITERIA; SECTION C.

In order to implement State Senator B. Robert Lewis' suggestion that the rule should provide information on how priority

services were determined, the following reasonable wording may be inserted in the rule if the Department deems it appropriate:

Paragraph C.2. may read:

2. The following services or components of services are mandatory under federal or state law and must be provided. . . .

Paragraph C.3. may be amended as follows:

3. The following services, or components of services, are priority services, not made mandatory by federal or state law, but which have been significantly funded by the state in the past or which have been significantly delivered in the past. That is, priority services are based upon historical practice. Priority services [[which]] are . . . .

Paragraph C.4. may be amended as follows:

4. The following services or components of services shall be made available at the option of the local social services agency. These optional services are non-mandatory services which have past records of delivery or state funding that have not been as significant as the records of priority services found in subparagraph 3 of this section C.

INCONSISTENT LISTING OF SERVICE CATEGORIES, SECTION C.2., et seq.

Eugene Johnson listed several inconsistencies where the proposed rule was different from the Comprehensive Annual Services Plan. (Ex. P-9) But that plan was not in evidence so the Examiner cannot evaluate the suggestions completely. However, the Department did not rebut Mr. Johnson's contention sufficiently. The proposed rule is unreasonable to the extent it conflicts with the Comprehensive Annual Services Plan. The Department should change either the rule or the plan to eliminate the inconsistencies between the two. For example, services listed as "priority" in the proposed rule should not be listed as "optional" in the plan.

SUBACUTE DETOXIFICATION SERVICES NOT WITHIN SCOPE OF RULE; SECTION C.2.g.(1)

Because community mental health program boards are responsible for the implementation of detoxification services (per Minn. Stat. § 254A.08 (1976)), Stanley Keeley testified that § C.2.g.(1) should be stricken. The Department evaluated the suggestion and acquiesced in it and the Examiner urges its adoption as necessary and reasonable. The stricken wording in § C.2.g.(1) is:

[[~~(1)--Subacute detoxification services.~~]]

Paragraph 2 in subsection g. should also be renumbered as paragraph 1.

SECTION C.3.c.(2)

Senator Lewis' suggestion that C.3.c.(2) be amended by striking "medical" and inserting "health related" is reasonable and necessary to more accurately reflect the range of family planning service providers.

Service to Battered Women Not Mandatory: C.2.g.

It was suggested that the definition of protective services for adults in § C.2.g. be modified to specifically include battered women. Subsection 2 of § C deals with services that local agencies must provide as required by federal or state law. Since no law has been cited that requires local social services agencies to provide services to battered women, consistency requires that services to battered women cannot yet be placed in the mandatory services category. If, at some future date, the Legislature enacts a law to make such services to battered women mandatory through local social services agencies, then such law will enable services to battered women to fit within the criteria used for selecting services that are to be considered mandatory services.

Ch. 428, § 7, of the 1977 Minnesota Session Laws dealing with battered women assigns some responsibility to the Department of Welfare for general assistance payments for battered women. General assistance payments, however, are not covered in the scope of Rule 160 (see amended scope section A.5.) or Title XX programs. So, that statute cannot be used to require service to battered women to be "mandatory" under this rule. Other sections of Ch. 428 assign various responsibilities for battered women to agencies other than local social services agencies and make an appropriation to support the carrying out of those responsibilities.

While Title XX does not include "general assistance," it does make funds available for programs that assist "battered women." See the § H.6.a.(1) discussion below for further elaboration on this topic.

INDIVIDUALIZED, NON-INSTITUTIONALIZED, ATTENDANT CARE SERVICES; C.3.f.

John E. Derus, Chairman of the Hennepin County Board of Commissioners sent two resolutions (Ex. P-6) passed unanimously by the seven Hennepin County Commissioners in favor of in-home attendant care to handicapped persons as well as direct grants to pay for that individualized attendant care. Michael Fargione, Attorney for the Legal Aid Society of Minneapolis, submitted proposed wording to accomplish this objective and a memorandum supporting it. (Ex. P-5) Darlene Morse also testified credibly on this subject giving the most compelling presentation at the hearing.

The Department of Welfare supports the inclusion of attendant care in Rule 160. Specific inclusion will apparently aid some Hennepin County officials who are uncertain about how they should proceed; it will raise the level of awareness of local agencies who do not realize that a state plan may be read to include attendant care; and it will satisfy with the utmost of certainty any requirements of 45 C.F.R. 228.47 that a service to be permitted at the local agencies' discretion be explicitly identified in the service plan (which can refer to the Rule). More importantly, the amendment will allow individuals who can be taken care of at home to receive assistance payments and avoid institutionalization. The testimony was uncontroverted that such a payment will substantially reduce the cost of caring for such patients if institutionalization can be avoided.

It is found that Mr. Fargione's proposed wording to § C.3.f. is necessary and reasonable when modified as follows:

> f. Homemaking services <u>including but not limited to attendant care.</u>

It is also recommended that a definition of attendant care be included in the rule if one cannot be found elsewhere in the Department of Public Welfare rules. If a definition can be found elsewhere, that definition should be incorporated by reference in Rule 160. A suggested definition (to be inserted at A.6.d.) is:

> <u>d. "Attendant care" means care given to an applicant by an attendant in a non-institutionalized setting which enables the applicant to exist in his or her own home or other non-institutionalized place.</u>

This should not be considered a substantial change because it merely spells out in more detail what is already allowed and does not result in a rule fundamentally different from that contained in the Notice of Hearing.

CLIENT ACCESS TO OWN INFORMATION; SECTION D.3.

Edith Lallier expressed concern that the proposed amendment to § D.3. abridged a client's right of access to his own file. In its Statement of Need, the Department claims this amendment is a reasonable change which does not alter the meaning or intent of the right to access. The Examiner disagrees with the Department. The change does alter the meaning of the section. Furthermore, the proposed change should be dropped as unnecessary--it is obvious that client information collection, use, storage and dissemination can take place only in accordance with state and federal law.

In connection with this, Ms. Lallier established that it was necessary and reasonable to implement the federal Privacy Protection Study Commission recommendations concerning a client's access to case files prior to appellate hearings and concerning a client's right to request correction of inaccurate material in his file. See Federal Register, December 8, 1976, pp. 53724-53728.

In order to implement the recommendation regarding correction of erroneous material in a client's file, the following amendment to § D.3. is deemed to be necessary and reasonable:

> 3. [Clients shall have access to information about themselves, [[[~~pursuant to applicable state and federal laws.~~] ~~Information regarding clients shall be collected, used, stored, and disseminated only in in accordance with state and federal law.~~]] and shall have the right to a hearing to correct or delete inaccurate, immaterial or outdated information.

This change is substantial because it results in a rule fundamentally different from that contained in the Notice of Hearing.

The followingaamendment to § E.5. is reasonable and necessary to implement the federal Privacy Protection Study Commission's recommendation assuring file access prior to appellate hearings:

> 5. The ageny. . . . If the application is denied, the individual shall be notified in writing of the reason for denial; [[~~and~~]] of his right to appeal to

the state agency[[.]]; and to inspect the contents of all state and local agency files relevant to his case prior to the appeal hearing; and that the local service agency's methods of assessing need and making service delivery determinations will be made available upon request. Such local agencies shall make that assessment and determination methodology available to the applicant or his representative upon request.

OFFICIAL ACCESS TO CLIENT INFORMATION; SECTION D.4.

It was suggested that when client information is released to officials authorized to have access to it, that only information relevant to the purposes to which information is sought should be released. It was not demonstrated, however, that wording to accomplish this was needed to change any existing practices. And it was not demonstrated that it was reasonable to further fetter the delicate balance which must be maintained between the right of individual privacy and the right of the public (and its representatives) to scrutinize public officials' actions. Persons who accept public funds--whether they be multi-million dollar corporations or welfare recipients--must expect some independent scrutinization of the reasonableness of the circumstances surrounding the granting of those public funds. Absent an affirmative showing that reasonable scrutiny of the granting of those funds has been abused, this suggestion limiting information release cannot be recommended. Also, the language of § A.3. adequately protects a client's right to privacy.

EXPLANATION OF RIGHTS; SECTION E.3.

Edith Lallier advocated reasonable and necessary changes to § E.3. to ensure that an applicant has a proper understanding of his rights and responsibilities. The following amendments are needed to implement the comments submitted by Ms. Lallier with regard to § E.3.:

3. Before an applicant's signature is requested on any forms, [[E]]each applicant shall be given a **com**plete and comprehensive written statement of his rights and responsibilities on the form prescribed by the state agency. For those individuals who cannot make use of/or understand the written statement for [[~~reasons such as disability, age or education,~~]] any reason the agency representative shall read out loud or interpret (if foreign language interpreting capability is available) and explain the written statement to the individual or to a responsible person acting on behalf of the individual. The agency representative also shall respond to any questions the applicant or his representative may have.

CLARIFICATION IN SECTIONS E.4.a. AND E.4.c.

It was suggested that the words "will only" be substituted for the word "may" in §§ E.4.a. and E.4.c. The Department supports that recommendation, and the Examiner finds it is a necessary and reasonable clarification.

RECORD OF SERVICE DENIAL; SECTION E.5.

Eugene Johnson requested that the rule contain language requiring the reason for a service denial to be inserted in the case record. It is reasonable and necessary to implement that request by making the following amendments to § E.5.

> 5. The agency shall act promptly on the application. [[In no instance shall]] The agency shall not take longer than 30 [[calendar]] days to [notify the applicant in writing that his application has been approved or denied.] make an eligibility decision and [[nor shall]] the agency shall not take longer than 15 days after the eligibility decision to notify the applicant in writing that his application has been approved or denied. The notification date and reason for denial or approval shall be entered in the case record. . . .

See § D.3. discussion for other suggested amendments to this section.

PROMPTNESS OF SERVICE DELIVERY; SECTION E.6.

It was suggested by Eugene Johnson that the time spans used to define reasonable promptness are confusing. If it is the purpose of these rules to establish a policy that service delivery must occur within 30 days (if it is to be considered reasonably prompt) the following wording in § E.6.b. will clarify that policy and help eliminate any misunderstanding which could arise from the present wording:

> b. Within 15 days of the notification that the application has been approved if such notification is given within 15 days of the application; or

If a total time span of longer than 30 days will generally be acceptable to the Department as reasonably prompt service delivery, the "15 days" in the Examiner's amendment can be increased. If, however, it is increased to read more than "30 days", that would be approaching unreasonableness since the total time period (30 days of the application plus 15 days of notification) would be approaching 45 days.

CLIENT'S RIGHT TO REJECT SERVICES; SECTION F.

The Department made a sufficient showing that § F. is necessary and reasonable, and its adoption is recommended with the following suggested amendment to address Eugene Johnson's observation that no language exists to cover those instances where services are being offered to clients whose voluntary rights have been legally removed:

> The applicant, if legally competent, shall have free choice to accept or reject. . . .

