STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Governing the Aid to Families With Dependent Children (AFDC) Program, Minnesota Rules, Part 9500.2060 to 9500.2880.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 11:00 a.m. on Friday, March 9, 1990 at the Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota. This Report is part of a rule hearing proceeding held pursuant to Minn. Stat. §§ 14.131 - 14.20 to determine whether the agency has fulfilled all relevant substantive and procedural requirements of law, whether the proposed rules are needed and reasonable, and whether or not the rules, if modified, are substantially different from those originally proposed.

Patricia A. Sonnenberg, Special Assistant Attorney General, Suite 200, 520 Lafayette Road, St. Paul, Minnesota 55155, appeared on behalf of the Minnesota Department of Human Services. Appearing and testifying in support of the proposed rules on behalf of the Department were: Paul Timm-Brock, Assistance Payments Director; Barbara Anderson, Quality Control Division; and Kristy McGovern, Quality Control Division. The hearing continued until all interested groups and persons had had an opportunity to testify concerning the adoption of the proposed rules.

The Department of Human Services must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval. If the Chief Administrative Law Judge approves the adverse findings of this Report, he will advise the Department of actions which will correct the defects and the Department may not adopt the rule until the Chief Administrative Law Judge determines that the defects have been corrected. However, in those instances where the Chief Administrative Law Judge identifies defects which relate to the issues of need or reasonableness, the Department may either adopt the Chief Administrative Law Judge's suggested actions to cure the defects or, in the alternative, if the Department does not elect to adopt the suggested actions, it must submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment.

If the Department elects to adopt the suggested actions of the Chief Administrative Law Judge and makes no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, then

the Department may proceed to adopt the rule and submit it to the Revisor of Statutes for a review of the form. If the Department makes changes in the rule other than those suggested by the Administrative Law Judge and the Chief Administrative Law Judge, then it shall submit the rule, with the complete record, to the Chief Administrative Law Judge for a review of the changes before adopting it and submitting it to the Revisor of Statutes.

When the Department files the rule with the Secretary of State, it shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On January 25, 1990, the Department filed the following documents with the Chief Administrative Law Judge:

(a) A copy of the proposed rules certified by the Revisor of Statutes.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
(e) The Statement of Need and Reasonableness.

2. On January 29, 1990, a Notice of Hearing and a copy of the proposed rules were published at 14 State Register pp. 1901 - 1920.[1]

3. On January 24, 1990, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

4. On February 8, 1990, the Department filed the following documents with the Administrative Law Judge:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) An Affidavit of Additional Notice.
(e) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

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[1]This publication was a "dual-notice" indicating that it was the Department's intent to adopt the proposed rule in a non-controversial manner if fewer than 25 persons requested a public hearing. However, more than 25 requests for a hearing were submitted so this hearing was held.

(f) A copy of the State Register containing the proposed rules.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 12 State Register page 1974 (March 7, 1988) and a copy of the Notice.

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

5. The period for submission of written comment and statements remained open through March 29, 1990, the period having been extended by Order of the Administrative Law Judge to 20 calendar days following the hearing. The record closed on April 3, 1990, the third business day following the close of the comment period.

Statutory Authority

6. Statutory authority to promulgate the proposed rules is found at Minn. Stat. § 256.851 (1988).

Fiscal Impact Statement

7. Pursuant to Minn. Stat. §§ 3.982, 14.11 and 14.131 (1988), the Department filed a fiscal note setting forth the anticipated cost to the State and local units of government over the next two years if these proposed rules are adopted and implemented. The Department estimates that the implementation of the proposed rules will result in additional State expenses of approximately $146,658 and county expenses of $130,998 in the two-year period subsequent to implementation.

Post-Hearing Modifications to the Proposed Rules Made by the Department

8. Subsequent to the hearing on this matter and after a review of all the written submissions, the Department has modified the proposed rules additionally as follows:[2]

9500.2060

Subp. 58. Full-time student. "Full-time student" means a person who is enrolled in ~~and attending~~ a graded or ungraded primary, intermediate, secondary, GED preparatory, trade, technical, vocational, or postsecondary school, and who meets the school's standard for full-time attendance.

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[2]Double-underlining indicates new language added subsequent to the publication of the proposed rules in sections where single-underlining is used to show amendments initially made by the Department.

