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JUNE 13, 2000 REVIEW COMMISSION

Independent Regulatory Review Commission
Fourteenth Floor, Harrisown 2
333 Market Street
Harrisburg, PA 17101

Re: #14-467, formerly #14-446,
"The Combo Package"

Dear Commissioners,

We write to comment on and oppose the adoption of DPW's latest regulations, the so-called "Combo Package," #14-467. These comments are filed on behalf of the same low income clients and organizations that we represented before the IRRC in the last filing: the Philadelphia Welfare Rights Organization, Success Against All Odds, the Kensington Welfare Rights Union and the Mon Valley Unemployed Committee. This is the second time that DPW has submitted this "Combo Package" of regulations. See # 14-446. When DPW withdrew the last package, almost 7 months ago, we were encouraged and believed that some discussion would take place and our differences, or at least some of them, would be resolved. Unfortunately, despite our repeated requests, DPW has not conferred with us about these regulations and therefore several problems still remain, although DPW has made several changes that improve the regulatory package.

The improvements include changes made to the Medical Assistance program by altering the spend down rule and more accurately defining the MA benefit package. The new regulatory package also makes it clear that the durational residency rules are not constitutionally permissible. Finally, we were heartened to learn that the Department concedes that the Educational Savings Account provision of 62 P.S. 408.2 should apply to the TANF program (see page 9 of submission 14-467). We understand that the set of regulations recently submitted by DPW intended to make this change, conceding the correctness of our position in the preamble; however, the regulations actually submitted again limited this policy to the GA program. We are pleased that this oversight has now apparently been corrected.

Of the remaining issues raised in our initial opposition to the adoption of the combo package, two issues stand out, namely (1) a new regulatory provision regarding timely processing of completed applications and (2) the treatment of Domestic Violence under the GA program.

The first issue involves an amendment to 55 Pa. Code § 125.21 (b)(1), ostensibly establishing a newly imposed requirement to submit a "signed, completed application" in order to trigger the 30 day promptness standard embodied in 62 P.S. §432.19. That section requires only an application to trigger the running of the 30 day period. The language of the regulation imposes an additional

burden on recipients and applicants to submit a "completed and signed application" in order to trigger the protection of the state statute. The application and accompanying material is a multi-page document that can be extremely daunting for the individual applicant to fill out. Given the fact that many welfare recipients function at an extremely low level of literacy, the requirement to submit a "complete" application is particularly daunting. Oftentimes recipients are handed the multi-page application form and are told to fill it out by a receptionist in a local assistance office. Absolutely no help is offered at that time; rather the individual applicant is told to hand it in and is then given an appointment with an interviewer. It may take a week or longer for this interview to be scheduled, at which time the interviewer will tell the client what further information is needed to complete the application. A second, and sometimes even a third interview, is scheduled before an application is completed. Obviously, such an application process can drag on for weeks, while the needy family is destitute.

Such an additional burden is inconsistent with the Act. If DPW, as it has argued, does not intend this completed application requirement to establish a new standard with this language, and that it will consider any signed application with a legible name and address to be complete, it should say so explicitly in this rulemaking. While DPW has made such a representation in correspondence (see attached), nothing in the regulation or accompanying material substantiates this representation. Such a clarification would satisfy our concern in this area. Lacking such formal assurance, we must continue to urge that these regulations be rejected.

Second, and most importantly, the newly submitted "combo package" fails to address our previous concerns regarding Domestic Violence and what women who have been abused need to show in order to establish that they have been victims of domestic violence and are therefore entitled to General Assistance. The Public Welfare Code clearly defines those who are eligible for General Assistance to include:

A person who is a victim of domestic violence and who is receiving *protective services* as defined by the department. No individual shall qualify for general assistance under this provision for more than nine month's in that person's lifetime.