The Department may also want to give consideration in a future revision of this rule to drafting language delineating the rights (if any) to accept or reject social services of persons whose voluntary rights have been legally removed. The rule is necessary and reasonable as far as it goes, but the record would indicate that it is incomplete with regard to the rights of incompetent recipients of social services. No showing to the contrary was attempted by the Department.

TYPOGRAPHICAL ERROR; SECTION G.2.a.

Section G.2.a. should be amended to strike "is to" in the second sentence so that sentence reads:

> "If the client is unable to participate in developing the plan, the plan [[is to]] shall be developed with the person[[(s)]] responsible for him.

OK

INCORPORATIONS BY REFERENCE: SECTION H.4.c.(2).

Proposed rule § H.4.c.(2) contains an incorporation by reference to the Code of Federal Regulations. At the Examiner's request, Department counsel scrutinized the incorporated material to see if it met the statutory requirements for incorporation by reference. It does not meet the statutory requirements because the incorporated section is less than 3,000 words long and so must be spelled out if incorporated. Since the services are clearly set forth in language following this section, the Department has acquiesced in a deletion of the reference. The Examiner sees nothing wrong, however, with referring to the federal regulation for the purposes of cross reference as long as it is clear that the incorporation is not for the purpose of making the wording of the federal regulation a substantive part of this rule. Therefore, the following language to be inserted after §

H.4.c.(2) to accomplish the limited purpose of cross-referencing may be adopted by the Department if that is deemed useful:

> (2) Individuals receiving services [[as stated in 45 C.F.R. 228.65]] directed toward the goal of protection[.] as specified in Section H.6 of this Rule. (For Cross-reference see 45 C.F.R. 228.65)

BATTERED WOMEN SPECIFIED; SECTION H.6.a.(1)

Senator Lewis recommended that § H.6.a.(1) be amended to explicitly include "battered women." The present wording impliedly encompasses "battered women." And the Department was concerned that a specific enumeration of one subcategory (battered women) would endanger other categories of exploited persons from being included in the service because customary statutory (and hence rule) interpretation would limit the services to enumerated categories. Senator Lewis' recommendation and the Department's concerns may be accommodated, however, by inserting the following wording at the end of § H.6.a.(1):

> These adults shall include but not be limited to battered women.

PROTECTING CHILDREN FROM HARM; SECTION H.6.b.(2)

Eugene Johnson submitted a comment that the proposed § H.6.b.(2) is unduly restrictive in contravention of the spirit of of recent federal regulations because the proposed section is solely related to harm perpetrated (either overtly or by neglect) by a child's parents or guardian. The Examiner agrees and finds that the present wording is unreasonable because it fails to take into account a situation where a child may not have a parent or guardian who is responsible for providing protection to him. The proposed rule also fails to take into account foster care or other more nebulous custodial situations. The following amendment to § H.6.b.(2) is necessary if the section is to be deemed reasonable:

> (2) The local social services agency shall document by entering into the case record for each child, that any person[[~~the parent or guardian~~]] is threatening to harm; or is harming the child; or that any person in a position of authority over the child is failing to provide for the protection, ...

Also a definition of "position of authority" should be included in the regulation. A suggested definition is:

> v. "Position of authority" means but is not limited in meaning to any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, ro a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

This definition is taken from Minn. Stat. § 609.341, subd. 10, and is normally used in connection with criminal sexual conduct charges so its use here does not make the change substantial since it is only adopting existing law by reference for clarity.

REDETERMINATION OF ELIGIBLITY; SECTION H.9.g.

At the hearing, a discussion arose concerning liability which local agencies might incur for paying for services if the time limits for redetermining eligibility were not specifically understood. The Examiner requested the Department to meet with Jim Hobbs, Robert Barrett and John Gendler who either raised the question or commented upon it and to submit to the Examiner a resolution of the problem. Since no resolution was submitted, the Department has not met its burden of demonstrating the reasonableness of this proposed section and its adoption cannot be recommended.

LOCAL AGENCY USE OF SOCIAL SERVICES FEE; SECTION H.10

The Department has met the burden of showing that the amendments to § H.10 are necessary and reasonable. However, the record indicates per the comments attached to Eugene Johnson's September 1st letter (Ex. P-9), that the regulation is incomplete in that it fails to specify in any manner consistent with the federal regulations what the local agencies can do with the social services fees they collect. The Department may promulgate this section as it stands, but the Examiner suggests it also hold a future hearing or devise some other method to complete the rule to specifically guide local social service agencies concerning what they can do with the money they collect.

COLLECTION NOTICE INTERVALS; SECTION H.10.c.(2)

Marylee Fithian, Executive Director of the Governor's Planning Council on Developmental Disabilities, was concerned that the word "usually" may provide too great of a discrepancy between the practices of different agencies as they deal with different clients. While the Department can accept deletion of the word "usually," it wishes to accommodate counties which have differing fee billing procedures--not all of which are established on strict 30-day intervals. Both concerns have merit. See the end of the next discussion for an H.10.c.(2) amendment to satisfy them.

LOCAL SERVICE AGENCY TITLE XX ELIGIBILITY; SECTION H.10.c.(2)

The comments of Miles J. Wangensteen, Director of the St. Louis County Social Services Department, concerning § H.10.c.(2) are well taken. As presently worded, that section could be interpreted to mean that a local social services agency could have its Title XX eligibility terminated if a client refused to pay a service fee after three collection notices. If the Examiner reads Mr. Cashdollar's post-hearing letter of September 21st correctly, all that is required for a local social services agency to retain Title XX eligibility is that the local agency terminate the client's Title XX eligibility after it has served three collection notices upon the client. The following amendment to § H.10.c.(2) is suggested to clarify the Department's intention in that regard:

> (2) At least three collection notices are given in person or by mail to the client, [[~~usually~~]] at approximately 30-day intervals[[.]]; and a client's Title XX eligibility has been terminated [[is lost]] if the fee remains delinquent after three collection notices have been given. A client's Title XX eligibility cannot be regained until a plan of payment has been agreed and implemented by the client and the agency.

This wording will satisfy the Department's goal of refusing to allow indefinite Title XX eligibility for a client who does not pay a required Title XX fee. The wording will also prevent a penalty to local social service agencies who have provided services in good faith to clients who subsequently refuse to pay their fees despite efforts to collect if those local social service agencies terminate the client's Title XX eligibility within a reasonable time.

ELIMINATING DOUBLE FEES FOR CERTAIN SERVICES; SECTION H.10.d.(2)

Miles Wangensteen pointed out (Ex. P-2) that a double fee could be charged parents of emotionally disturbed, mentally retarded or epileptic children. This is possible because the federal program has one fee ceiling for services provided under Title XX (See Ex. N which is 45 C.F.R. 228.60(d) at Federal Register, January 31, 1977, Vol. 42, p. 5858) and the state has another ceiling for services provided to emotionally disturbed, mentally retarded or epileptic children. (See Minn. Stat. § 252.27, as amended by Ch. 331, 1977 Minnesota Session Laws. Apparently the ceiling is $125 per month, but the statute is not clear on the time period.) The Department commented that the dual fees did not create an "ideal situation" but did not have a way to handle the problem.

Since the statute also directs the Commissioner of Public Welfare to promulgate rules governing the administration of the state statute, it is necessary to clarify the procedure that is to be followed in determining these fees so that a double charge is not possible. The rule as it exists is unreasonable because it does not do that. The following changes to § H.10.d.(2) are suggested to make the rule reasonable. (Since the changes are substantial, it is suggested that the Department notice them for future hearing.):

> (2) When . . . received. The total amount of the two fees when added together shall not exceed the total amount that would be charged if all fees were calculated under the formula set out by the Title XX program at Federal Register, January 31, 1977, Vol. 42, p. 5858, 45 C.F.R. 228.60(d)(1) and (2) which provide:
>
> > (d) Income levels as baselines for fee imposition.
> >
> > (1) Except for individuals whose eligibility is determined on a group basis, individuals whose eligibility is based on income status shall be subject to imposition of a fee for service . . . if their family's monthly gross income exceeds 80 percent of the median income of a family of four in the State or the median income of a family of four in all States, whichever is less, and does not exceed 115 percent of the median income of a family of four in the State, adjusted for family size.

(2) The median incomes (at 80 percent and 115 percent) as calculated in paragraph (d)(1) of this section for a family of four, shall be adjusted for family size according to the following percentages:

(i) One person--52 percent.
(ii) Two person family--68 percent.
(iii) Three person family--84 percent.
(iv) Four person family--100 percent.
(v) Five person family--116 percent.
(vi) Six person family --132 percent.
(vii) for each additional family member above six persons, the State shall add 3 percentage points to the percentage for a family of six.

REFUSING TO ENTER HOST COUNTY CONTRACTS WITH INCOMPETENT PROVIDERS; SECTION H.11.c.(1)

Diane Ahrens, Ramsey County Commissioner, submitted for the record, a September 6, 1977 letter to Marshall Whitlock outlining a potential problem where a host county that had cancelled its contract with a provider because of the provider's incompetence or breach of contract could be forced to contract, as the agent of another local social services agency, with that same incompetent provider. Secondly, the Commissioner expressed chagrin that the state had licensed a child care facility, Browndale, after Ramsey County had terminated its contract with that facility and despite the fact that at least two other states and Canada had experienced difficulty with the operator of Browndale. In that regard, the Commissioner seemed to indicate that two standards may exist for child care facility licensing, one for licensing to care for children eligible for Title XX programs, and one for other programs.

The Department did not comment on the Commissioner's letter. And the letter referred to several previous communications which undoubtedly contained background needed to more fully understand this problem. But, those previous communications were not submitted to be made part of the record.

With regard to the double standard for licensing claim, the record does not contain enough information to permit the Examiner to act. If the allegation is true and a rules change would remedy it, interested persons may initiate a request for such a change under Minn. Stat. § 15.0415 and submit specific wording for the proposed rule as well as a complete justification for it.

The Commissioner can consult her legal counsel to suggest remedies for the specific Browndale situation.

The record is complete enough to allow the Examiner to make the following recommendation as reasonable and necessary to protect the rights of the county while recognizing the hegemony of the state when a host county is required by the state to be the agent of another county by administering a purchase of service contract with a provider residing in the host county. The Examiner recommends that § H.11.c.(1) be amended to read:

> (1) The local social service§ agency of the county in which an approved provider is located shall negotiate and administer host county purchase of service contracts on behalf of any other local social service§ agency wishing to purchase services[[.]], provided, however, that if a local social services agency (host county) does not want to comply with this provision because it is being required to administer (for another local social services agency) a host county purchase of service contract (1) with a provider who has breached past contracts with the host county, or (2) with a provider whose previous contract with the host county was terminated for failure to provide adequate service, the host county local social services agency shall be entitled, upon its request, to an administrative contested case hearing to determine whether or not it has justifiably refused to administer a host county purchase of service contract with an alleged incompetent, or contract-neglecting provider.