9500.2140, subp. 5C

(7) when a recipient child has run away from home~~,-and-another-person-has not-made-application-for-that-child~~ or when a recipient child has been taken from home without the consent of the recipient caretaker or a court order and the caretaker has reported the kidnapping to the appropriate law enforcement agency and has initiated legal action for the return of the child, if possible, assistance must continue for no more than two months following the month of departure, provided another person has not made application for the recipient child.

9500.2380, subp. 2

I. state and federal income tax refunds ~~except-for~~ including the earned income tax credit;

~~L.~~ J. funds received for reimbursement, replacement, or rebate of personal or real property when these payments are made from public agencies, ~~issued by-insurance-companies,~~ awarded by a court, solicited through public appeal, or made as a grant by a federal agency subsequent to a presidential declaration of disaster;

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DD. Rebate of rental payments paid by an applicant or recipient.

9500.2420, subp. 4

C. A local agency may verify additional program eligibility and assistance payment factors when it ~~either-documents~~ determines that information on the application is inconsistent with statements made by the applicant, other information on the current application, information on previous applications, or other information received by the local agency. The local agency must document the reason for verifying the factor in the case record of an assistance unit ~~or-when-it-establishes-written-procedures-that-identify-those-circumstances in-which-additional-program-eligibility-may-be-required. A-local-agency-may also-verify-additional-program-eligibility-and-assistance-payment-factors-when it-has-received-department-approval-to-verify-those-factors-on-a-county-wide basis-because-of-unique-circumstances.~~

Additional factors that may be verified, subject to the ~~conditions-of-this item~~ approval of the commissioner, are:

(1) the presence of a child in the home;
(2) death of a parent or spouse;
(3) continued absence of a parent;
(4) ~~residence~~ citizenship;
(5) marital status~~,-except-as-provided-under-item-A,-subitem-(9)~~; and
(6) income and property that an applicant or recipient has not acknowledged receiving or having.

9500.2580 EMPLOYMENT DISREGARDS

A local agency shall deduct the disregards in items A to D from gross earned income as defined in part 9500.2380:

A. A ~~$75~~ 90 work expense, whether employment is part- or full-time. ~~This disregard must be deducted from the gross earned income of each employed member of an assistance unit and for other financially responsible household members who are ineligible or otherwise excluded from the assistance unit~~, except that sanctioned persons who are not allowed allocations under part 9500.2600, item C must not receive this disregard. ~~This expense is~~ A $75 work expense shall be deducted for those financially responsible persons under part 9500.2500, subpart 4, item G, subitem (3), prior to the payment eligibility test under part 9500.2500, subpart 5, and must not be deducted a second time under part 9500.2500, subpart 5, item B.

B. A monthly deduction for ~~documented~~ costs for care of a dependent child or an adult dependent who is in the assistance unit. These costs must be documented according to part 9500.2420, subpart 4, item B, subitem 6. This disregard must only be deducted from the gross income of a member of an assistance unit or an ineligible parent, except that sanctioned persons who are not allowed allocations under part 9500.2600, item C must not receive this disregard. The deduction must not exceed ~~$160 per~~ $175 for each dependent age two or older, or $200 for each dependent under the age of two when employment equals or exceeds 30 hours per week~~, or $159 per~~. The deduction must not exceed $174 for each dependent age two or older, or $199 for each dependent under the age of two when employment is less than 30 hours per week. A deduction for dependent care costs is not allowed when the care is provided by a member of an assistance unit, by a parent of a dependent child, or by a spouse of a caretaker or a dependent child. The deduction under this item shall be taken after the deductions in items A, C, and D.

C. A deduction for a $30 and one-third work incentive disregard. This disregard must be deducted for each employed member of an assistance unit. The first $30 must be applied against the balance of gross earned income after deductions for the work expense ~~and dependent care~~ have been allowed. A deduction of one-third of the balance must also be applied after allowing the $30 deduction. This deduction is limited by subitems (1) to (6).

9500.2640

Subp. 5. Determining net income. A local agency shall determine net income for purposes of recoupment by ~~using~~ deducting:

A. ~~estimates of federal and state income taxes, social security withholding taxes, and mandatory retirement fund deductions~~ the first [~~$75~~] $90 of earned income and, for self-employed persons, the expenses directly related to and necessary for the productions of goods and services; and

9500.2680

Subp. 3. Choosing payees for protective, vendor, and two-party payments. A local agency shall consult with a caretaker regarding the selection of the form

of payment, the selection of a protective payee, and the distribution of the assistance payment to meet the various costs incurred by the assistance unit. When choosing a protective payee, the local agency shall notify the caretaker of a consultation date. If the caretaker fails to respond to the local agency's request for consultation by the effective date on the notice, the local agency shall choose a protective payee for that payment month and subsequent payment months until the caretaker responds to the agency's request for consultation. The local agency shall notify the caretaker of the right to appeal the determination that a protective, vendor, or two-party payment should be made or continued and to appeal the selection of the payee.

