

June 1, 2023

RE: EAP Benefits Policy

To Whom it May Concern:

The Minnesota Department of Commerce's Legal Services Division works with the Minnesota Energy Assistance Program and provides this letter of legal support for the Department's proposed program changes.

The LIHEAP statute requires that funds available under the program be used for specific purposes, including "provid[ing] assistance to low income households in meeting their home energy costs." 42 U.S.C. § 8624(b)(1). Once an assistance payment is provided to an eligible household under the program – regardless of the form of payment – that assistance payment has been used in accordance with the statute to provide assistance to the household in meeting its home energy costs.

The LIHEAP statute permits states to provide assistance payments to eligible households through a variety of acceptable methods, including "directly to, or indirectly for the benefit of," eligible households. 42 U.S.C. § 8624(f)(1)-(2). In other words, states may choose to provide payments directly to households, and states may also choose to provide payments to home energy suppliers on behalf of eligible households. If a state "chooses to pay home energy suppliers directly," the state must follow certain procedures, including "assur[ing] that the home energy supplier will charge the eligible household . . . the difference between the actual cost of the home energy and the amount of the payment made by the State . . ." and "ensur[ing] that the provision of vendored payments remains at the option of the State." 42 U.S.C. § 8624(b)(7)(B), (D).

The Department proposes to continue providing payments to energy suppliers on behalf of eligible households. Once these payments are appropriately made, the benefit's statutory purpose is fulfilled – the eligible household has received the benefit of assistance in meeting its home energy costs. To ensure the statutory purpose remains fulfilled, the Department's proposed changes are designed to keep assistance payments available to the recipient households. Ensuring that assistance payments remain available to the recipient households will also help the program remain in compliance with 31 U.S.C. § 1301(a), which states that "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

The Department's proposed policy change will still consider a household's specific circumstances in determining the appropriate method for keeping its assistance payment available for its use. For example, a household may transfer to a new energy vendor; in that instance, the assistance payment would simply transfer to the new vendor. Similarly, where a household's

energy account becomes inactive for a reason other than transfer to a new vendor, the assistance payment would be provided directly to the household instead – as is permitted under the language in the LIHEAP statute. 42 U.S.C. § 8624.

Additionally, where an energy vendor account becomes inactive but assistance payments cannot be provided directly to a household, the proposed program change will ensure that funds continue to be available to the household through Minnesota’s unclaimed property procedures, pursuant to Minn. Stat. § 345.34 (when a deposit is paid in advance for utility services and is held by any utility for more than one year after termination of the services, that deposit is presumed abandoned) and Minn. Stat. § 345.43, subd. 2a (property that is presumed abandoned must be reported and delivered to the commissioner).

Unlike certain states, Minnesota’s unclaimed property statutes keep unclaimed funds available to owners in perpetuity. Minn. Stat. § 345.49. Therefore, any remaining funds lawfully received under the LIHEAP statute for the benefit the household would be held in custody for the recipient household. Id. Notably, this means that EAP staff will not have access to energy assistance funds once the funds are properly provided to recipient households under the program. Instead, the funds will remain property of the household from the time they are properly provided to the household.

The procedures presented in the Department’s proposed program changes are designed to better ensure compliance with relevant federal and state statutes.

Sincerely,



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