This procedure will also protect the provider from discrimination by the county. Because this proposal contains new subject matter with major substantive effect, it is a substantial change, and it is suggested that a future hearing be held on it.

MISCELLANEOUS.

1. V. C. Salomonsen wrote for the Otter Tail County Department of Social Services requesting that Rule 160 be amended to contain a provision allowing written notice of Title XX application approval to be accomplished by mailing the applicant the yellow copy of Form DPW-1950. (The original DPW-1950 would be retained in the case record.) (Ex. P-1) The Department responded that current Departmental internal management procedures (rather than the rules) permitted counties to use Form DPW-1950 to notify clients of application approval as Mr. Salomonsen recommends. The Examiner believes this answer to be sufficient so that the concern does not have to be dealt with further in the rule-making. But

if the answer is not sufficient, those who still believe it is insufficient are encouraged to contact the Department to further advocate for the point during the time allotted to comment on this Report.

2. Several persons submitting comments to the Examiner concerning the regulation concluded their comments by stating that if there were any questions, the Examiner could contact them. While the willingness of these persons to make themselves available is appreciated by the Examiner, it should be realized that the Examiner cannot engage in any extra record communications which deal with the substance of this proceeding. Therefore, the Examiner has not availed himself of these generous offers to assist.

3. It is suggested that the abbreviations used in this Rule be spelled out in conformance with the Governor's request that state agencies "talk plain English."

4. It is suggested that the wording in the definitions § A.6. be modified to drop the colon after the word defined and insert the word "means," etc. This style will conform to the one the Revisor of Statutes uses in legislative drafting. See definitions suggested above for further style examples.

CONCLUSIONS

A. That the Minnesota Department of Public Welfare duly acquired and now has jurisdiction over the subject proceeding.

B. That all relevant, substantive and procedural requirements of statute and rule have been properly complied with.

C. That with the exceptions concerning open meetings noted in the above Findings of Fact, the Minnesota Department of Public Welfare has statutory authority to promulgate and adopt the proposed rules.

D. That except as stated above, the proposed amended rules considered herein and in accordance with the hereinabove Findings of Fact, are reasonable and necessary to facilitate the interfacing of state and local welfare programs with federal Title XX programs and to help the Minnesota Department of Public Welfare to carry out its statutory functions.

E. That in proposing the changes suggested in the Findings of Fact and in reviewing the originally proposed amended rules which were noticed for public hearing, consideration was given to Minn. Reg. HE 108 to determine whether this rule, as finally adopted, will be substantially different from the ruleas originally proposed. In the event that it is determined that a substantial change has been made, the proposing agency must either withdraw the proposed final rule or reconvene the rule hearing. This Hearing Examiner concludes that except as specifically noted above, the additions, deletions and language changes suggested hereinabove will not result in a substantial change from the originally proposed amended rules.

RECOMMENDATIONS

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Minnesota Department of Public Welfare adopt proposed Rule 160 as amended in accordance with the Findings of Fact set forth in this Report.

Dated: October 24, 1977.

Russell L. Doty

RUSSELL L. DOTY
Hearing Examiner

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

RECEIVED
AUG 5 1977
OFFICE OF HEARING
EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION
OF AMENDMENTS TO MINNESOTA RULE DPW-160
OF THE DEPARTMENT OF PUBLIC WELFARE
GOVERNING THE ADMINISTRATION OF PUBLIC
SOCIAL SERVICES.

STATEMENT OF NEED

The above captioned rule is an amendment to the existing rule of the Department of Public Welfare. This rule was promulgated October 11, 1976.

Rule 160 establishes standards for the administration of social services by county welfare departments and human service boards. This Rule was first promulgated in October 1976. The Department of Public Welfare now finds it necessary to make certain changes in this Rule to improve its clarity, to correct statements which have caused confusion, and to bring the Rule into compliance with several changes in the Federal Title XX Program. These changes will allow Minnesota to take advantage of certain improvements and options in the Federal Social Services Program administered by the Department of Health, Education, and Welfare.

The following are the specific editorial and substantive changes proposed and an explanation of why the Department of Public Welfare believes these changes are desirable and are in the best interest of the Minnesota Program.

Section A.2., Page 1. The word "policy" is deleted, since the Commissioner of Public Welfare utilizes several types of bulletins in addition to policy bulletins in communication with local agencies. These other types include informational bulletins, instructional bulletins, and request bulletins.

Section A.4., Page 1. Editorial changes are made in this paragraph to improve the language and readability, and to make clear that this Rule is only binding on the State Agency, local social services agencies under the administration of county welfare boards or human services boards and contractors.

Section A.5., Page 1. A new paragraph is added since over the past year confusion has arisen over the organization of this Rule. When this Rule was originally promulgated the Department of Public Welfare found it reasonable and necessary to establish certain basic, uniform standards for the administration and delivery of social services which are applicable regardless of any funding source that might be used to pay for such services. These basic standards include a standardized application process which treats all clients fairly and equitably; case record requirements for uniform fiscal accountability and statistical reporting to the state and federal agencies; client social services planning requirements which are consistent with sound professional practice; universal annual

planning requirements which provide a mechanism through which local agencies plan the delivery of services and project a multiple funding source budget to support that plan; and local agency responsibilities and options for service delivery. The new Paragraph A.5. makes clear that these universal standards, regardless of funding source are found in Sections A through G. Standards which are specific to Title XX are found in Section H, the remainder of the Rule. Because of the addition of this new Section 5, old Section 5 becomes new Section 6. Also, in new Section 6, because of additions and withdrawals of certain definitions, the letter sequence is amended.

New Section A.6.b. It is necessary to revise the definition of "application" to reflect changes in the Federal Regulations published January 31, 1977 (45 CFR 228.60) which are binding on all states. This is a reasonable change since the term application now encompasses the notification of the applicant of his rights and responsibilities and collection of sufficient information to make an eligibility decision.

New Section A.6.c. and throughout Page 2. An editorial change is made here and throughout the Rule to standardize the use of the term "local social services agency". This standardization is reasonable since it eliminates inconsistency in using "local agency" and "local social services agency" to apply to the same agency. Also, we propose to amend the term "social service" throughout the rule by use of the plural in "services". This is a reasonable amendment since it is consistent with Federal and State Law and Regulations which use the plural in "social services".

New Section A.6.e. and f. Definitions are added for two new terms, "CASP" and "declaration method". To make this glossary more comprehensive and useable, it is necessary to add these terms to reflect proposed changes in the text of the Rule.

New Section A.6.g. An editorial change is proposed to change the word "family" to "household". This is necessary to make the term "household monthly gross income" consistent with the household definition in Paragraph H.8. of this Rule.

New Section A.6.k. An original error is corrected by changing the term "exemptions" to "deductions". This is a necessary and reasonable change since the word "deductions" is the more commonly understood term and this has been a source of confusion to local agency personnel.

Old Section A.5.k., Page 2. This very general definition of household, which only applies to Title XX, is deleted from the glossary as obsolete since a comprehensive operational definition is added in the Title XX Section H.8. of this Rule. This is a necessary and reasonable change since the operational definition is lengthy and would be out of context in the glossary.

Old Section A.5.n., Page 3. The term "letter of contract certification" is deleted from the glossary, since we propose in Old Section G.9.b. (New Section H.11.b.) to eliminate this requirement to bring about efficiencies in administration.

New Section A.6.o., q., r., t., and u. Editorial changes are proposed and necessary to make improvements in the Rule style and language and to correct sources of misunderstanding which have occurred.

New Section A.6.v., Page 3. We propose to add a definition for "State Administrative Plan". It is necessary to add this definition to the glossary in order to clarify the difference between the Federal State Administrative Plan and the CASP Plan.

Section B, Page 4 and 5. It is necessary to make extensive editorial changes throughout this Section on State and Local Social Services Planning for reasons already given. A substantive change is made by adding a new Paragraph 8 on CASP amendment requirements. This change is made in response to relaxed Federal requirements for CASP amendments. In the past, plan amendments in a single county needed to appear in newspapers in every county of the state at great cost. It is a reasonable change since under the new Federal Regulations the amendment must only be published in the county or counties affected by the amendment. The result is that county welfare/human services boards will have more flexibility in making mid-year budget and program adjustments in their Title XX Plan.

Section C, Pages 5 through 8. In the Section 'Local Agencies Duties and Responsibilities', editorial changes are made throughout for purposes of clarity and uniformity. Paragraph C.1.a. is changed to affirm the local agency's responsibility and authority for assessing clients' needs through individual social services planning. The minimum standards for individual services planning is established in Section G of this Rule. The effect of this change is to clarify that a person is eligible for a service if in the judgment of the local social services agency the person is in need of the service. This requirement has incorrectly been interpreted in the past to mean that an individual must be given a service, even if the need for the service had not been established.

In Paragraph C.2.b. and throughout this Rule the term "daytime activity services" is changed to "developmental achievement services". This is a necessary and reasonable editorial revision since the name was changed by Minnesota Laws of 1977, Chapter 337, effective September 10, 1977.

Section C.2.b., Page 6. This is a technical amendment to make DAC services for adults mandatory as well as for children. This brings Rule DPW 160 into uniformity with Rule DPW 185 on Services to Mentally Retarded Individuals which was promulgated in March 1977.

Section D., Pages 8 through 9. In respect to client access to information, improvements are made in the language in Paragraph 3 without changing the meaning or intent of the requirement. This is a reasonable and necessary change in that it places not only client access but all management of client information in the context of state and federal law.

Section E., Pages 9 through 10. In respect to Section E, changes in application requirements are necessary to bring this Rule into compliance with new Federal Regulations and to make these changes mandatory for all services regardless of funding. It is necessary and reasonable to expand these application requirements to include group eligibility procedures and documentation for family planning services, since both are required by recent Federal Regulations. This Section also establishes for all services the federally required time limits for eligibility determination and notification. Making these requirements universal provides for equitable treatment of clients regardless of their funding eligibility and brings about uniform administration of social services.

New Section F., Page 10. The Department of Public Welfare finds it necessary to add a new section, "Client's Right to Accept or Reject Services" to accomplish the following: 1. To make explicit that a client in most instances has a right to reject without consequence a service offered by the agency; 2. to make clear the consequences of rejecting certain services; 3. to require the local agency to inform the client of these choices; and 4. to clarify the local agency's responsibility when refusal of services involves the neglect, abuse, or exploitation of an individual. There is a reasonable need to establish this policy in order to protect client rights,to ensure that the client is informed of these rights, and to define client and agency roles when there is not mutual agreement on the need for social services.

Because of the addition of a new Section F, old Sections F and G are relettered to new Sections G.and H.