When a local agency is not able to find another protective payee, a local agency staff member may serve as a protective payee. A person who is not to serve as protective payee is: a member of the county board of commissioners; the local agency staff member determining financial eligibility for the family; special investigative or resource staff; the staff member handling accounting fiscal processes related to the recipient; or a landlord, grocer, or other vendor dealing directly with the recipient.

9500.2800 AFDC Payments for . . . Special Needs

The Department has withdrawn new subp. 8a., the amendments to subp. 9, and new subp. 10. This withdrawal is based on the following:

> Federal financial participation (FFP) for Employment Special Needs (ESN) expenditures ended on October 13, 1989. In order to maximize the availability of FFP funds remaining as of October 13, 1989, state ESN funds were transferred into the Project STRIDE Employment and Training Block Grant fund. Project STRIDE expenditures are eligible for FFP at varying rates ranging from 50 percent to 90 percent. The transfer of state ESN funds to Project STRIDE was approved on January 29, 1990, by the Legislative Advisory Commission and by the Governor on February 14, 1990. Based on the loss of funding for the ESN program, the department recommends that the proposed rule changes for part 9500.2800, subparts 8a, 9, and 10 be withdrawn.

Part 9500.2820 EMERGENCY ASSISTANCE

Subp. 4. Inquiries. A local agency shall offer, by hand or mail, an application form and an informational brochure provided by the department as soon as a person makes a written or oral inquiry about the program. A local agency shall offer an application form and brochure on the same day the inquiry is received by the local agency. The brochure shall include information on the effect of accepting emergency assistance as a cash payment in lieu of a vendor or two-party payment may have on food stamps.

The above-modifications were made to eliminate ambiguous language, to clarify the intent and purpose of the proposed rules, and in response to public

comments which are a part of the record in this matter. The Administrative Law Judge finds that the need for and reasonableness of these modifications has been demonstrated and that none constitute a substantial change from the rules as initially proposed.

The Judge points out that subpart 4 of Rule 9500.2820 was not amended in any respect by the Department when the rules were initially proposed or published in the State Register. The Department has, however, subsequent to the hearing, modified that subpart by adding language which clarifies the content of a brochure which is required to be made available to the public by local agencies. Although this is a new requirement, the Judge finds that it is not a substantial change within the meaning of Minn. Rule 1400.1100, subp. 2. That rule requires that the Administrative Law Judge shall consider the extent to which the change "affects classes of persons who could not have reasonably been expected to comment on the proposed rules at the rulemaking hearing, or goes to a new subject matter of significant substantive effect, or makes a major substantive change that was not raised by the original notice of hearing in such a way as to invite reaction at the hearing, or results in a rule fundamentally different in effect from that contained in the notice of hearing." The modification made by the agency to subpart 4 of Rule 9500.2820 is merely a clarification of what is intended by the rule and is not a "new subject matter of significant substantive effect" or a "major substantive change". Consequently, the Judge has found that this proposed modification, which addresses concerns raised at the hearing, does not constitute a substantial change to the rules as initially proposed.

Nature of the Proposed Rules

9. The proposed amendments to the rules governing AFDC eligibility incorporate changes in federal and state law and clarify certain provisions that have been the source of confusion in the past. The proposed rules also bring the AFDC program into conformity with food stamp policy to the extent permitted by federal law. Consistency between the AFDC and food stamp programs is necessary because of the statewide automated eligibility project (MAXIS) that the Department is developing. This project will computerize eligibility determinations for the AFDC and food stamp programs. These proposed rule amendments have been developed in consultation with an advisory committee composed of representatives from counties, service providers, Legal Aid and the Department of Jobs and Training.