62 Purdon's Stat. 432 (3)(i)(G)(emphasis added). Our dispute with DPW in promulgating these regulations has been the agency's failure to incorporate a reasonable standard of proof in establishing the receipt of "protective services." All too often, we have seen victims of domestic violence who have fled from abusive situations with little documentation. Of course, those fortunate enough to live in a shelter for abused women or find or maintain a relationship with an established service provider, will have no problem documenting that they are receiving protective services. However, there are many other women who have received protective services but cannot document them -- they can not obtain police reports or emergency protection orders. Many are in desperate need of cash assistance. To insist that they document their receipt of protective services before they can get any help will cause needless delay and suffering.

DPW's Notice of Rule Change, that permits the satisfaction of the child support cooperation requirement by self-declaration, rather than the more formal route of providing formal documentation, is much more sensible. See, 30 Pa. Bull. 2957 (June 10, 2000). Thus, just this

week DPW announced its intent to waive the documentation requirement for establishing a good cause exemption from the usual requirement of cooperating in the establishment of paternity and child support where there was an allegation of domestic violence. In such cases, the caseworker may waive all documentation requirements for the first six months and make an informed judgement after six months based on an assessment of the situation. NORC, 30 Pa. Bull. 2957, Item 3, Evidence to Corroborate Good Cause/Verification of Good Cause Based on Domestic Violence Form (see attached).

Especially since DPW has evinced a heightened awareness and sensitivity to this area, it is inexplicable that the GA regulations remain unchanged, requiring documentation of domestic violence protective services prior to the granting of subsistence level GA benefits.

Even before the publication of the NORC, we had urged DPW to amend the regulations to allow for a more flexible rule regarding domestic violence verification. By way of background, our comments and concerns from the first set of regulations are attached. Unfortunately, DPW has not seen fit to respond to the concerns we raised on behalf of GA recipients.

In short, the proposed final regulations do very little to protect victims of abuse from avoidable difficulties. Although the Department has resisted any face-to-face communication with us regarding our concerns, we are aware that they have, on several occasions, made light of our objections. While we recognize that some of the domestic violence issues we raise may be addressed at a later date by anticipated TANF regulations, the question of the verification needed for GA eligibility should and, indeed, must be addressed in these regulations. After all, it is DPW that inserted this issue in the current rulemaking by requiring written verification of factors that may be dangerous or impossible to document. Simply put, we want the combo regulation package withdrawn, so that it can be quickly amended in a way that protects women from their abusers, by allowing victims of domestic violence to establish GA eligibility by declaration, rather than be limited to documentation of the receipt of protective services.

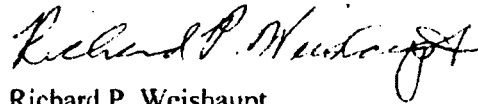
As we have remarked, this declaration system has been adopted by DPW for allegations of domestic violence in the child support area. This is even more explicit after publication of the NORC. There, victims may be exempted from the usual requirement to pursue child support from former abusers, if they establish "good cause." Such good cause is usually established by documenting a history of domestic violence; but should the victim be unable to provide documentation of the abuse, she may, under existing DPW policy, declare her situation, without having to provide documentation. Assuming that this allegation of abuse is not contradicted by other evidence, DPW accepts it as true and exempts the alleged victim from the requirement of pursuing child support. This should also be the policy for the GA program.

We are frankly bewildered by DPW's failure to adopt a similar policy for the relatively few women who are unable to document the receipt of protective services to address their domestic violence needs.

While we are reluctant to continue to oppose the adoption of regulations that have been already modified once, we would be remiss in our representation of poor women who have been

victimized by domestic violence if we did not continue to oppose the regulations in their current form.

