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TO: Robert Nyce, Executive Director

FIRM: IRRC, 333 Market St., Harrisburg

FAX NO.: 717-783-2664

FROM: Richard P. Weishaupt and Jonathan Stein

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MESSAGE: mail copy to follow

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September 16, 1997

VIA FAX (717) 783-2664

Robert Nyce
Executive Director
Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Dear Mr. Nyce:

We wish to raise with the Independent Regulatory Commission and the Joint Committee on Documents a major regulatory issue impacting on the lives and health of close to 13,000 Pennsylvanians who will shortly lose General Assistance pursuant to a policy change which will take effect October 1, 1997 without review by your Commission and without publication in the Pennsylvania Bulletin. We believe that this action will violate Section 7.1 of the Regulatory Review Act.

Since 1984, the Department of Public Welfare has had a formal policy, first in an Income Maintenance Bulletin (see attached Exhibit A), and later in its Cash Assistance Handbook (Exhibit B), that provided that adults whose employability depended upon certain health sustaining medications would be eligible for full General Assistance (GA) and Medical Assistance (MA) benefits.

The genesis of this policy came during the Thornburgh Administration, shortly after passage of the Administration sponsored Act 75. Act 75 limited GA benefits to 3 months for previously eligible employable individuals and families, even if they were financially needy and looking for work. After some experience with the program, the Pennsylvania Senate passed legislation seeking to address certain unintended consequences of the original Act. DPW was also concerned about certain anomalies, including the problem of those whose health depended on medication losing eligibility only to requalify once their condition deteriorated. To address this problem and to forestall legislative action, DPW adopted an Income Maintenance Bulletin that bestowed full eligibility on those who required certain health sustaining medications. The Welfare Department administratively established this policy to protect this vulnerable population. It was assumed that although theoretically employable and subject of the

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requirement to seek, accept and retain employment, this group was unlikely to obtain or sustain employment. In short, the risk of adverse consequences from loss of aid was too great for these individuals and for the state (who would shoulder the fiscal burdens of restoring the health people whose conditions would be adversely affected by a cut in GA benefits).

For 13 years DPW has had this policy in effect, which protects an estimated 12,000 to 13,000 poor adults at present. Even after passage of Act 35, which abolished all Transitionally Needy benefits, DPW continued this policy. Recently, however, DPW announced that beginning October 1, 1997, all those on GA in this category would be dropped, and new applicants would be denied GA, although allowed to receive MA.

We believe that change in this longstanding and important policy indisputably constitutes a substantive eligibility and entitlement criterion for a benefit established under state law. Thus, under state law and well recognized principles of an administrative law, the dissolution of this policy must be viewed as a regulation requiring publication and IRRC review.

The group of individuals affected are those most impoverished residents of our Commonwealth, who have virtually no other income or assets, and whose very lives rest upon receipt of a \$205 monthly grant for the essentials of life. They also are indisputably people who have serious medical conditions, whose lives may also be in jeopardy from a loss of aid. There is a major fiscal interest to the state if loss of aid causes a degeneration of medical conditions requiring hospitalization or major medical intervention.

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COMMUNITY SERVICES

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We urge the Commission to give this matter the highest priority and expedited consideration to insure full compliance with applicable state administrative law. We look forward to a response at your earliest convenience.

Sincerely yours,

Jonathan M. Stein
JONATHAN M. STEIN
General Counsel

Richard P. Weishaup
RICHARD P. WEISHAUP
Senior Attorney

cc: Ann S. Torregrossa, Director,
Pa. Health Law Project

Ilene Shane, Director,
Disabilities Law Center

Joseph Rogers, Director, Mental
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Sue Walther, Mental Health
Association of Pennsylvania

Enclosure



INCOME MAINTENANCE BULLETIN

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF PUBLIC WELFARE

DATE OF ISSUE

MARCH 23, 1984

EFFECTIVE DATE

MARCH 23, 1984

NUMBER

141-84-4

SUBJECT

CHRONICALLY NEEDED CLASSIFICATION
FOR PERSONS REQUIRING HEALTH
SUSTAINING MEDICATIONS

BY

Patricia S. Jacobs
Patricia S. Jacobs
Deputy Secretary for Income Maintenance

SCOPE: EXECUTIVE DIRECTORS
DISTRICT ADMINISTRATORS
INCOME MAINTENANCE MANAGERS

INCOME MAINTENANCE SUPERVISORS
INCOME MAINTENANCE WORKERS

PURPOSE

To provide instructions for classification as chronically needy of General Assistance (GA) applicants/recipients who require medication for chronic diseases or illnesses.

