



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 03-001

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

1. Statutory Authority

a. The end of the second paragraph of the analysis states the department’s intention “to recognize the ability of other persons to qualify someone for TAP (Telecommunication Assistance Program) assistance” and s. HFS 78.05 (1) would allow certification of hearing loss by “a counselor employed by the department of workforce development . . . or a counselor at an independent living center.” This appears to conflict with s. 46.297 (2) (a), Stats., which requires that a person be certified as deaf or severely hearing impaired by a physician, a licensed audiologist, or the department.

b. Section HFS 78.05 (3) (a) appears to allow for the possibility that a person would be eligible for TAP assistance if the person reported adjusted gross income on an individual income tax return equal to or less than 200% of the poverty line, even if a nonimpoverished spouse filed separately. This appears to conflict with s. 46.297 (2) (b), Stats., which requires that the adjusted gross income of an eligible person’s family be equal to or less than 200% of the poverty line.

2. Form, Style and Placement in Administrative Code

a. The definition of “Public Service Commission” (PSC) in s. HFS 78.03 (8) should be moved appropriately to reflect that definitions are arranged alphabetically. [See s. 1.01 (7) (a), Manual.]

b. In the note following s. HFS 78.04 (1): On the first and second lines “DHFS” should be replaced with “Department.”

c. In s. HFS 78.04 (2) (a), there are two “(a)”s. The “(a)” before the introductory material should be deleted.

3. Conflict With or Duplication of Existing Rules

There appears to be some conflict between the use of the term “hard of hearing” in the proposed rule and in s. PSC 160.071. Section HFS 78.05 (1) states that a person is eligible for TAP assistance if certified as “deaf, deafblind or *hard of hearing*” (emphasis added). However, the department’s rule would use TAP assistance only to pay copayments under the TEPP (Telecommunication Equipment Purchase Program) program, unless an exception is made for a compounding physical or visual disability under s. HFS 78.07 (1) (b). If the compounding exception did not apply, an applicant falling under the “hard of hearing” disability category in the TEPP program would not make a copayment, unlike those falling under the “severely hard of hearing” and “deaf” disability categories, and therefore, such an applicant could *not* use TAP assistance. [See s. PSC 160.071 (1) (b) and (c).]

4. Adequacy of References to Related Statutes, Rules and Forms

a. The fifth sentence of the plain language analysis states that the PSC’s TEPP program requires applicants to pay \$100 towards the purchase of telecommunications equipment, and s. HFS 78.04 (2) (f) includes the phrase: “\$100 copayment requirement of the telecommunications equipment purchase program administered by the public service commission for *all* eligible applicants.” (Emphasis added.) That sentence appears to be inaccurate with respect to “hard of hearing” applicants falling under the TEPP program’s “hard of hearing” disability category, since such applicants are not required to make a copayment under s. PSC 160.071 (1) (c).

b. Section HFS 78.04 (2) (a) states “except as provided in s. HFS 78.06 (2).” (Emphasis added.) It appears that the “(2)” should be changed to “(3).”

c. The reference to forms in s. HFS 78.04 (1) appears inadequate. Whereas s. HFS 78.04 (1) states that the applicant shall submit a “completed department TAP application form” to the department, it appears from the note following s. HFS 78.04 (1) that the applicant actually submits a “TEPP application form” instead, and to the PSC instead of the department (the Note states that the TEPP application form should be sent to the address or fax number given on the form, which is presumably at the PSC since it is a PSC form). If a conflict exists between the rule and the note, the conflict should be resolved.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The relating clause uses the term “severely hearing impaired,” whereas the proposed rule uses the term “hard of hearing” (see comment below). Should the relating clause be changed? Or, should the entire rule make use of the statutory term “severely hearing impaired”?

b. In the first sentence of the analysis, the word “to” should be inserted after the word “pursuant.”

c. The last sentence of the analysis states that the department “proposes to update the terminology used to refer to deaf and severely hearing impaired persons,” and s. HFS 78.03 (1) establishes the apparently updated terminology of “deaf, deafblind or hard of hearing” and defines all three the same way. Therefore, it appears that “or hard of hearing” should replace “and severely hearing impaired person” in the definitions in s. HFS 78.03 (5) and (6). Or, it may be preferable to use the statutory term “severely hearing impaired.”

d. According to the next-to-last sentence of the first paragraph of the analysis, reducing the maximum voucher benefit from \$600 to \$100 and requiring the voucher to be used to meet the copayment requirement of the TEPP program extends “the TAP program benefits to a greater number of potential recipients.” Given that applicants falling under TEPP’s “hard of hearing” disability category would generally be excluded from TAP program benefits, because no copayment is required from them, is this statement true?

e. One of the two periods should be deleted at the end of the second-to-last sentence of the second paragraph of the analysis.

f. In s. HFS 78.03 (7), the word “purchase” in the next-to-last line has a space between the “r” and the “c” that should be deleted.

g. In s. HFS 78.04 (2) (e), “now” should be deleted. [See s. 1.01 (9) (b), Manual.]

h. In s. HFS 78.05 (4), “in his or her” should be replaced with “at.” [See s. 1.01 (3), Manual.]

i. In s. HFS 78.05 (5), “he or she” should be replaced with “the applicant.” [See s. 1.01 (3), Manual.]

j. In s. HFS 78.05 (6), “he or she” should be replaced with “the person.” [See s. 1.01 (3), Manual.]

k. In s. HFS 78.06 (1), if “first-come” has a hyphen, then “first served” should also have a hyphen. In addition, “based” should be deleted (because “basis” is used later) and “and the availability” should be replaced with “subject to availability.”

l. In general, under s. HFS 78.07 (1) (c), it is unclear whether, for example, a deaf-blind recipient of a \$7,200 TEPP voucher under s. PSC 160.071 (1) (b) 6. can also receive a TAP voucher for a lesser amount that nevertheless exceeds the \$100 copayment requirement--since apparently from the note following s. HFS 78.04 (1) the TEPP application is used to apply for a TAP and TEPP voucher. If so, it would appear that the recipient of a TAP voucher could pay for charges exceeding the TAP voucher amount with a TEPP voucher under s. HFS 78.07 (1) (c) 2. Whether that is the case should be clarified in this provision.