New Section G, Page 11. It is necessary to make editorial changes in the Client Social Service Plan Section to improve its readability. This also strengthens the policy by substituting "shall" for "is to" which is vague and ambiguous and has been interpreted incorrectly by some local agencies to be permissive rather than mandatory.

New Section H. Amendments to Section H. of this Rule on Title XX are proposed primarily to bring this Section into conformity with Title XX Regulations promulgated on January 31, 1977, effective October 1, 1977, and to make improvements in Rule language and program efficiency.

In the initial statement in Section H.1., Page 11, the Department finds it necessary to add the phrase " to the extent federal funds are available". This serves to limit state and local financial liability when federal funds are not available or when there have been budget overruns. This is a reasonable requirement since to do otherwise would make it difficult for local governments to planfully manage a budget and prevent deficit spending.

In Section H.2., Page 12, the heading "Administrative Requirements" is amended to read "State Administrative Plan Requirements". This is necessary to clarify the distinction between that plan and the Comprehensive Annual Services Program Plan (CASP).

In Section H.2.j., the reference to Social and Rehabilitation Service is deleted because the Department of Health, Education and Welfare has reorganized and Social and Rehabilitation Service (SRS) no longer exists. By referring only to the Department of Health, Education and Welfare, the state continues to be required to submit the Plan, but if the Department of Health, Education and Welfare again reorganizes, this rule need not be amended.

In Section H.4. and new 5., Page 12 and 13, it is necessary to add to eligible categories, individuals who are eligible on a group basis and minors who may receive family planning services without regard to income. It is reasonable to add these categories so that Minnesota can take advantage of the options in P.L. 94-401 which make these two groups eligible for Title XX funds. Both of these categories are options given to the states by the Federal Requlations. Through this Rule, these options are passed on to local social services agencies.

On Pages 13 through 15, new H.6., Protective Services to Children and Adults, the Department of Public Welfare finds it necessary to specify the conditions under which Title XX funds may be claimed for protective services without regard to client income. The Federal Regulations permit universal eligibility for Title XX protective services if the client is harmed or threatened with harm. To support claims for federal financial participation, the social worker must document the circumstances which lead him to believe that the person is threatened. It is reasonable for the state through this Rule to further define the broad federal policy by specifying the protective services and activities which are usually necessary to remove a child and adult from harm until a permanent plan can be made. The state has accepted the federal option and limited it to certain services which are crisis-oriented or time-limited and generally the most often needed immediately when the local agency intervenes to protect an endangered child or adult. To expand beyond this the services and activities which may be provided without regard to income would create great difficulty in documenting adequately the urgent nature of the protective situation. Also, unchecked expansion of federal eligibility for proective services would create great demands on scarce Title XX funds and would cause funding reductions in other important service areas.

A new Section H.7. on Page 15 is added. The January 31, 1977 Federal Regulations provide that states may give family planning services to anyone without an income eligibility test. The state wishes to pass this option to local social services agencies, but feels it is necessary to limit the potentially eligible population due to inadequate Title XX funding. It is reasonable for the state to make this fiscal restraint since to do otherwise would make potentially everyone in the state of child-bearing age eligible for family planning services. The state social services program cannot afford such an expansion of services in the face of limited Title XX funds which account for approximately forty percent (40%) of current expenditures. If there were unlimited federal funds available, Minnesota could utilize about seventy-five percent (75%) of current expenditures.

As an alternative, the state has accepted the option only for minors which is a population group often barred from family planning service eligibility since the family must be contacted to establish income eligibility. If county welfare and human services boards elect this option, minors would have universal eligibility for Title XX family planning services while preserving confidentiality. This policy is consistent with Minnesota Statute 144.343 which provides that minors on the basis of their own consent may receive mental, medical and other health services to determine the presence of or to treat pregnancy and associated conditions. Under this law a minor may receive family planning services without the knowledge or consent of parents.

Until this time, in order to have Title XX funds available to them, minors living with their families have been required to be considered as part of their family in determining financial eligibility for Title XX. This has usually meant that parents became aware of the minor's request for services. It has also meant that even though they did not approve, the parents were placed in a position of paying a fee for the service. Consequently, many minors choose not to receive the family planning services rather than to involve their parents.

In regard to new Section H.8., Household Definition, the Department of Public Welfare finds it necessary to replace and expand upon the household definition deleted from the glossary (old A.5.k.). This change is responsive to a change in Federal Regulations (45 CFR 228.1) which require states to define family or household for purposes of an income means test for Title XX eligibility. States are given latitude in how the income of blood relatives is treated in arriving at household monthly gross income for Title XX purposes. The proposed definition makes clear that close family members temporarily absent from the home shall be considered members of the household for income purposes. The definition also recognizes the sensitivity of eligibility determination for confidential services such as family planning and the treatment of court ordered child support payments as income.

Old Section G.9., Pages 16 through 19. The policy and definitions used to determine household monthly gross income are deleted from this Rule as superfluous, since this is a verbatim repetition of the Title XX Regulations found in 45 CFR 228.66. It is reasonable to exclude these requirements from rule-making since the Federal Regulations on monthly gross income are binding on the states for Title XX purposes.

The state has found it necessary to amend new Section H.9., Pages 19 and 20 to include methods of eligibility determination other than the documentation method. Now that Federal Regulations permit a declaration method of eligibility, it is reasonable to change this Rule to permit county welfare/human service boards to elect this optional method of eligibility determination.

Also, new Federal Regulations provide that eligibility may be redetermined annually, rather than semi-annually, for individuals whose monthly gross income is derived exclusively from pensions, Social Security, or SSI or a combination of these. The Department of Public Welfare believes it is reasonable to accept this option and make it mandatory upon local agencies. This change is responsive to the desire to reduce the administrative costs of redetermining eligibility semi-annually for a population whose income and Title XX eligibility seldom change. This will also be of benefit to the needs of the elderly or handicapped citizens for whom semi-annual redetermination is unnecessarily burdensome.

In new H.10.d., an editorial correction is made by adding "and epileptic" after "mentally retarded". This is included since epileptic children are also eligible for cost of care funds. Also, to avoid conflict between the Title XX fee policy contained in this Section and Cost of Care Rules, elimination of any specific dollar amount in this Rule will eliminate the need for its being amended with each change in the Cost of Care Law or Rule.

At Page 22, new Section H.11.b.(1)., the Department of Public Welfare believes it is desirable to delete entirely the requirement of a "letter of contract certification". This report to the State Agency was designed as a supervisory and monitoring control when local agencies were relatively inexperienced in Title XX purchase of service contracts. The State Agency used the information from the contract certification for pre-audit purposes and to identify technical assistance needs of local agencies. Now that local agencies have more than five years experience with contracting and there is on-site purchase of service monitoring by local and state staff, the usefulness of this device is deminished. Therefore, it is reasonable to delete this requirement from this Rule.

This rule is promulgated pursuant to the broad powers granted the Commissioner of Public Welfare through Minn. Stat. 256.01, Subd. 4 and Minn. Stat. 393.07, Subd. 4.

The remaining minor changes not addressed specifically are merely editorial and are meant to clarify language by better sentence structure.

DATED: 8/5/77

for Michael Wickenhauser Asst. Comm.
EDWARD J. DIRKSWAGER, JR.
Acting Commissioner
Department of Public Welfare

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

FINDINGS of FACT

In the Matter of the Proposed Adoption of Rule 160 of the Department of Public Welfare Governing the Administration of Minnesota Public Social Service.

ORDER ADOPTING THE RULE

The above-entitled matter came on for hearing before Hearing Examiner Russell L. Doty, of the State Office of Hearing Examiners, on September 2, 1977, in the Veteran's Service Building, Room D-20, after proper notice as required by Minn. Stat. sec. 15.0412, subd. 4 (Minn. Supp. 1977) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

At the hearing the proposed Rule 160 as published at 1 State Register 60 (July 11, 1977) was considered. The following persons testified for the Department of Public Welfare: Gary Haselhuhn and Herbert Cashdollar. The hearing continued until all interested groups and persons had an opportunity to be heard. Pursuant to the order of the Hearing Examiner, the record remained open for twenty (20) days for the submission of written material.

Based upon all the records and proceedings, the Hearing Examiner made Findings of Fact, Conclusions and Recommendations which are contained in the Report of Hearing Examiner, dated October 24, 1977. The Report is attached hereto as Exhibit A. Pursuant to the requirements of Minn. Stat. sec. 15.0412, subd. 4 (Minn. Supp. 1977) the Report was available to all affected persons for at least five (5) days.

The Hearing Examiner's Findings of Fact are not enumerated but are organized by subject. The Department does not accept all of the findings and suggestions of the Hearing Examiner. For clarity and ease of comparison the Department will address each of the Hearing Examiner's findings according

DEFINITION OF "INCOME ELIGIBLE CLIENT"; SECTION A. 6. m.

The Department accepts this finding of the Hearing Examiner.

"INCOME MAINTENANCE STATUS" DEFINITION; SECTION A. 6. n.

The Department accepts this finding of the Hearing Examiner.

"POSITION OF AUTHORITY" - NEW DEFINITION; SECTION A. 6. v.

The Department has reviewed the recommendation of Eugene J. Johnson, Deputy Director of the Hennepin County Welfare Department, contained on page 3 of his letter of September 1, 1977, to the Hearing Examiner regarding Section H. 6. b. (2). Mr. Johnson states that the language contained in H. 6. b. (2) which restricts provision of protection services without regard to income to children harmed or threatened to be harmed by a parent or guardian is too restrictive and inconsistent with revised federal regulations.

Prior to revision the applicable federal regulation provided as follows:

> (a) FFP is available without regard to income for services directed at the goal of preventing or remedying neglect, abuse or exploitation of children and adults unable to protect their own interests, only as follows:
>
> (1) With respect to children, only when provided with respect to an individual under the age of 18 harmed or threatened with harm by a person responsible for the individual's health or welfare (and for runaways, harmed or threatened with harm by virtue of their status), through non-accidental physical or mental injury, sexual abuse (as defined by State law); or negligent treatment, including the failure to provide adequate food, clothing, or shelter.

45 C.F.R. sec. 228.65 (1976) (emphasis added) ("FFP" stands for Federal Financial Participation).

Paragraph (1) of this provision, pertaining to children, was amended effective January, 1977 to read:

> (1) With respect to children, only when provided to or in behalf of an individual under the age of 18 who is harmed or threatened with harm through non-accidental physical or mental injury, sexual abuse (as defined by State law), or

to the topical organization contained in the Report. Where necessary the Department has made new findings of fact and conclusions. These are included in the body of the discussion.

PROCEDURAL REQUIREMENTS

The Department accepts the findings of the Hearing Examiner.

POST-RECORD COMMENTS

The Department rejects the finding that the written comment of Harry T. Neimeyer, dated October 11, 1977 can be considered as part of the record. Minn. Stat. sec. 15.0412, subd. 4 (1977) expressly limits to 20 days the period the record may be kept open following a public hearing. The record remained open 20 days, or through September 22, 1977, following the public hearing on Proposed Rule 160. Written comments and statements received after September 22, 1977, are not a part of the record herein and cannot furnish the basis for any finding of fact.