BACKGROUND

The person with a chronic disease or illness and dependent on medication to maintain employability, is sometimes being classified as transitionally needy because their condition is not a barrier to employment. We have reviewed this situation in light of the fact that these persons after exhaustion of their eligibility for the ninety day cash grant are unable to obtain the necessary medication through the Medically Needy Only (MNO) program. Those chronically ill clients only remain employable so long as they are maintained on the appropriate medications.

DISCUSSION

When it is determined that a person has one of the following diagnoses: (1) cancer; (2) diabetes; (3) epilepsy; (4) heart disease; (5) psychosis; (6) narcolepsy; (7) sickle cell anemia; and requires drug maintenance as part of the treatment for the condition, this person should be classified as chronically needy as long as the need for drug maintenance exists.

This chronically needy status is established based on information provided by a physician on the Medical Assessment Form (MAF) - PA 635. The physician must provide the diagnosis, the need for maintenance medication and the name of the drug prescribed. The physician will in the majority of cases be listing a drug or its generic equivalent from the following categories listed in the Physician's Desk Reference (P.D.R.): (1) Antineoplastics; (2) Antidiabetic Agents; (3) Anticonvulsants; (4) Cardiovascular Preparations; (5) Antipsychotics or (6) specific medication documented by the physician as necessary to control narcolepsy or

(continued on other side)

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

YOUR IMMEDIATE SUPERVISOR

EXHIBIT A

sickle cell anemia. If the physician provides an unclear diagnosis or does not provide sufficient information to document the diagnosis and drug maintenance, but the client states he needs continuing medication, a collateral contact should be made with the physician. The case record must reflect the basis for the decision.

The decision to require work registration of these persons will be based on the physician's assessment of capacity as indicated in the Physical/Mental Capacity section of the MAF.

NEXT STEPS

1. Implement this policy for applicants upon receipt of this bulletin.
2. Reference related IMB #141-84-5 subject "Medical Assessment Form" - PA 635.
3. Review active transitionally needy caseloads and make appropriate category changes.

SEP 17 1997

SECRETARIES TVEBET JORDI



Cash Assistance Handbook

CATEGORY

CITATION

(Under Age 21, cont'd.)

Acceptable verification includes, but is not limited to, birth certificates, hospital certificates, school records or statement, and graduation notices. Once age has been documented, it does not need to be verified again.

REMINDER: The CAO will first determine if the child under age 19 qualifies for AFDC.

105.42 TWO-PARENT BUDGET GROUP

Persons who are parents residing in a two-parent household with their child may qualify for GA if their child is under age 13 or age 13 or older and disabled. For purposes of this section, a disabled child is a child who receives Social Security disability or Supplemental Security Income (SSI) benefits. The disability must be verified.

62 P.S. 432(3)(B)

It is not necessary for both parents and the child to apply for GA. One parent may apply as long as the child is not eligible for AFDC on the basis of a deprivation factor, or the child does not meet the requirements for citizenship or refugee status. Or, one parent along with the child can apply.

Once the budget group composition and the ages of the budget group members are verified, they do not have to be verified again. If a change occurs in the budget group such as the addition of another member, that budget group member's date of birth must be verified. The new member's birthdate can be verified by, but is not limited to, hospital records, birth certificates, etc.

105.43 PHYSICAL OR MENTAL DISABILITY

A client may be eligible for GA if he has a temporary or permanent physical or mental disability that:

55 Pa. Code
141.61(d)(1)(iii)

- > permanently prevents him from working in any gainful employment;
- > temporarily prevents him from working in any gainful employment.

NOTE: If in the doctor's opinion a person is considered employable only by use of health-sustaining medication for an acute or chronic medical condition, he may be eligible for GA. In this instance, a doctor will have to provide information regarding the diagnosis and the medication being used.