Very truly yours,



Richard P. Weishaupt
Kim Berry
Louise Hayes
Amy E. Hirsch

Peter Zurflieh,
Community Justice Project

cc: John A. Kane, Esq.
Dr. Sherri Z. Heller
House and Senate Standing Committees
Enclosures

COMMENTS REGARDING VERIFICATION OF DOMESTIC VIOLENCE FROM 14-446**Section 141.61(d)(1)(viii) -- Domestic violence**

The subsection providing for a one-time, 9 month lifetime eligibility for GA for victims of domestic violence is lacking in some key protections that are crucial for this population and that DPW has recognized in the TANF program. In response to the difficulties and dangers faced by victims of abuse in satisfying welfare requirements, DPW made a commitment to institute more flexibility for them with respect to TANF program requirements, as the state is now encouraged to do under Federal law. To assist it in doing so, DPW appointed a Domestic Violence Task Force that has been working for over two years to develop policies and practices that appropriately respond to the needs of victims of domestic violence. The questions which the Task Force has considered and the solutions it has developed are as relevant to victims of domestic violence seeking the benefits of the GA program as they are to those seeking the assistance of the TANF program.

For example, the Task Force has studied extensively the need for flexibility with respect to verification. Victims of domestic violence do not always have documentation of abuse. Some women do not seek "official" assistance from law enforcement or other sources because they fear retaliation against themselves or their children. Others do not have documentation of their efforts to obtain assistance for a number of reasons: they were not given documentation by the authorities, the abuser destroyed the paperwork, or they were forced to flee without it. The policies developed by the Task Force, which DPW has approved, provide flexibility so that a victim of domestic violence will not be denied benefits due to inability to provide third party verification or documentation other than her own statement. Flexibility with regard to verification should be, but is not, incorporated into DPW's proposed regulation on GA benefits for victims of domestic violence.

There is also a need for flexibility in how the protective services requirement is defined. This flexibility is not incorporated into the list of services in the regulation drafted by DPW, which is a finite list. It is very possible that a victim of domestic violence will seek services that would satisfy the purpose of the rule but might not have been contemplated by DPW. DPW appears to have recognized the need for flexibility in the protective services requirement in the Cash Assistance Handbook (CAH), where it identifies services satisfying the requirement as a non-exhaustive list, prefaced with the phrase "include, but are not limited to, the following services." CAH §105.46. This same flexibility should be incorporated into the regulations.

The Task Force has also devoted considerable attention to the confidentiality concerns of victims of domestic violence. Victims of domestic violence may divulge extremely personal information to the Department. They also divulge their location, information a victim may have deliberately withheld from the batterer from whom she has fled. It is therefore crucial that DPW policies protect the privacy and location of victims of domestic violence. The Task Force has examined DPW's confidentiality protections and has concluded that they do not adequately protect information about domestic violence or the location of the victim, either within the

Department or without. While regulation 141.61(d)(1)(vii) gives recognition to the confidentiality concerns of victims of abuse by generally referring to DPW's existing regulation on safeguarding information, it fails to adequately address the particular confidentiality concerns of victims of domestic violence. We recommend that DPW seek the input of the Domestic Violence Task Force on section 141.61(d)(1)(vii) and get the benefit of their consideration and recommendation. The expertise developed by this Task Force in solving the difficulties faced by victims of domestic violence should be applied to the GA program to make it more responsive to a population which often turns to public assistance as an avenue to help them escape violence. A uniform approach in dealing with a problem as serious as domestic violence is consistent with the commitment made by the Commonwealth and DPW to respond to the needs of victims of domestic violence. We urge DPW to modify the regulation to be consistent with the flexibility contained in the Cash Assistance Handbook and to amend the regulation to conform to policies and procedures developed by the Domestic Violence Task Force.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
P.O. Box 2675, Harrisburg, PA 17105-2675

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February 25, 2000

Mr. Richard Weishaupt, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, Pennsylvania 19102-2505

Sent by Fax and U.S. Mail

In Re: Regulation # 14-446

Dear Richard:

On October 14, 1999, you wrote to the Independent Regulatory Review Commission (IRRC) objecting to regulation No. 14-446, which implements provisions of state welfare reform legislation, Act 1994-49, Act 1995-20 and Act 1996-35. The Department responded to the questions and concerns that IRRC had after reviewing your comments and other people's comments. The Department withdrew the regulation to make revisions to address some of those concerns, as described below. Although we have responded to the Commission, you indicated your desire to have a separate response and separate communication from the Department. Set forth below is our response to your comments, presented in the order in which your comments were made.

