921 KAR 4:116. Low Income Home Energy Assistance Program or "LIHEAP".

RELATES TO: KRS 45.357, 194A.010, 194A.060, 194A.070, 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 8621-8627, 42 U.S.C. 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 8621

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has the responsibility under 42 U.S.C. 8621 to administer the Low Income Home Energy Assistance Program to help low-income households meet the cost of home energy. This administrative regulation establishes the eligibility and benefits criteria for heating and cooling assistance. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with KRS 45.357. The imposition of additional requirements and responsibilities is to ensure necessary compliance with applicable state laws.

Section 1. Definitions.

(1) "Agency" means Community Action Kentucky (CAK), or a local community action agency contracted to provide LIHEAP.

(2) "Annual low income home energy assistance program state plan" means an application prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87.

(3) "Authorized representative" means the person who presents to an agency a written statement signed by the head of the household, or spouse of the head of the household, authorizing that person to apply on the household's behalf.

(4) "Crisis component" means the component that provides assistance to households that are experiencing a home heating or cooling crisis.

(5) "Economic unit" means one (1) or more persons sharing common living arrangements.

(6) "Emergency" means, at the time of application, the household:

(a) Is without heat;

(b) Will be disconnected from a utility service within forty-eight (48) hours;

(c) Will be without bulk fuel within four (4) days; or

(d) Will be without cooling as specified in Section 3 of this administrative regulation.

(7) "Energy" means electricity, gas, and other fuel that is used to sustain reasonable living conditions.

(8) "Gross household income" means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.

(9) "Heating season" means the period from October through April.

(10) "Household" means an individual or group of individuals who are living together in the principal residence as one (1) economic unit and who purchase energy in common.

(11) "Household demographics" means an applicant's:

(a) Address;

(b) Household composition that includes:

1. Size;
2. Age group;
3. Relationship to applicant;
4. Sources of income;
5. Liquid assets; and

6. Type of housing; and

(c) Heat source.

(12) "Level of poverty" or "poverty level" means the degree to which a household's gross income matches the official poverty income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(13) "Life-threatening situation" means, at the time of application, a household is or will be without heat or cooling within eighteen (18) hours and temperatures are at a dangerous level as determined by the National Weather Service.

(14) "Principal residence" means the place:

(a) Where a person is living voluntarily and not on a temporary basis;

(b) An individual considers home;

(c) To which, when absent, an individual intends to return; and

(d) Is identifiable from another residence, commercial establishment, or institution.

(15) "Subsidy component" means the heating or cooling component that provides an eligible household with:

(a) A payment to the household's energy provider; or

(b) A payment to a landlord, if utilities are included in the rent.

Section 2. Application.

(1) A household or authorized representative applying for LIHEAP shall provide to an agency the following:

(a) Proof of household income;

(b) Most recent:

1. Heating bill;

2. Cooling bill; or

3. Verification that heating or cooling is included in the rent;

(c) Statement of household demographics; and

(d) A Social Security number, or a permanent residency card, for each household member.

(2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section, is received by the agency.

Section 3. Eligibility Criteria.

(1) Income. Gross household income shall be at or below 130 percent of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), unless:

(a) Program funding is enhanced through a federal or state award; or

(b) The cabinet approves an increase to the poverty income guidelines due to funding availability.

(2) The household shall be responsible for paying:

(a) Home heating;

(b) Cooling costs; or

(c) Heating or cooling costs as an undesignated portion of the rent.

(3) Crisis component. In addition to meeting the criteria in subsections (1) and (2) of this section, an applicant shall:

(a) Be within four (4) days of running out of fuel, if propane, fuel oil, coal, wood, or kerosene is the primary heat source;

(b) Have received a past-due or disconnect notice, if natural gas or electric is the primary heat or cooling source; or

(c) Have received a notice of eviction for nonpayment of rent, if home heating or cooling cost is included as an undesignated portion of the rent.

(4) Summer cooling component. In addition to meeting the criteria in subsections (1) and (2) of this section, to be eligible to receive an air conditioner unit, an applicant shall:

(a) Be without an adequate source of cooling; and

(b) Have a household member who:

1. Has a health condition that requires cooling to prevent further deterioration, verified by a physician's statement prepared on the physician's letterhead;
2. Is sixty-five (65) years of age or older; or
3. Is under the age of six (6) years.

Section 4. Benefits.