10. Some of the proposed rule provisions received no negative public comment and were adequately supported by the Statement of Need and Reasonableness. The Judge will not specifically address those rules in the discussion below and specifically finds that the need for and reasonableness of those provisions has been demonstrated.[3] Some of the public comments raised

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[3]In order for an agency to meet the burden of reasonableness, it must demonstrate by a presentation of facts that the rule is rationally related to the end sought to be achieved. Broen Memorial Home v. Minnesota Department of Human Services, 364 N.W.2d 436, 440 (Minn. App. 1985). Those facts may either be adjudicative facts or legislative facts. Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984). The agency must show that a reasoned determination has been made. Manufactured Housing Institute at 246.

issues beyond the scope of the proposed rule amendments or were legislative-type suggestions designed to improve the rule. Several of the concerns raised by the public have been addressed by the modifications to the proposed rules set forth above. The remainder of this Report will only address substantive issues of need, reasonableness or statutory authority.

Discussion of the Proposed Rules

11. Rule 9500.2140, subp. 5C.(7) -- The Legal Services Advocacy Project (LSAP), the Legal Aid Society of Minneapolis (Legal Aid) and the Southern Minnesota Regional Legal Services (SMRLS) all objected to the two-month limitation on assistance for a child who has been taken from or leaves the home without the consent of the recipient caretaker. These three groups argue that the two-month limitation is totally unrealistic if the recipient caretaker is forced to go to court to secure the return of a child. They contend that the caretaker must be able to maintain an appropriate household for the child to return to and that this may be impossible when assistance is cut off after two months. Each argues that the assistance limitation period should be changed to six months in order to more closely coincide with the period necessary to recover a "kidnapped" child or runaway.

The Department contends that the temporary absence standard of two months is reasonable and is consistent with other temporary absences from the home. The Department points out that the only exceptions to the two-month standard are hospitalization, illness and foster care. The Department has amended this rule provision to provide for an expansion of the access to temporary absence when children have been kidnapped and it has been reported to the appropriate law enforcement agency. (See Finding 8 above.)

The Statement of Need and Reasonableness states that "the two-month period of continued benefits enables the recipient caretaker to maintain the home for the child's return and gives the family and/or the family court system time to resolve the situation and provide for the return of the departed child." The evidence submitted by LSAP, Legal Aid and SMRLS shows clearly that if recourse through the court system for the return of a "runaway" or "kidnapped" child is initiated, a two-month period to resolve the issue is not sufficient. The Judge finds that the Department has not shown the need for or reasonableness of the two-month assistance limitation period contained in the rule. In order to correct this defect, the rule should be amended to make the limitation period "no more than six months". As so amended, the proposed rule is both needed and reasonable.

12. Rule 9500.2420, subp. 4A.(11) -- SMRLS and LSAP argue that the use of "residence" as an eligibility factor for assistance is inappropriate due to the increased homelessness among families with children. These families reside in the county, but verification of a "residence" can be extremely difficult if the family is living with relatives or friends on a temporary basis, in shelters for limited periods, or even in cars. They contend that the rule should make absolutely clear that the initial verification necessary is only that the "household" is physically present in the county and is intending to continue to live in the county.

The Department states that the concern raised by SMRLS and LSAP is sufficiently dealt with in Rule 9500.2140, subp. 2C. which provides that "a

person who lives in vehicles or other temporary places, including transient facilities, is a resident of Minnesota when that person is physically present in Minnesota on an ongoing basis. . . ." The Judge agrees that this rule provision does make it clear that a person's presence in the county, and not the attachment of a specific, permanent address to the person, is the determining factor in assessing eligibility. Thus, the Judge finds that the need for and reasonableness of proposed Rule 9500.2420, subp. 4A.(11) has been demonstrated.

13. Rule 9500.2820, subps. 15 and 16 -- Both SMRLS and LSAP argued that the proposed threshold limits for emergency assistance eligibility for utility costs is unreasonably high. The Judge points out that the threshold limits were not noticed as a subject about which amendments would be made and/or discussed. Consequently, any changes at this time, without allowing the Department to do a fiscal analysis, would be a substantial change to the rules as proposed.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Department of Human Services gave proper notice of the hearing in this matter.

2. That the Department has fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule.

3. That the Department has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i)(ii).

4. That the Department has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii), except as noted at Finding 11.

5. That the amendments and additions to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, and Minn. Rule 1400.1000, subp. 1 and 1400.1100.

6. That the Administrative Law Judge has suggested action to correct the defects cited in Conclusion 4 as noted at Finding 11.

7. That due to Conclusion 11, this Report has been submitted to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. § 14.15, subd. 3.

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 19 day of April, 1990.

Peter C. Erickson

PETER C. ERICKSON
Administrative Law Judge