You first objected to these regulations being published as final, omitting proposed rule making. As you know, the significant changes in these regulations were mandated by statutory changes and have already been implemented by Notice of Rule Change. There is no point in delaying implementation to go through additional comment periods. You had the opportunity to comment on the regulations in 1998 and again in 1999. Prior to that, you commented on drafts you received from the Department in 1994 (Act 49 only) and in 1996. You also received a copy of the redraft after Act 1995-20 was enacted, but you did not comment on that draft.

You objected to the Department referring to TANF as time-limited, because this provision does not appear in State law. As you know, Temporary Assistance For Needy Families (TANF) is a federal program, and federal law limits that assistance to five years, with some exceptions. It is not necessary to have every provision of federal law repeated in a state statute in order for it to be operative. State law at 62 P.S. § 201(2) does mandate that the Department take whatever measures are necessary to make the Commonwealth eligible for federal funds for

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assistance programs. Compliance with the five year limit on TANF for adults is crucial to receiving the federal TANF block grant, which is over \$710 million per year.

You objected to the requirement that an application be signed and completed before the thirty-day clock for processing the application begins. We have confirmed with the Office of Income Maintenance that the instructions to the County Assistance Offices (CAOs) and the practice of the CAOs is to regard an application as complete for these purposes if it contains a name, address and signature. Those are sufficient to start the thirty-day clock running and get the case scheduled for an application interview. It is not necessary that every line on the application be completed, although it is obviously to the client's benefit to complete as much information as possible. Although the Cash Assistance Handbook (CAH) provides that "The application process starts when an individual or someone acting on his behalf files a completed, signed application with the CAO", CAH § 104.2, it also provides that "The CAO will accept any PA 600 [application] that contains the name and address of the applicant and a signature..." CAH § 104.1. Both provisions have been in the handbook since before 1990. The regulation revision does not reflect a change in this policy; it merely codifies the long-standing policy.

You requested that these regulations be delayed to incorporate TANF provisions for victims of domestic violence. Regulation 14-446 is not and never was intended to be a TANF regulation. This regulation follows three Notices of Rule Change which implemented changes in the State Public Welfare Code prior to the enactment of TANF. In fact, the Department has been consulting with the Domestic Violence Task Force and is planning to put into regulations provisions for additional protections for victims of domestic violence who are receiving TANF, but it will be in a separate regulation, not #14-446. As you know, the Department has already implemented the TANF program, and has prepared regulations to that effect. The State TANF regulations were drafted to follow the pre-TANF Welfare Reform regulations, and the TANF regulations dealing with domestic violence will follow the TANF regulations that implement the TANF NORC. As the law changes and regulations are revised, it is always necessary to establish a sequence of regulation changes, so that each regulation builds on the changes in text, numbering and organization of the prior regulation package. The TANF regulations dealing with domestic violence will follow the pre-TANF Welfare Reform and the TANF final/omit regulations. We note that in your comments you did not recommend a specific change to regulation 14-446. You will, of course, have additional opportunities to make specific suggestions for the domestic violence regulations.

You raised a concern about the language which copies the provision of state law (62 P.S. §§ 442.1(a)(3)(i) and 442.2(1)) providing that recipients of General Assistance (GA) Cash or GA-related Medical Assistance (MA) receive only the medically needy level of benefits plus prescription drugs. We have addressed this issue in our discussions with IRRC. The regulations are being revised to explain that GA Cash and GA-related Medical Assistance recipients who qualify for federally-funded MA receive a larger package of Medical Assistance benefits. This,

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of course, is not a change in policy, merely relocation and reiteration of existing policy.