BACKGROUND AND GENERAL REASONS FOR RULE CHANGE

The Department accepts the findings of the Hearing Examiner.

DEPARTMENT AMENDMENTS TO PROPOSED CHANGES

The Department accepts this finding of the Hearing Examiner.

RULEMAKING AUTHORITY

The Department accepts this finding of the Hearing Examiner.

ADOPTION OF CHANGES NOT SPECIFICALLY MENTIONED IN OTHER PARTS OF THIS REPORT

The Department accepts this finding of the Hearing Examiner.

SCOPE OF RULE APPLICABILITY; SECTION A.5.

The Department accepts this finding of the Hearing Examiner.

"EMANCIPATED MINOR" DEFINED; SECTION H. 8. c. (4).

The Hearing Examiner found that it is unreasonable for the term "emancipated minor" to be used in Section H. 8. c. (4) without defining the term. The Hearing Examiner recommended a definition based on case law from jurisdictions throughout the country. The Department accepts the finding that the rule should include a definition of emancipated minor, but rejects the definition proposed by the Hearing Examiner. That definition is too detailed and tentative to be administratively workable.

It is reasonable and necessary to add the following definition of emancipated minor at Section H. 8. c. (4).

> (4) An emancipated minor. For purposes of this section an emancipated minor is an individual under the age of 18:
>
> (a) who has married; or
>
> (b) who is living apart from his parents and managing his own financial affairs; or
>
> (c) who is seeking one or more of the following Title XX services--family planning, health services, residential treatment for chemical dependency, or counseling related to pregnancy, venereal disease or chemical dependency--
>
> and has:
>
> 1. Borne a child; or
> 2. Wishes to determine the presence of or treat pregnancy, venereal disease, or chemical dependency.

The first two conditions, (a) and (b), are reasonable because they are within the meaning of emancipated minor as defined by Minnesota case law. See In re Fiihr, 289 Minn. 322, 184 N.W.2d 22 (1971), In re Sonnenberg, 256 Minn. 571, 99 N.W.2d 444 (1959). The third condition is reasonable because it encompasses those situations in which minors can give effective consent for medical services pursuant to Minn. Stat. secs. 144.341-343 (1976). In those statutorily specified circumstances the State has conferred upon minors the right to consent to treatment or service; to the extent it has done so it has removed from the parents control over the behavior of the minor. There-

fore, it is reasonable to consider minors emancipated in relation to those services. This definition is consistent with Minnesota case law which holds that emancipation may be partial and limited as to purpose. In re Sonnenberg, supra.

This definition is narrower than the definition proposed by the Hearing Examiner. That definition, particularly in the "may" clauses in the last sentence, is too conditional and vague to be administratively workable. Under that definition it would be too difficult for counties to determine when a minor could be considered emancipated for purposes of Title XX eligibility.

This definition is an insubstantial change which adds clarity to the rule.

GRANVILLE HOUSE PROBLEM; SECTION A. 6. 1.

The Hearing Examiner recommended that Section A. 6. 1. of the rule, which governs host county contracting, be amended specifically to accommodate the problems of Granville House, a halfway house with facilities in Ramsey and Washington Counties. It is unreasonable to promulgate an amendment which applies only to one facility, as proposed by the Hearing Examiner. The amendment is also unreasonable because there is no evidence in the record showing how the amendment might affect other service vendors with facilities or operations located in two or more counties. The amendments proposed by the Hearing Examiner do constitute a substantial change in the rule as proposed. Finally, it is unreasonable and unnecessary to amend this section as recommended by the Hearing Examiner because the Department intends to completely revise the host county contracting provisions as evidenced by the Notice of Intent to Solicit Opinion published at 2 State Register 1916 (April 17, 1968). The Hearing Examiner's recommendations regarding Sections A. 6. 1. and H. 11. c. (5) (c) are rejected. Those sections are adopted as proposed.

> negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter. For purposes of this section, runaways are presumed to be harmed or threatened with harm by virtue of their status.

45 C.F.R. sec. 228.65 (1977).

The phrase "by a person responsible for the individual's health or welfare" has clearly been deleted from the revised regulation. Thus, under the federal regulations FFP would be available to abused or neglected children regardless of who caused the harm. Therefore, the Department finds that Section H. 6. b. 2. should be amended as follows:

> The local social services agency shall document by entering into the case record for each child, that the ~~parent or guardian is threatening to harm~~ child is harmed or threatened with harm. Such harm shall be identified as non-accidental physical or mental injury, sexual abuse as defined in Minn. Stat. sec. 626.556, or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter. Harm or threatened harm to a runaway shall also be documented.

This amendment is reasonable or necessary because it is consistent with federal regulations and thus insures the availability of FFP.

It is an insubstantial charge.

DEFINITION OF "SOCIAL SERVICES"; SECTION A. 6. t.

The Department accepts this recommendation of the Hearing Examiner. Section A. 6. t. of the rule is amended accordingly.

OPEN MEETINGS; SECTIONS B. 6. b. and B. 8.

The Department has carefully reviewed the findings and recommendations of the Hearing Examiner regarding Section B. 6. b. which provides for "meetings to receive public comment" on the CASP plan. The Department has also reviewed the written comments of Edith Lallier, Executive Director of Ramsey Action Programs, Inc., which are contained in a letter to the Hearing Examiner dated September 7, 1977.

The Department finds that the term "public meeting" is more appropriate and reasonable in this section than the term "open meeting." Use of the latter term creates confusion by implying that such meetings would be subject to the Open Meeting Law, Minn. Stat. sec. 471.705 (1976). The meetings provided for in Section B. 6. b. are not subject to the Open Meeting Law. Why?

CLIENT ACCESS TO AGENCY METHODOLOGY

The Hearing Examiner recommended that Section E. 5. be amended by adding the underlined language:

> If the application is denied, the individual shall be notified in writing of the reason for denial; ((and)) of his right to appeal to the state agency; and to inspect the contents of all state and local agency files relevant to his case prior to the appeal hearing; and that the local social services agency's methods of assessing need and making service delivery determinations will be made available upon request. Such local agencies shall make that assessment and determination methodology available to the applicant or his representative upon request.

The Department rejects this recommendation because equivalent provisions already exist in Minn. Stat. sec. 256.045 (1976).

CLARIFICATION OF DUTY TO PROVIDE PRIORITY AND OPTIONAL SERVICES; SECTION C. 1. b.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

PRIORITY SERVICE CRITERIA, SECTION C.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

INCONSISTENT LISTING OF SERVICE CATEGORIES, SECTION C. 2., et seq.

The Hearing Examiner found that insofar as Section C. of the rule listed services as mandatory, priority, or optional in a way inconsistent with the Comprehensive Annual Social Services Plan (CASP), the rule was unreasonable. The Department agrees that the rule and the CASP should be consistent. Since

the identification of services as priority, mandatory, or optional in Proposed Rule 160 is consistent with current federal regulations and state law, and since the CASP is amended and published annually and the proposed CASP for 1978-1979 is currently subject to amendment before final adoption on October 1, 1978, it is reasonable to adopt the service categories as proposed in Rule 160, Section C. and to amend the CASP to conform with the rule. Section C. should be adopted as proposed.

SUBACUTE DETOXIFICATION SERVICES NOT WITHIN SCOPE OF RULE; SECTION C. 2. g. (1).

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

SECTION C. 3. C. (2).

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

INDIVIDUALIZED, NON-INSTITUTIONALIZED, ATTENDANT CARE SERVICES; C. 3. f.

It is appropriate and reasonable to specify attendant care in Section C. 3. f. The Hearing Examiner's finding as to this point is accepted and the rule is amended accordingly. It is neither necessary nor reasonable to define attendant care in Rule 160 because none of the specified social services are defined therein, and because there exist independent rules defining and governing each specific social service. Specifically, "attendant care" falls within the definition of homemaking services contained in Minn. Rule DPW 206 (12 MCAR sec. 2:206). Attendant care is also defined in the CASP plan. The Department therefore rejects the finding of the Hearing Examiner which adds a definition of attendant care to the rule.

CLIENT ACCESS TO OWN INFORMATION; SECTION D. 3.

The Hearing Examiner found that the Department's proposed amendment to Section D. 3. was not only unnecessary, but changed the meaning of the section. Prior to amendment the section provided:

> Clients shall have access to information about themselves pursuant to applicable state and federal laws.

The proposed amendment deleted that sentence and added the following provision:

> Information regarding clients shall be collected, used, stored, and disseminated only in accordance with state and federal law.

Based on the recommendation of Edith Lallier, Executive Director of Ramsey Action Programs, Inc., the Hearing Examiner recommended as reasonable and necessary the following provision:

> Clients shall have access to information about themselves and shall have the right to a hearing to correct or delete inaccurate, immaterial or outdated information.

The Hearing Examiner found that this provision constituted a substantial change from the rule as proposed.

The comments of Ms. Lallier reflect a concern that clients have access to their case files, especially in order to prepare for a hearing on an adverse eligibility determination, and in order to correct dated or erroneous information. The Department finds that its proposed amendment to Section D. 3. provides for client access and for correction of the file. The case files of recipients of social services are classified as private pursuant to the Emergency Classification of Welfare Records issued by the Commissioner of Administration on September 8, 1977, pursuant to the Minnesota Data Privacy Act, specifically Minn. Stat. sec. 15.1642, Minn. Supp. 1977. The rights of subjects of private data are contained in Minn. Stat. sec. 15.165 (1976). They include the right to see the data and obtain copies of it, and the right to contest the accuracy and completeness of the data.

The Department's proposed amendment to Section D. 3. is reasonable and necessary because it calls attention to the existence of relevant federal and state law and emphasizes that adherence to these laws is necessary, first of all, for proper delivery of social services, and secondly, in order to qualify for federal funds. At the same time the broad reference to "state and federal law" avoids the need for amending the rule every time the State data privacy law or federal regulations are amended.

OFFICIAL ACCESS TO CLIENT INFORMATION, SECTION D. 4.

The Department accepts this finding of the Hearing Examiner.

EXPLANATION OF RIGHTS; SECTION E. 3.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

CLARIFICATION IN SECTIONS E. 4. a. and E. 4. c.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

RECORD OF SERVICE DENIAL; SECTION E. 5.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

PROMPTNESS OF SERVICE DELIVERY; SECTION E. 6.