(1) For a subsidy component, payment to the household's heating or cooling provider shall be made for the full benefit amount as follows:

(a) Benefits shall be determined prior to implementation of the component, based upon calculations from fuel usage data and from an average heating season energy cost for the six (6) primary heating fuels.

(b) The amount of benefits shall be based upon household income and type of heating or cooling source used.

(c) A household with the lowest income and highest heating season fuel cost shall receive highest benefits.

(d) Benefits shall be a percentage of the average annual heating season energy cost of the primary heating fuel.

(e) A household living in federally assisted housing or receiving a utility allowance shall be eligible for lower benefits.

(2) For a crisis component, benefits shall be the minimum amount necessary to alleviate a heating or cooling crisis. A household living in federally assisted housing may be eligible.

(a) A benefit may be:

1. Fuel or other energy source for heating or cooling;
2. A space heater loaned on a temporary basis until:
   a. Fuel is delivered; or
   b. Another resource is located to alleviate the crisis;
3. A blanket or sleeping bag;
4. Emergency shelter; or
5. An air conditioner unit.

(b) In determining the minimum amount of assistance, an agency shall take into consideration a direct subsidy for payment of utility cost received by the household from another program.

(c) A household may receive assistance more than one (1) time, but shall not receive more than the maximum allowable during each component period for the primary heating fuel or cooling source. The maximum allowable benefit shall equal cost for delivery up to:

1. Two (2) tons of coal;
2. Two (2) cords of wood;
3. 200 gallons of propane;
4. 200 gallons of fuel oil;
5. 200 gallons of kerosene; or
6. $400 for natural gas or electric, unless:
   a. Program funding is enhanced through a federal or state award; or
   b. The cabinet approves an increase to the benefit amount due to funding availability.

(d) A household threatened with eviction whose heat or cooling costs are an undesignated portion of the rent shall not receive more than the maximum allowable

payment for the primary heating fuel or cooling source.

(3) For cooling component benefits, a household shall be eligible for:

(a) A one (1) time subsidy payment during each component period to the household's:

1. Electric utility provider; or

2. Landlord, if the cost of cooling is included as an undesignated portion of the rent;

(b) An air conditioner unit, if:

1. Criteria in Section 3(4) of this administrative regulation are met; and

2. The agency has the funding to purchase an air conditioner unit or has an air conditioner unit available for the household; and

(c) Benefits based on:

1. The household's level of poverty, unless program funding is enhanced through a federal or state award or the cabinet approves an increase to the poverty income guidelines due to funding availability; and

2.

a. Subsidized housing with:

(i) Zero percent to one hundred (100) percent of poverty receiving up to one hundred (100) dollars; or

(ii) 101 percent to 150 percent of poverty receiving up to $200; or

b. Nonsubsidized housing with:

(i) Zero to one hundred (100) percent of poverty receiving up to $400; or

(ii) 101 percent to 150 percent of poverty receiving up to $300.

Section 5. Benefit Delivery Methods.

(1)

(a) Payment under a subsidy component shall be authorized by a one (1) party check made payable to the household's:

1. Energy provider; or

2. Landlord, if the cost of heating or cooling is included as an undesignated portion of rent.

(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider if heating or cooling services were provided by more than one (1) provider. However, the total amount of the payments shall not exceed the maximum for the primary source of heating or cooling.

(2) For a crisis component, a direct cash payment shall not be made to the recipient. A payment shall be authorized to:

(a) An energy provider by a one (1) party check upon delivery of fuel, restoration, or continuation of service;

(b) A vendor who supplies a heater, blanket, emergency lodging, or air conditioning unit; or

(c) A landlord, if heating or cooling cost is included in the rent.

Section 6. Right to a Fair Hearing.

(1) An individual who has been denied assistance or whose application has not been acted upon in accordance with time standards established in Section 8 of this administrative regulation shall be provided an administrative review by the agency.

(2) An individual dissatisfied with the results of an administrative review may request a hearing to be held in accordance with 921 KAR 2:055.

Section 7. Vendor Selection for Nonmetered Fuel Provider.

(1) Subsidy component.

(a) An agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor listing.

(b) The agency shall place an advertisement for interested vendors in a local newspaper with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.

(c) A potential vendor shall provide the agency with a fixed price in gallons for kerosene, propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.