You asked that the Department issue regulations to provide that an individual qualifies for MA in the medically needy only category based on performing 100 hours per month of community service. Although there was political momentum for this in the past, there is no basis for this in the law.

You requested that this pre-TANF regulation be revised to reflect a TANF change, specifically that educational savings accounts are exempt for TANF recipients. Your concern was echoed by other commentators. Accordingly, we have made this TANF change in this pre-TANF regulation and that will be reflected when the regulations are resubmitted to IRRC. (This movement of a TANF regulation to a non-TANF regulation necessitated amendment to the TANF regulation now being reviewed.)

You objected to the provision in section 181.12(c) regarding income deductions for medical expenses for those individuals qualifying for medically needy only category of benefits under spend-down. This also is not a state welfare reform pre-TANF change and is unrelated to the purpose of Regulation 14-446. This issue has been discussed with IRRC, and when the regulations are resubmitted they will reflect a change. After this issue was raised, we confirmed with the Health Care Financing Administration that their interpretation of 42 U.S.C. § 1396a(a)(17)(D) is that an individual is permitted a deduction from income for the value of medical care paid for by a public program operated or funded by the state or a political subdivision thereof, even if the cost of that care was never an "expense" to the individual. HCFA has clarified that this deduction is not available for the value of care funded by the federal government, e.g. Medicare or a program that receives federal funding, e.g. Medicaid.

Finally, you noted that the description of the durational residency litigation that appeared in the preamble was out of date, as it was. The preamble was prepared prior to the conclusion of Warrick v. Snider, and the preamble has been revised accordingly for resubmission.

I trust that this lengthy discussion has satisfied your concerns. If you have additional questions, please get back to me.

Yours truly,


Jean E. Graybill

c: John A. Kane
Edward Zogby



NOTICES

Notice of Rule Change; Revision to Chapter 187, Support from Relatives Not Living with the Client, to Support Implementation of the Family Violence Option

[30 Pa.B. 2957]

By this notice, the Department of Public Welfare (DPW) announces its intent to amend 55 Pa. Code Chapter 187, to establish rules and procedures to identify victims of domestic violence, waive child support requirements for them, and refer them for appropriate counseling. These changes are based on provisions of Federal law applicable to the Temporary Assistance to Needy Families (TANF) program, but will also be applicable to the state-funded General Assistance (GA) program. One of the cornerstones of TANF is the establishment of paternity and the pursuit and enforcement of child and spousal support. This principle supports the goal of aiding families in reaching self-sufficiency. A state is permitted to waive the requirement for applicants and recipients to cooperate in establishing paternity and obtaining child support, as part of its efforts for victims of domestic violence. Pennsylvania announced its intent to implement special provisions for victims of domestic violence in the TANF State Plan, Item VI.A.15, published at 27 Pa.B. 342, 350 (January 18, 1997).

The changes announced in this notice are based on provisions of Section 103(a)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. No. 104-193), amending Sections 402(a)(7) and 408(a)(7)(C)(iii) of the Social Security Act (42 U.S.C.A. §§ 602(a)(7) and 608(a)(7)(C)(iii)). Section 402(a)(7) of the Social Security Act, 42 U.S.C.A. § 602(a)(7), gives states the option to include in their TANF plan provisions to screen and identify victims of domestic violence, refer those individuals to counseling and supportive services, and waive certain program requirements, including support requirements, for those individuals as needed. This option is referred to as the Family Violence Option (FVO). The elements of this option are set forth in 42 U.S.C.A. § 602(a)(7)(A). The state must have standards to:

- (a) screen and identify victims of domestic violence while maintaining the confidentiality of such individuals,
- (b) refer such individuals to counseling and supportive services, and
- (c) waive, pursuant to a determination of good cause, certain program requirements for up to six months where compliance with such requirements would make it more difficult for individuals receiving Temporary Assistance for Needy Families (TANF) (42 U.S.C.A. §§ 601--619) cash assistance to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence. A reassessment of the waiver will take place every six months to determine if the waiver is still necessary and if the services plan is still appropriate.