The definition of reasonable promptness contained in Section E. 6. a. and b. is confusing. Federal regulations require that if services are provided within 15 calendar days after notification of eligibility the further federal requirement of "reasonable promptness" is met. 45 C.F.R. sec. 228.60 (g) (3) (i) (1977). In order to ensure that Title XX services provided in Minnesota are eligible for federal financial participation (FFP) it is reasonable for the state agency to require that services be delivered within 15 calendar days. Accordingly, Section E. 6. should be amended as follows:

> 6. If application is approved, the local social services agency shall provide the social services with reasonable promptness. Reasonable promptness means:
>
> ~~a. Within 30 days of the application; or~~
>
> ~~b. Within 15 days of the notification that the application has been approved; or~~
>
> a. Within 15 calendar days after the applicant has been notified of his eligibility; or

~~c.~~ b. At an appropriate later date which has been mutually agreed upon by the local social services agency and the applicant.

CLIENT'S RIGHT TO REJECT SERVICES; SECTION F.

The Department accepts the finding of the Hearing Examiner that Section F. is reasonable and necessary. It further accepts the finding that the section should be amended by adding the words "if legally competent" after the word "applicant". The rule is amended accordingly.

TYPOGRAPHICAL ERROR; SECTION G. 2. a.

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

INCORPORATIONS BY REFERENCE; SECTION H. 4. c. (2).

The Department accepts this finding of the Hearing Examiner.

BATTERED WOMEN SPECIFIED; SECTION H. 6. a. (1).

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

PROTECTING CHILDREN FROM HARM; SECTION H. 6. b. (2).

See the findings made above under the caption "Position of Authority". The Department rejects the amendments proposed by the Hearing Examiner in favor of its own amendment.

REDETERMINATION OF ELIGIBILITY; SECTION H. 9. g.

The federal regulations implementing Title XX require as a condition for FFP that a state redetermine the eligibility of social service clients at least every six months:

> (1) Redetermination of eligibility shall be made for persons whose eligibility is determined on an individual basis:
>
> . . . .
>
> . . . .
>
> (iii) Periodically, but not less frequently than every six months . . . .

45 C.F.R. sec. 228.61 (c) (1) (iii) (1977) (emphasis added).

In Proposed Rule 160 the Department amended Section H. 9. g. by adding the word "maximum":

> An individual shall remain eligible for a maximum of six 6 months from the date eligibility was initially ~~established~~ determined.

This is another way of saying that eligibility must be redetermined within six months from the date of initial eligiblity. It is necessary and reasonable for the Department to require redeterminations in a time-span consistent with the federal regulations in order to insure the availability of FFP. The addition of the word "maximum" does not substantially change the meaning or effect of the rule.

In its Statement of Need (p. 6) the Department demonstrated that the primary amendment to sec. H. 9. g. was the Exception clause, which provides for annual redetermination in certain cases. The section is necessary and reasonable and is adopted as proposed.

LOCAL AGENCY USE OF SOCIAL SERVICES FEE; SECTION H. 10.

The Department accepts only the finding of the Hearing Examiner that the proposed amendments to Section H. 10. are necessary and reasonable.

COLLECTION NOTICE INTERVALS; SECTION H. 10. c. (2).

The Department accepts this finding of the Hearing Examiner.

LOCAL SERVICE AGENCY TITLE XX ELIGIBILITY; SECTION H. 10. c. (2).

The Department accepts this finding of the Hearing Examiner. The rule is amended accordingly.

B

ELIMINATING DOUBLE FEES FOR CERTAIN SERVICES; SECTION H. 10. d. (2).

The comments of the Hearing Examiner regarding this section are duly noted. However, the Department finds that the section is reasonable and necessary as proposed. The section is adopted as proposed.

REFUSING TO ENTER HOST COUNTY CONTRACTS WITH INCOMPETENT PROVIDERS; SECTION H. 11. c. (1).

The Department accepts the finding of the Hearing Examiner that his proposed amendment to Section H. 11. c. (1) represents a substantial change in the rule.

MISCELLANEOUS

1. The Department accepts this finding of the Hearing Examiner.

2. Not applicable.

3. The Department accepts this finding of the Hearing Examiner. The Rule has been amended accordingly.

4. The Department accepts this finding of the Hearing Examiner. The Rule has been amended accordingly.

Having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above-captioned rule and the reasonableness thereof,

NOW THEREFORE, IT IS ORDERED, that those Findings, Conclusions and Recommendations of the Hearing Examiner contained in the Report of the Hearing Examiner which have been accepted by the Department as indicated above are hereby adopted and incorporated herein.

It is further ordered, that this rule identified as Rule 160 of the Rules of the Minnesota Department of Public Welfare is adopted this 24th day of August, 1978, and after this day Rule 160 shall read in its entirety as set forth in the attached Exhibit B, pursuant to the authority vested in me, and pursuant to Minn. Stats. Chapters 15, 252, 256 and 393.

Dated: August 24, 1978

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Edward J. Dirkswager, Jr.

Edward J. Dirkswager, Jr.
Commissioner

K

AMENDMENTS

The Department recommends the following changes in the language of the proposed amendments to Minn. Rule DPW 160 as appeared in the State Register on July 11, 1977, and August 1, 1977.

C. 2. b. ~~Daytime-activity~~ Developmental achievement services.

E. 1. b. At local agency option, Aapplications ~~shall-not~~ may be required for determining group eligibility. However, whether or not applications are required, the local agency shall obtain sufficient information to document the basis for the group eligibility decision.

H. 5. Group Eligibility: With State Agency approval, ~~b~~local social services agencies have the option to include in the geographic area plan group determination of eligibility for social services as provided in and subject to federal regulations for Title XX.

B.14 H. 6. a. (4) (g) Emergency homemaking services not to exceed 30 cumulative days in any 12 month period.

B.15 H. 6. b. (4) (j) Emergency homemaking services not to exceed 30 cumulative days in any 12 month period.

Underlining indicates addition. ~~Strikeout~~ indicates deletion.

DPW-78-002-RLD



STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE
DIVISION OF SOCIAL SERVICES

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULE 160 OF THE)
DEPARTMENT OF PUBLIC WELFARE)
GOVERNING THE ADMINISTRATION)
OF MINNESOTA PUBLIC SOCIAL)
SERVICE.)

REPORT OF THE
CHIEF HEARING EXAMINER

The above-entitled matter was submitted to the Chief Hearing Examiner for review pursuant to the provisions of Minn. Stat. § 15.052, Subd. 4, and Minn. Rule HE 107, on September 15, 1978. This review is limited to ensuring compliance with Minn. Stat. § 15.0412, Subd. 4, and to determine whether or not the rules as finally adopted are substantially different from those prepared prior to hearing.

Based upon a review of the record, the Chief Hearing Examiner makes the following:

FINDINGS OF FACT

1. A Notice of Hearing was published in the State Register and mailed to all persons who had registered with the Secretary of State at least 30 days prior to the first day of hearing.

2. The rule was published in the State Register at least 30 days prior to the first day of hearing.

3. All documents required to be filed prior to the hearing pursuant to Minn. Rule HE 103 were filed more than 25 days prior to the hearing.

4. The Hearing Examiner issued his report on October 24, 1977, and the Commissioner of the Department of Public Welfare issued his Order adopting the rules on August 24, 1978, incorporating the Hearing Examiner's Report and making certain changes based on the record.

In rule DPW 160 C.4.a., the rule as finally adopted deletes what was previously (1) reading: "For families who are in the income eligible categories." Such deletion was not proposed at the hearing nor is such deletion addressed by the Department in its Order. Such deletion therefore is found to

be a substantial change.

Based upon the foregoing, the Chief Hearing Examiner makes the following:

CONCLUSIONS

1. The agency has complied with the provisions of Minn. Stat. § 15.0412, Subd. 4.

2. The deletion of the former rule DPW 160 C.4.a.(1) is a substantial change.

NOW, THEREFORE, pursuant to the provisions of Minn. Stat. § 15.052, Subd. 4, and Minn. Rule HE 108, the Department of Public Welfare shall either reinsert the deleted language discussed in the Findings and Conclusions above or reconvene the rule hearing.

Dated this 25th day
of September, 1978.

DUANE R. HARVES
Chief Hearing Examiner

M E M O R A N D U M

In reviewing this previously existing rule and the proposed amendments and the final rules, the Chief Hearing Examiner has reviewed with particular interest DPW 160 A.2. The existing language, prior to the hearing, was:

> "The Commissioner of Public Welfare may issue policy bulletins and manual material to local social service agencies and other service providers to clarify the provisions of this rule and may prescribe forms to be used in the administration of social services."

In this proceeding, the agency has deleted the term "policy" from this particular rule.

Minn. Stat. § 15.0411, Subd. 3, reads in part as follows:

> "'Rule' includes every agency statement of general applicability and future effect, including the amendment, suspension, or repeal thereof, made to implement or make specific the law enforced or administered by it...."

It would appear to the Chief Hearing Examiner that the rule in question violates the Administrative Procedure Act in that it attempts to allow the Commissioner of Public Welfare to issue bulletins and manual material "to clarify the provisions of this rule".

While it is beyond the purview of review of the Chief Hearing Examiner and in that this rule was only proposed to be amended by deleting one word, the Hearing Examiner could not rule on the particular rule either. However, the Chief Hearing Examiner takes this vehicle to point out to the agency that utilization of this rule may result in a subsequent judicial determination that the agency is in violation of the Administrative Procedure Act.

Had this particular rule been proposed as a new rule at the time of this hearing, it would have resulted in a finding that the rule was not needed, was not reasonable, and that it would have exceeded statutory authority of the Department.

Cavert McKee v. Likens

Ex D

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF
RULE 160 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ADMINISTRATION OF MINNESOTA PUBLIC SOCIAL SERVICE

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, 55155, on September 2, 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 State Register.

Edward J. Dirkswager, Jr.

EDWARD J. DIRKSWAGER, JR.
Acting Commissioner

Date: July 26, 1977

EX. C

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 160 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ADMINISTRATION OF MINNESOTA PUBLIC SOCIAL SERVICE

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, 55155, on September 2, 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 Russell Doty, Hearing Examiner, Office of Hearing Examiners, 1045 Grand Avenue, St. Paul, Minnesota, 55105, 612-298-0836, either before the hearing or within 5 working days after the close of the hearing.

Minn. Rule DPW 160 governs the administration of publicly funded social services as provided or purchased by county welfare and human services boards in Minnesota. Generally, the proposed amendments are responsive to changes in federal regulations governing Title XX of the Social Security Act. Major proposed changes in Minn. Rule DPW 160 include:

---Elimination of Letter of Contract Certification.

---Addition of Comprehensive Annual Service Program (CASP) Plan amendment policy.

---Addition of an option to provide services with eligibility for Title XX funds determined on a group basis.

---Addition of time limitations on county welfare/human services board response to applications for social services.

---Addition of services which are provided in protective situations without considering household income in determining eligibility for Title XX funds.

---Addition of an option providing for family planning services to minors without considering household income.

---Revision of household definition for Title XX.

---Addition of options in using different methods of eligibility determination for Title XX funds.

