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Senate of Pennsylvania

March 18, 2002

Hon. Feather O. Houstoun
Secretary of Public Welfare
Room 333
Health & Welfare Building
Harrisburg, PA 17105

Re: Department of Public Welfare (DPW) Proposed Regulation 14-474:
Extended TANF

Dear Secretary Houstoun:

I submit the following comments in my capacity as Minority Chair of the Senate Public Health & Welfare Committee. Given the volume of public comments, and given the concerns that I have with these proposed regulations, I suggest that agency staff, IRRC staff and committee staff meet to discuss appropriate changes to your proposal.

DPW has exceeded its statutory authority by trying to extend the work requirement from twenty to thirty hours per week and by making the work requirement a condition of eligibility. Both actions violate the letter and spirit of Act 35 and the Public Welfare Code, §405.1 (a.2) (6). Specifically, Act 35 mandates at §405.1 (a.2) (6):

A recipient who has received assistance for twenty-four months, whether those months are consecutive or interrupted, must work, participate in subsidized employment, work experience, on-the-job training, community service or workfare for an average of at least twenty hours per week. Information indicating noncompliance with the minimum twenty-hour per week requirement shall be cause for a review of eligibility.

The Pennsylvanians subject to the requirements of proposed regulation #14-474 have all received assistance for more than twenty-four months. The General Assembly has clearly set forth the requirement for this group. They must work, or engage in a listed work-related activity "for an

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average of at least twenty hours per week." If the General Assembly had intended to create a higher standard for post-sixty months receipt of assistance, it would have done so.

Similarly, if the General Assembly intended to make the work requirement a condition of eligibility, it would have done so. A condition of eligibility is a statutory mandate that cannot be waived and allows for no exceptions. Compare the language of the section under review here, §405.1 (a.2) (6), with the language of §§405.1 (a.2) (1) and (2). Both of those sections explicitly state that the requirements contained therein are a "condition of eligibility" The present section, by contrast, states that "[i]nformation indicating noncompliance with the minimum twenty-hour per week requirement shall be cause for a review of eligibility'.

In sum, DPW has no authority to extend the work requirement from twenty to thirty hours per week or to make the work requirement a condition of eligibility. If the department believes otherwise, a specific citation to the grant of authority as to both issues would be helpful.

DPW also has exceeded its authority by proposing to invoke a full-family sanction in both the Extended TANF and GA programs against families of adult recipients who are exempt from work requirements and fail to establish eligibility for Federal benefits. The same full family sanction would apply for failure to obtain a Work Capacity Assessment or to participate in the Maximum Participation Project. In both cases, DPW has exceeded its grant of authority.

The Public Welfare Code provides that all recipients must cooperate in establishing eligibility for federal benefits, where appropriate:

Section 432.21. Requirement that Certain Federal Benefits be Primary Sources of Assistance.--(a) All recipients or applicants for assistance in this Commonwealth shall cooperate with the department in identifying the eligibility of such recipients or applicants for Federal Social Security Supplemental Security Income (SSI), Federal Social Security Retirement, Survivor's and Disability Income benefits (RSDI) or other Federal programs as the primary source of financial assistance for such persons.

DPW exceeds its authority by trying to invoke a sanction against the whole family for violating this section. The General Assembly continued in §432.21 by adding the following:

Any person who, without good cause, fails to cooperate with the department in an effort to establish such person's eligibility for SSI, RSDI or other Federal benefits shall have **his assistance** terminated, or if **he** has not previously received assistance, **shall thereby be rendered ineligible for such assistance** for a period of sixty days by reason of his noncooperation. (emphasis added)

Compare this language to §432.3. That section, entitled "Failure to Comply with Employment and Work- Related Activity Requirements", provides in §432.3(a)(2):

(2) If the reason for the disqualification occurs during the first

twenty-four months that cash assistance is received, whether those months are consecutive or interrupted, only the individual is disqualified. If the reason for the disqualification occurs after the individual has received assistance for more than twenty-four months, whether those months are consecutive or interrupted, the disqualification is imposed on the entire assistance group.

If the General Assembly meant to apply full family sanctions against recipients or applicants who are exempt from the work requirements, it would have. By creating very clearly different statutory consequences in each section, the General Assembly has evinced its intention to distinguish the full family sanction of §432.3 with the recipient/applicant only sanction of §432.21.

DPW needs to clarify the relationship between Regulation #14-472, which establishes the sixty-month limit for receipt of TANF and this regulation, which establishes the circumstance for post sixty-month receipt of Extended TANF and GA. The Preamble to this regulation includes contradictory statements. In referring to #14-472, the Preamble reads:

The final-form regulations for Extended TANF will be effective after the promulgation of the final-form TANF regulations.

This suggests that there will be a gap between the promulgation of #14-472 and the sixty-month limit, and this regulation and the extension beyond sixty months. The last sentence of this regulation adds a certain comfort level:

Pending promulgation of these regulations, families will continue to receive TANF cash assistance if otherwise eligible.

I repeat my concerns from my comments to #14-472. It is in that regulation that a clear statement must be made that the sixty-month limit will not apply until after the extensions of Regulation #14-474 are in place. Nonetheless, the last sentence of the Preamble to this regulation is a helpful beginning point and it is appreciated.

These regulations are not in the public interest in several respects. The thirty-hour work requirement is not reasonable as a universal requirement for single parents who are still not self-sufficient after sixty-months of assistance and who do not have a guarantee that child care and transportation will be available. Does DPW have information as to the distance between families' homes and their work and the available childcare? Does DPW know whether public transportation is available at all necessary times? More importantly, can DPW tell us how long it takes to get from home to childcare to work to childcare and back home again? What time is left over for education and training since we know that DPW's work first policy requires additional training in the out years for most people to receive self-sufficiency?

I am persuaded by the arguments of Community Legal Services and many others that the regulations create, or fail to correct undue burdens on families with limited English proficiency and on families that need only short-term help due to an emergency or a temporary disability. I also join in their comments on the inadequacy of the Work Capacity Assessment. Finally, I agree

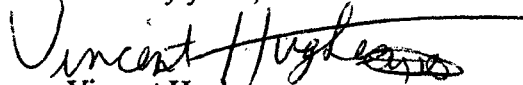
Secretary Feather Houstoun
Comments on Regulation #14-474
March 18, 2002
Page 4

with the many advocates for victims of domestic violence that these regulations do not adequately provide all the necessary protections required by federal law.

I repeat my earlier suggestion. Given the volume of public comments, and given the concerns that I have with these proposed regulations, I suggest that agency staff, IRRC staff and committee staff meet to discuss appropriate changes to your proposal.

Thank you for your time and consideration.

Sincerely yours,

A handwritten signature in black ink that reads "Vincent Hughes". The signature is written in a cursive style with a long horizontal line extending to the right.

Vincent Hughes

Minority Chair

Public Health & Welfare Committee

cc: John R. McGinley, Jr., Esq., Chair, Independent Regulatory Review Commission
Senator Harold F. Mowery, Jr., Chair, Public Health & Welfare Committee