In addition, former Federal child support regulations found at 45 CFR Chapter 232, which had been the basis for Pennsylvania's child support regulations, were rescinded in December 1997. Consequently, DPW has developed new policy and revised existing policy as necessary to support implementation of the FVO when the determination of

non-cooperation and good cause is made by the local County Assistance Office (CAO).

These changes are also based in part on Federal regulations implementing the TANF program, found at 45 CFR 260.50--260.59, and on section 4372(b) of the Domestic Relations Code, 23 Pa.C.S. § 4372(b).

The changes set forth in this Notice of Rule Change will be applied to applicants and recipients effective July 3, 2000.

The following changes in requirements apply to the TANF and General Assistance programs. Each change in policy described also identifies the section of Title 55 of the Pennsylvania Code that is being amended.

1. Process for Establishing Good Cause/New Verification Form

Current regulations describe the requirements for establishing good cause.

This Notice of Rule Change revises the standards and process for establishing good cause, including a new verification form and a new process to verify good cause by client affirmation for domestic violence victims. This regulation is therefore amended to reference the new procedure described in subparagraph (iii), as amended.

55 Pa. Code § 187.23(a)(3); Pub. L. No. 104-93, Title I, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii))

2. How Good Cause is Established

Current regulations provide for waiving cooperation requirements for good cause if cooperation in establishing paternity or obtaining child support will result in serious physical or emotional harm to the child or serious physical or emotional harm to the mother or other caretaker/relative with whom the child is living to the degree that it reduces her capacity to care for the child adequately.

This amendment removes the terms "serious" as it describes physical or emotional harm.

This amendment also removes the phrase "with whom the child is living to the degree that it reduces that individual's capacity to care for the child adequately." Deleting this phrase removes the subjective determination regarding the applicant's or recipient's ability to care for a child while a victim of domestic violence. The "capacity to care for the child" requirement was an element of the rescinded Federal regulations which defined good cause circumstances to be circumstances under which cooperation may be "against the best interests of the child." The FVO, because of its independent interest in the safety of the parent as well as the child, is not guided merely by a best interests of the child standard.

This amendment also provides for additional circumstances that, when present, are criteria for the establishment of good cause due to domestic violence. Good cause is established if cooperation may result in, and the individual or family member has been subjected to:

- * physical acts that resulted in, or threatened to result in, physical injury to the individual;
- * sexual abuse;
- * sexual activity involving a dependent child;
- * being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;
- * threats of, or attempts at, physical or sexual abuse;
- * mental abuse;
- * good cause may also be established if cooperation would make it more difficult for individuals receiving TANF or General Assistance to escape domestic violence; or
- * unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

55 Pa. Code § 187.23(a)(3)(i)(A); Pub. L. No. 104-93, Title 1, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

3. Evidence to Corroborate Good Cause/Verification of Good Cause Based on Domestic Violence Form

Current regulations provide a list of types of evidence that may be used to corroborate good cause.

This amendment adds the requirement that a Verification of Good Cause Based on Domestic Violence form is completed at application when an applicant claims good cause based on domestic violence. This form is also completed when the good cause waiver is reviewed but no less often than every six months. The form is used to:

- * Accompany acceptable verification that an applicant or recipient has provided of the good cause claim; or
- * Authorize by written consent of the applicant or recipient that a third party may provide verification/corroboration of the good cause claim; or
- * Grant good cause for up to six months when an applicant or recipient affirms she is unable to safely obtain evidence to verify the claim of domestic violence within the established time frames for providing verification.