Copies of the proposed rules are now available and one free copy may be obtained by writing to Margaret Holt, Department of Public Welfare, Division of Social Services, Centennial Office Building, Fourth Floor, St. Paul, Minnesota, 55155, tele. number (612) 296-2338. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. §256.01, Subd. 4(2). A "statement of need" explaining why the agency feels the

OVER -

proposed rule is necessary and 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 any 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 (612) 296-5615.

Edward J. Dirkswager, Jr.

EDWARD J. DIRKSWAGER, JR.
Acting Commissioner

Dated: July 25, 1977

NOTE

This Notice of Hearing changes the hearing date on DPW Rule 160 from August 19, 1977 to September 2, 1977. There have been no changes in the content of Rule 160, the hearing date has simply been changed.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

ACTING COMMISSIONER OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO MINNESOTA RULE DPW-160 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ADMINISTRATION OF PUBLIC SOCIAL SERVICES

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, Room 300, St. Paul, Minnesota 55104, and in support thereof, the Department of Public Welfare will introduce the following evidence:

Testimony will be presented explaining the various proposed changes to the rule, the conditions which led to the need for the proposed changes, and problems in interpretation of the present rule which are clarified in the proposed changes.

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

Herb Cashdollar, Supervisor
Division of Social Services
Department of Public Welfare

Mr. Cashdollar may explain each rule change and show why it is necessary and reasonable for the administration of public social services in Minnesota.

Gary Haselhuhn, Director
Division of Social Services
Department of Public Welfare

Mr. Haselhuhn may supplement Mr. Cashdollar's comment regarding the necessity and reasonableness of proposed changes in Minnesota Rule DPW 160.

We intend to introduce as documentary evidence the 45 Code of Federal Regulations, Part 228, on Services to Families and Individuals: Title XX of the Social Security Act published on January 31, 1977.

We will be citing the following statutes, rules and regulations:

- Minn. Stat. 144.343 -- Minors may receive family planning on basis of own consent.

- Minn. Laws of 1977, Chapter 337 -- Changes name of DAC's to developmental achievement centers, effective 9-10-77.

- Minn. Rule 185 -- Mandatory DAC

- 45 CFR 228 -- Regulations on Title XX - Published January 31, 1977.

Dated: 8/5/77

Michael W. Weber, Asst Commr

EDWARD J. DIRKSWAGER, JR.
Acting Commissioner
Department of Public Welfare

to recover damages for personal injury or in any action under the workmen's compensation act. Nothing herein contained shall be construed to interfere with or limit the powers of the department of labor and industry to make inspections of places of employment or issue orders for the protection of the health of the persons therein employed. When upon investigation the board reaches a conclusion that a condition exists which is dangerous to the life and health of the workers in any industry or factory or other industrial institutions it shall file a report thereon with the department of labor and industry.

[1939 c. 322] (4327-1)

CONSENT OF MINORS FOR HEALTH SERVICES

144.341 LIVING APART FROM PARENTS AND MANAGING FINANCIAL AFFAIRS, CONSENT FOR SELF. Notwithstanding any other provision of law, any minor who is living separate and apart from his parents or legal guardian, whether with or without the consent of a parent or guardian and regardless of the duration of such separate residence, and who is managing his own financial affairs, regardless of the source or extent of his income, may give effective consent to medical, dental, mental and other health services for himself, and the consent of no other person is required.

[1971 c 544 s 1]

144.342 MARRIAGE OR GIVING BIRTH, CONSENT FOR HEALTH SERVICE FOR SELF OR CHILD. Any minor who has been married or has borne a child may give effective consent to medical, mental, dental and other health services for his or her child, and for himself or herself, and the consent of no other person is required.

[1971 c 544 s 2]

144.343 PREGNANCY, VENEREAL DISEASE AND ALCOHOL OR DRUG ABUSE. Any minor may give effective consent for medical, mental and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol and other drug abuse, and the consent of no other person is required.

[1971 c 544 s 3]

144.344 EMERGENCY TREATMENT. Medical, dental, mental and other health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the professional's judgment, the risk to the minor's life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment.

[1971 c 544 s 4]

144.345 REPRESENTATIONS TO PERSONS RENDERING SERVICE. The consent of a minor who represents that he may give effective consent for the purpose of receiving medical, dental, mental or other health services but who may not in fact do so, shall be deemed effective without the consent of the minor's parent or legal guardian, if the person rendering the service relied in good faith upon the representations of the minor.

[1971 c 544 s 5]

144.346 INFORMATION TO PARENTS. The professional may inform the parent or legal guardian of the minor patient of any treatment given or needed where, in the judgment of the professional, failure to inform the parent or guardian would seriously jeopardize the health of the minor patient.

[1971 c 544 s 6]

144.347 FINANCIAL RESPONSIBILITY. A minor so consenting for such health services shall thereby assume financial responsibility for the cost of said services.

[1971 c 544 s 7]

WATER POLLUTION

144.35 POLLUTION OF WATER. No sewage or other matter that will impair the healthfulness of water shall be deposited where it will fall or drain into any pond or stream used as a source of water supply for domestic use. The board shall have general charge of all springs, wells, ponds, and streams so used and take all necessary and proper steps to preserve the same from such pollution as may endan-

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Ex. I

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 160 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ADMINISTRATION OF MINNESOTA PUBLIC SOCIAL SERVICE

AFFIDAVIT OF MAILING

SUSAN A. WILFORD, being first duly sworn, deposes and says:

That on the 29th day of July, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she 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.

Susan A. Wilford

Subscribed and sworn to before me
this 29th day of July,
1977.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 160 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ADMINISTRATION OF MINNESOTA PUBLIC SOCIAL SERVICE

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

SUSAN A. WILFORD, being duly sworn on oath deposes and says:

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

2) That on the 28th day of July, 1977, she 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 had 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 28th day of July, 1977, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Susan A. Wilford

Subscribed and sworn to before me
this 28th day of July,
1977.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 160 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ADMINISTRATION OF MINNESOTA PUBLIC SOCIAL SERVICE

CERTIFICATE OF DELIVERY
SECRETARY
OF STATE'S
LIST

I hereby certify that the attached 504 Labels - 6 sheets sheets constitute the complete list of persons, associations, and other interested groups who as of 3:15 o'clock P .M. this 28th day of July, 1977, have requested pursuant to M. S. 1976 Sec. 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

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Lee E. Sheehy
Special Assistant Attorney General

DATE: November 13, 1978

FROM : John L. Kirwin John Kirwin
Special Assistant Attorney General

PHONE:

SUBJECT: Proposed DPW Rule 160

On August 18, 1978, the Commissioner signed an Order adopting the above-referenced rule. I am hereby forwarding the rule with the complete hearing record, to you for your review pursuant to Minn. Stat. §15.0412, subd. 4 (Supp. 1977).

There is voluminous correspondence and other material relative to the rule that I have not included. I am certainly willing to make it available for your review should you desire.

Please call me at 6-6628 if you have any questions. When you have approved the Rule, please call me and Robert Hamper, DPW State Register Liaison Officer, (6-2794).

Thank you.

JLK:dq

enc.

Ex J

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 160 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ADMINISTRATION OF MINNESOTA PUBLIC SOCIAL SERVICE

AFFIDAVIT OF ADDITIONAL MAILING

SUSAN A. WILFORD, being first duly sworn, deposes and says:

That on the 29th day of July, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to mailing the attached Notice of Hearing to all persons and associations listed on the Secretary of State's list, she also 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 the following agencies:

All Minnesota County Welfare Departments
All Minnesota Human Service Boards
All Minnesota Area Mental Health Boards
All Minnesota State Hospitals

Susan A. Wilford

Subscribed and sworn to before me
this 2 day of August
1977.

Margaret Holt

NOTARY PUBLIC MINNESOTA

K

AMENDMENTS

The Department recommends the following changes in the language of the proposed amendments to Minn. Rule DPW 160 as appeared in the State Register on July 11, 1977, and August 1, 1977.

C. 2. b. ~~Daytime-activity~~ Developmental achievement services.

E. 1. b. At local agency option, Aapplications ~~shall not~~ may be required for determining group eligibility. However, whether or not applications are required, the local agency shall obtain sufficient information to document the basis for the group eligibility decision.

H. 5. Group Eligibility: With State Agency approval, ~~L~~local social services agencies have the option to include in the geographic area plan group determination of eligibility for social services as provided in and subject to federal regulations for Title XX.

B.14 H. 6. a. (4) (g) Emergency homemaking services not to exceed 30 cumulative days in any 12 month period.

B.15 H. 6. b. (4) (j) Emergency homemaking services not to exceed 30 cumulative days in any 12 month period.

Underlining indicates addition. ~~Strikeout~~ indicates deletion.

OFFICE OF HEARING EXAMINERS

JOHN KIRWIN
Special Assistant
Attorney General

October 18, 1978

DUANE R. HARVES
Chief Hearing Examiner

DPW Rule 160.

Pursuant to our conversation, enclosed with this memorandum is a copy of the Supplemental Report of the Chief Hearing Examiner.

You will note that I have copied Mr. Sheehy.

DRH:sw
Enc.
cc: Mr. Lee Sheehy

RECEIVED
OCT 18 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF WELFARE
DIVISION OF SOCIAL SERVICES

In the Matter of the Proposed Adoption of Rule 160 of the Department of Public Welfare Governing the Administration of Minnesota Public Social Service.

SUPPLEMENTAL REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter was first submitted to the Chief Hearing Examiner for review pursuant to the provisions of Minn. Stat. Sec. 15.052, subd. 4, and Minn. Rule HE 107, on September 15, 1978. That review was completed and the Chief Hearing Examiner issued his report on September 25, 1978.

In that report, the Chief Hearing Examiner found that the deletion of the former rule, DPW 160 C.4.a.(1), was a substantial change. The Department of Public Welfare, by and through its Special Assistant Attorney General John L. Kirwin, requested that the Chief Hearing Examiner review his prior conclusion by memorandum dated October 3, 1978. (Copy attached.)

The Chief Hearing Examiner, having considered the memorandum and having once more reviewed the rules finds and concludes that the deletion of the former DPW 160 C.4.a.(1) is not a substantial change in that the inclusion of the services in the optional category of the rule would be duplicative of the same provision found in the priority section of the rule. The Chief Hearing Examiner advises the agency that prior to submitting the rule to the Attorney General for review on the issues of form and legality, that it issue a supplemental finding of fact addressing this deletion, which finding was not contained in the agency's original findings and fact and order adopting rules.

Now, therefore, pursuant to the provisions of Minn. Stat. Sec. 15.052, subd. 4, the Department of Public Welfare shall have the responsibility of submitting the rules to the Attorney General for his review.

Dated: October 18th, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Duane Harves
Chief Hearing Examiner

DATE: Oct. 3, 1978

FROM : John L. Kirwin
Special Assistant Attorney General
Department of Public Welfare

PHONE: 6628

SUBJECT: DPW Proposed Rule No. 160

I received your Report regarding DPW Rule No. 160, and I appreciate your prompt review.