(d) A prospective vendor shall:

1. Allow agency and authorized federal or state representatives to inspect records upon request;

2. Maintain records to financial transactions regarding LIHEAP for a period of three (3) years;

3. Inform the agency if information is received that a household has obtained a benefit by misrepresentation;

4. Provide fuel as specified and at the price quoted;

5. Comply with federal and state law pertaining to equal employment opportunity; and

6. Comply with billing procedures established by the agency.

(e) A household shall select a vendor from the agency's approved vendor list.

(2) Crisis component.

(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.

(b) Each agency shall maintain a list of approved vendors and prices throughout the crisis component.

(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.

(d) For a household with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within:

1. Eighteen (18) hours for a life-threatening situation; or

2. Forty-eight (48) hours for an emergency situation.

Section 8. Time Standards.

(1) Under a subsidy component, an eligibility determination shall be made by an agency within five (5) working days after receipt of information required by Section 2 of this administrative regulation.

(2) Under a crisis or cooling component, benefits shall be authorized so that a:

(a) Crisis situation is resolved within forty-eight (48) hours; or

(b) Life-threatening situation is resolved within eighteen (18) hours.

(3) Under a subsidy, crisis or cooling component, an applicant shall have five (5) working days from the date of application to provide required information to an agency as specified in Section 2 of this administrative regulation, or the application shall be denied.

Section 9. Effective Dates.

(1) Implementation and termination dates for LIHEAP shall depend upon the availability of funds.

(2) If additional federal funds are made available, LIHEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation.

Section 10. Allocation of Federal Funds.

(1) An amount of federal funds sufficient to provide benefits to eligible households that apply during the subsidy application period shall be reserved for a subsidy component.

(2) The balance of benefit funds for LIHEAP shall be reserved for a crisis component as follows:

(a) Benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's percentage of the statewide population at or below 130 percent of the poverty level unless:

1. Program funding is enhanced through a federal or state award; or

2. The cabinet approves an increase to the poverty income guidelines due to funding availability.

(b) $400,000 of crisis benefit funds shall be identified as contingency funds and allocated to agencies based on need as approved in advance by the cabinet.

(3) $25,000 or more shall be reserved for the Preventive Assistance Program to assist families with an energy payment not to exceed $300 for each family if the payment:

(a) Prevents the removal of a child from the family; or

(b) Assists in reuniting a child with the family.

Section 11. Energy Provider Responsibilities. A provider accepting payment from LIHEAP for energy or services provided to an eligible recipient shall comply with the following provisions:

(1) Reconnection of utilities and delivery of fuel during a crisis component shall be accomplished upon certification for payment.

(2) A household shall be charged, in the normal billing process, the difference between actual cost of the home energy and amount of payment made through this program.

(3) A LIHEAP recipient shall be treated the same as a household not receiving benefits.

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of a recipient household due to receipt of a LIHEAP payment.

Section 12. Annual Plan. A copy of the state's annual Low Income Home Energy Assistance Program state plan prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87 may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

(11 Ky.R. 916; eff. 12-11-84; 1945; eff. 7-9-1985; 12 Ky.R. 623; eff. 12-10-1985; 13 Ky.R. 980; eff. 12-2-1986; 14 Ky.R. 648; eff. 11-6-1986; 1699; 1904; eff. 3-10-1988; 15 Ky.R. 658; eff. 9-21-1988; 1303; eff. 1-7-1989; 16 Ky.R. 1706; 2146; 4-12-1990; 17 Ky.R. 2279; 2955; eff. 4-4-1991; 18 Ky.R. 2039; 2826; eff. 2-26-1992; 19 Ky.R. 1225; 1567; eff. 1-4-1993; 20 Ky.R. 2253; eff. 3-14-1994; 21 Ky.R. 2545; eff. 5-19-1995; 22 Ky.R. 2158; eff. 7-5-1996; 25 Ky.R. 2009; 2394; eff. 4-14-1999; Recodified from 904 KAR 2:116, 6-3-1999; 29 Ky.R. 1705; 2112; eff. 2-13-2003; TAm eff. 10-27-2004; TAm eff. 8-1-2005; 32 Ky.R. 1806; 2019; eff. 6-2-2006; 35 Ky.R. 1935; 2450; eff. 6-5-2009; 47 Ky.R. 215; eff. 10-22-2020; 48 Ky.R. 689; eff. 11-23-2021.)