After six months, an applicant or recipient who continues to claim good cause may establish that claim by providing any of the items of verification listed in subsection (ii). If, after six months, the applicant or recipient is unable to provide documentation of her claim other than her initial affirmation, the CAO will make a determination of good cause based on a current assessment of the recipient's circumstances by a domestic violence counselor or other person trained in domestic violence and substantiated by completion of the Verification of Good Cause Based on Domestic Violence form.

55 Pa. Code § 187.23(a)(3)(ii); Pub. L. No. 104-93, Title 1, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

4. Sworn Third Party Statements as Evidence of Good Cause

Current regulations provide that sworn statements from individuals with knowledge of the circumstances which provide the basis for the good cause claim are acceptable evidence of the good cause claim.

This amendment deletes the term "sworn." In addition to those items listed in the current

regulation, acceptable evidence includes, but is not limited to, a statement from an individual with knowledge of the circumstances which provide the basis for the good cause claim, including a domestic violence service provider, a medical, psychological, or social service provider, a law enforcement professional, a legal representative, an acquaintance, friend, relative, or neighbor of the claimant, or other person.

55 Pa. Code § 187.23(a)(3)(ii)(F); Pub. L. No. 104-93, Title 1, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

5. Time Frame for Authorizing Assistance When Good Cause is Claimed

Current regulations provide that an applicant or recipient has 20 days from the date the good cause claim is made to provide corroborative evidence of the good cause claim.

This amendment provides that assistance will be authorized no later than 30 days following application where the applicant claims good cause due to domestic violence and verification is not readily available or is pending from a third party. This is consistent with the manner in which other applicants are treated when certain eligibility factors are not readily available or pending from a third party.

55 Pa. Code § 187.23(a)(3)(iii); Pub. L. No. 104-93, Title 1, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

6. CAO Investigation of Good Cause Claim

Current policy provides the procedures that apply when verification is not available to prove that domestic violence exists. The CAO may conduct an investigation and may also attempt to determine the credibility of the client.

This amendment deletes the text of 55 Pa. Code §§ 187.23(a)(3)(v) and (vi), 187.23(4)(ii) and portions of 187.23(a)(4) because this Notice of Rule Change revises the process for establishing good cause at 55 Pa. Code § 187.23(a)(3)(ii) and (iii), making the deleted sections irrelevant and unnecessary.

55 Pa. Code § 187.23(a)(3)(v) and (vi) and (4), and (4)(ii); Pub. L. No. 104-93, Title 1, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

7. No CAO Contact with the Alleged Perpetrator Pending Good Cause Waiver

Current regulations permit the CAO to contact the putative father or non-custodial parent when such contact is determined necessary to establish the good cause claim.

This amendment clarifies that the putative father or non-custodial parent should not be contacted to verify good cause in a domestic violence situation. Such contact could endanger the safety of a victim of domestic violence by inciting the abuser to violence or disclosing her location. The alleged abuser may not be a source of accurate information regarding domestic violence.

55 Pa. Code § 187.23(a)(3)(vi); Pub. L. No. 104-93, Title 1, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

8. Deletion of Obsolete Good Cause Procedure

Current regulations provide a procedure that applies when the CAO is determining good cause based on physical or emotional harm to the parent.

This amendment deletes this regulation. In light of the revised standards and process for

establishing good cause, this regulation is no longer needed.

55 Pa. Code § 187.23(a)(4)(iii); Pub. L. No. 104-93, Title I, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

9. Final Authority of CAO to Establish Good Cause

Current regulations provide a process for giving the Bureau of Child Support Enforcement the opportunity to review and comment on the CAO's findings on good cause.

This amendment deletes those portions of the regulations. The regulations give the CAO final authority to make good cause determinations, making these provisions unnecessary. This amendment also makes explicit that the applicant is notified of the good cause determination.