In your Report, you determined that the deletion from Rule DPW 160 C.4.a. of "(1) For families who are in the income eligible categories" was a substantial change. Though the deletion does at first glance appear to be substantial, a discussion of the provision with the DPW staff involved convinced me that the deletion was not even substantive.

Rule DPW 160 C.1. describes the services to be provided by local social services agencies. Those services are divided into three categories: mandatory, priority and optional services. The services falling into those categories are specified in parts 2, 3, and 4 respectively of Rule DPW 160 C. Rule DPW 160 C.3.b. provides that day care services for "children of working parents in income eligible categories" is to be considered a priority service to be provided by the local social services agency. Rule DPW 160 C.4.a.(1) provides that the local social services agency has the option of providing day care for children in "families who are in the income eligible categories."

Though provision of both "priority" and "optional" services are discretionary with the local social services agency, a service specified in the "priority" category carries with it the strong recommendation of the state agency. Therefore, since the service was previously included in both the "optional" and "priority" categories, the omission of the reference to the service in the "optional" category does not work a substantive change. Provision of the service remains discretionary with the local agency and the state agency's strong recommendation regarding the service remains intact.

With this in mind, I request that you once again review DPW proposed Rule No. 160 for substantial change pursuant to Minn. Stat. §15.052, subd. 4 and Minn. Rule HE 107.

CC: Lee Sheehy,
Special Assistant Attorney General

ADMIN-1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF HEARING EXAMINERS

Office Memorandum

TO : JOHN L. KIRWIN
Special Assistant Attorney General
Department of Public Welfare

DATE: Sept. 25, 1978

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 8100

SUBJECT: DPW RULE 160

I am returning herewith the Report of the Chief Hearing Examiner with a Memorandum attached in the above-entitled matter.

I have kept the copies of the documents you filed with me on the 15th of September for our file.

Please note that a copy of this report has been forwarded to the Attorney General pursuant to Minn. Rule HE 108 (which was the effective number at the date these rules were first adopted and which has now become HE 111).

DRH:sh
Enc.
cc: Lee Sheehy
Special Assistant Attorney General

RECEIVED
SEP 27 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE
DIVISION OF SOCIAL SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 160 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ADMINISTRATION OF MINNESOTA PUBLIC SOCIAL SERVICE.	REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter was submitted to the Chief Hearing Examiner for review pursuant to the provisions of Minn. Stat. § 15.052, Subd. 4, and Minn. Rule HE 107, on September 15, 1978. This review is limited to ensuring compliance with Minn. Stat. § 15.0412, Subd. 4, and to determine whether or not the rules as finally adopted are substantially different from those prepared prior to hearing.

Based upon a review of the record, the Chief Hearing Examiner makes the following:

FINDINGS OF FACT

1. A Notice of Hearing was published in the State Register and mailed to all persons who had registered with the Secretary of State at least 30 days prior to the first day of hearing.

2. The rule was published in the State Register at least 30 days prior to the first day of hearing.

3. All documents required to be filed prior to the hearing pursuant to Minn. Rule HE 103 were filed more than 25 days prior to the hearing.

4. The Hearing Examiner issued his report on October 24, 1977, and the Commissioner of the Department of Public Welfare issued his Order adopting the rules on August 24, 1978, incorporating the Hearing Examiner's Report and making certain changes based on the record.

In rule DPW 160 C.4.a., the rule as finally adopted deletes what was previously (1) reading: "For families who are in the income eligible categories." Such deletion was not proposed at the hearing nor is such deletion addressed by the Department in its Order. Such deletion therefore is found to

be a substantial change.

Based upon the foregoing, the Chief Hearing Examiner makes the following:

CONCLUSIONS

1. The agency has complied with the provisions of Minn. Stat. § 15.0412, Subd. 4.

2. The deletion of the former rule DPW 160 C.4.a.(1) is a substantial change.

NOW, THEREFORE, pursuant to the provisions of Minn. Stat. § 15.052, Subd. 4, and Minn. Rule HE 108, the Department of Public Welfare shall either reinsert the deleted language discussed in the Findings and Conclusions above or reconvene the rule hearing.

Dated this 25th day
of September, 1978.

DUANE R. HARVES
Chief Hearing Examiner

M E M O R A N D U M

In reviewing this previously existing rule and the proposed amendments and the final rules, the Chief Hearing Examiner has reviewed with particular interest DPW 160 A.2. The existing language, prior to the hearing, was:

> "The Commissioner of Public Welfare may issue policy bulletins and manual material to local social service agencies and other service providers to clarify the provisions of this rule and may prescribe forms to be used in the administration of social services."

In this proceeding, the agency has deleted the term "policy" from this particular rule.

Minn. Stat. § 15.0411, Subd. 3, reads in part as follows:

> "'Rule' includes every agency statement of general applicability and future effect, including the amendment, suspension, or repeal thereof, made to implement or make specific the law enforced or administered by it...."

It would appear to the Chief Hearing Examiner that the rule in question violates the Administrative Procedure Act in that it attempts to allow the Commissioner of Public Welfare to issue bulletins and manual material "to clarify the provisions of this rule".

While it is beyond the purview of review of the Chief Hearing Examiner and in that this rule was only proposed to be amended by deleting one word, the Hearing Examiner could not rule on the particular rule either. However, the Chief Hearing Examiner takes this vehicle to point out to the agency that utilization of this rule may result in a subsequent judicial determination that the agency is in violation of the Administrative Procedure Act.

Had this particular rule been proposed as a new rule at the time of this hearing, it would have resulted in a finding that the rule was not needed, was not reasonable, and that it would have exceeded statutory authority of the Department.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rule 160 of the Department of Public Welfare Governing the Administration of Minnesota Public Social Service.

SUPPLEMENTAL FINDINGS OF FACT

On August 24, 1978, the Commissioner of Public Welfare issued his Order adopting the Rule in the above-entitled matter. On October 18, 1978, the Chief Hearing Examiner, while determining that a certain deletion from the originally proposed rule was not a substantial change, recommended that a Supplemental Finding of Fact be issued concerning the deletion. Pursuant to that recommendation, the Commissioner of Public Welfare now makes the following

SUPPLEMENTAL FINDING OF FACT

OPTIONAL SERVICES; SECTION C. 4. a.

The Department has deleted the language at Section C. 4. a. (1) which reads, "For families who are in the income eligible categories". Section C. 4. a. (2) is renumbered accordingly to new C. 4. a. (1). The provision was redundant and its deletion is not a substantial change. The deleted provision provided that local agencies could provide the specified service as an optional service. Section C. 3. b. (1) provides that the same service is to be considered a priority service. Thus the deleted provision is subsumed by the latter, higher priority, provision.

Dated: Nov 7, 1978

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Edward J. Dirkswager, Jr.
Commissioner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Duane Harves
Chief Hearing Examiner

DATE: Oct. 3, 1978

FROM : John L. Kirwin
Special Assistant Attorney General
Department of Public Welfare

PHONE: 6628

SUBJECT: DPW Proposed Rule No. 160

I received your Report regarding DPW Rule No. 160, and I appreciate your prompt review.

In your Report, you determined that the deletion from Rule DPW 160 C.4.a. of "(1) For families who are in the income eligible categories" was a substantial change. Though the deletion does at first glance appear to be substantial, a discussion of the provision with the DPW staff involved convinced me that the deletion was not even substantive.

Rule DPW 160 C.1. describes the services to be provided by local social services agencies. Those services are divided into three categories: mandatory, priority and optional services. The services falling into those categories are specified in parts 2, 3, and 4 respectively of Rule DPW 160 C. Rule DPW 160 C.3.b. provides that day care services for "children of working parents in income eligible categories" is to be considered a priority service to be provided by the local social services agency. Rule DPW 160 C.4.a.(1) provides that the local social services agency has the option of providing day care for children in "families who are in the income eligible categories."

Though provision of both "priority" and "optional" services are discretionary with the local social services agency, a service specified in the "priority" category carries with it the strong recommendation of the state agency. Therefore, since the service was previously included in both the "optional" and "priority" categories, the omission of the reference to the service in the "optional" category does not work a substantive change. Provision of the service remains discretionary with the local agency and the state agency's strong recommendation regarding the service remains intact.

With this in mind, I request that you once again review DPW proposed Rule No. 160 for substantial change pursuant to Minn. Stat. §15.052, subd. 4 and Minn. Rule HE 107.

CC: Lee Sheehy,
Special Assistant Attorney General

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF HEARING EXAMINERS

Office Memorandum



TO : JOHN KIRWIN
Special Assistant
Attorney General

DATE: October 18, 1978

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE:

SUBJECT: DPW Rule 160.

Pursuant to our conversation, enclosed with this memorandum is ~~a copy of~~ the Supplemental Report of the Chief Hearing Examiner.

You will note that I have copied Mr. Sheehy.

DRH:sw
Enc.
cc: Mr. Lee Sheehy

DPW-78-002-RLD

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF WELFARE
DIVISION OF SOCIAL SERVICES



In the Matter of the Proposed Adoption of Rule 160 of the Department of Public Welfare Governing the Administration of Minnesota Public Social Service.

SUPPLEMENTAL REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter was first submitted to the Chief Hearing Examiner for review pursuant to the provisions of Minn. Stat. Sec. 15.052, subd. 4, and Minn. Rule HE 107, on September 15, 1978. That review was completed and the Chief Hearing Examiner issued his report on September 25, 1978.

In that report, the Chief Hearing Examiner found that the deletion of the former rule, DPW 160 C.4.a.(1), was a substantial change. The Department of Public Welfare, by and through its Special Assistant Attorney General John L. Kirwin, requested that the Chief Hearing Examiner review his prior conclusion by memorandum dated October 3, 1978. (Copy attached.)

The Chief Hearing Examiner, having considered the memorandum and having once more reviewed the rules finds and concludes that the deletion of the former DPW 160 C.4.a.(1) is not a substantial change in that the inclusion of the services in the optional category of the rule would be duplicative of the same provision found in the priority section of the rule. The Chief Hearing Examiner advises the agency that prior to submitting the rule to the Attorney General for review on the issues of form and legality, that it issue a supplemental finding of fact addressing this deletion, which finding was not contained in the agency's original findings and fact and order adopting rules.

Now, therefore, pursuant to the provisions of Minn. Stat. Sec. 15.052, subd. 4, the Department of Public Welfare shall have the responsibility of submitting the rules to the Attorney General for his review.

Dated: October 18th, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULEMAKING PROCEDURES

I, Special Assistant Attorney General John L. Kirwin, do hereby declare that I have examined the proposed Rule 160 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 before.

Dated: November 13, 1978

JOHN L. KIRWIN
Special Assistant Attorney General