55 Pa. Code § 187.23(a)(4)(iv) and (v); Pub. L. No. 104-93, Title I, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

10. Time Frame for Support/Paternity Action After Denial/Expiration of Good Cause Claim

Current regulations provide that the Bureau of Child Support Enforcement will not attempt to establish paternity or obtain support during the time of a good cause waiver.

This amendment expands the policy to provide that neither DPW nor the Bureau of Child Support Enforcement will attempt to establish paternity or obtain support for at least 30 days after the client has been informed orally and in writing of the denial of the good cause claim.

55 Pa. Code § 187.23(a)(4)(iv) and (v); Pub. L. No. 104-93, Title I, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

11. Review of Good Cause Waiver at Redetermination

Current regulations require the CAO to review the circumstances of the good cause waiver at each eligibility review.

This amendment is added to clarify that a recipient who provided corroborative evidence of the good cause claim does not have to provide additional corroborative evidence upon reassessment of good cause if circumstances have not changed since the initial waiver was approved. However, the recipient must establish that continuation of the good cause waiver is necessary by providing a Verification of Good Cause Based on Domestic Violence form completed by a domestic violence counselor or other person trained in domestic violence.

55 Pa. Code § 187.23(a)(4)(viii); Pub. L. No. 104-93, Title I, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

12. Individualized Safety and Services Plan

This amendment provides that the CAO will waive cooperation requirements under a determination of good cause based on domestic violence. Simultaneously, the CAO will refer the applicant or recipient to counseling and supportive services. The applicant or recipient must cooperate with the appropriate agency to develop an individualized safety and services plan. The services plan will:

- * be developed by a person trained in domestic violence;
- * reflect the individualized assessment and any revisions indicated by the redetermination of the good cause waiver;
- * be designed to help lead to work to the extent that compliance with program requirements does not make it more difficult to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence; and
- * be maintained in the files of the originating agency.

This amendment also provides that an applicant or recipient's failure to cooperate in the development of a services plan or failure to comply with a services plan, without good cause, may result in the denial of the good cause waiver.

55 Pa. Code § 187.23(a)(4)(x); Pub. L. No. 104-93, Title 1, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

13. Good Cause Requirements/Spousal Support

Current regulations provide a requirement for seeking spousal support.

This amendment provides that an individual will be excused from seeking spousal support when good cause is established under the standards and procedures set forth in subsection (a) of this section.

55 Pa. Code § 187.23(b); Pub. L. No. 104-93, Title 1, Section 103 (42 U.S.C.A. § 602(a)(7)(A)(iii));

Failure by DPW to implement the provisions of this Notice of Rule Change will result in noncompliance with the TANF State Plan as published at 29 Pa.B. 5658 (October 30, 1999).

This Rule Change has been reviewed and approved by the Office of General Counsel and the Office of Attorney General.

This Rule Change is made under the Joint Committee on Documents Resolution 1998-1 (2), 28 Pa.B. 2629 (June 6, 1998). This Rule Change will be in effect for 365 days pending adoption of final rulemaking by DPW.

Public comments to this Rule Change may be made by writing to Edward J. Zogby, Director, Bureau of Policy, Office of Income Maintenance, Room 431, Health and Welfare Building, Harrisburg, PA 17105.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users).

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-NRC-76. (1) General Fund; (2) Implementing Year 1999-00 is \$77,000; (3) 1st Succeeding Year 2000-01 is \$77,000; 2nd Succeeding Year 2001-02 is \$77,000; 3rd Succeeding Year 2002-03 is \$77,000; 4th Succeeding Year 2003-04 is \$77,000; 5th Succeeding Year 2004-05 is \$77,000; (4) 1998-99 Program--\$259.688 Million; 1997-98 Program--\$323.388 Million; 1996-97 Program--\$523.236 Million; (7) Cash Grants; (8) recommends adoption. Funds are available to cover the cost of this rule change.

[Pa.B. Doc. No. 00-995. Filed for public inspection June 9, 2000, 9:00 a.m.]

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