

Original: 2244

THE WELFARE COALITION

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Bucks County Housing Group
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Community Action
Committee of the
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Community Justice
Project
Community Legal Services
Community Women's
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Poverty of the Lehigh Valley
Jewish Labor Committee
Just Harvest
Lutheran Advocacy
Ministry in PA
Maternity Care Coalition
Parental Stress Center
PA AFL-CIO
PA Assoc for Adult
Continuing Education
PA Assoc. of County Human
Service Administrators
PA Catholic Conference
PA Coalition Against
Domestic Violence
PA Coalition Against Rape
PA Council of Children,
Youth & Family Services
PA Council of Churches
PA Hunger Action Center
PA Jewish Coalition
League of Women Voters
PA Legal Services
PA Partnerships for Children
Pa Social Services Union,
Local 668 SEIU
People's Emergency Center
Philadelphia Citizens for
Children and Youth
Philadelphia NOW
Philadelphia
Unemployment Project
Regional Workforce Partnership
Sisters of Mercy
Success Against
All Odds
The Blueprint to
End Homelessness
The Institute for the
Study of Civic Values
The Working Wardrobe
United Way of PA
United Way of SE PA
United Way of
Westmoreland County
Women's Assoc. for
Women's Alternatives
Women's Community
Revitalization Project
Women's Law Project

August 29, 2002

The Honorable Harold Mowery
Chair, Senate Public Health and Welfare Committee
Pennsylvania Senate
169 Main Capitol
Harrisburg, Pennsylvania 17120

The Honorable Vincent Hughes
Democratic Chair, Public Health and Welfare Committee
Pennsylvania Senate
543 Main Capitol
Harrisburg, Pennsylvania 17120

The Honorable George Kenney, Jr.
Pennsylvania House of Representatives
Chair, Health and Human Services Committee
Room 108 Ryan Office Building
Harrisburg, Pennsylvania 17120

The Honorable Frank Oliver
Pennsylvania House of Representatives
Democratic Chair, Health and Human Services Committee
Room 34 East Wing
Harrisburg, Pennsylvania 17120

The Honorable John McGinley, Jr.
Chair, Independent Regulatory Review Commission
333 Market Street
Harrisburg, Pennsylvania 17101

RE: Extended TANF Regulations #14-474

VIA FACSIMILE

Dear Sirs:

On behalf of the Pennsylvania Welfare Coalition – a diverse statewide coalition of parents, religious leaders, community-based organizations, employers, labor, public officials, recipients, providers and advocates – we are writing to urge your immediate attention to Department of Public Welfare Regulations #14-474. This regulatory package will codify the Commonwealth's decision to extend Temporary Assistance for Needy Families (TANF) benefits to eligible families beyond the current federally imposed 60-month time limit. DPW forwarded these final form regulations to the Independent Regulatory Review Commission for action on August 12, 2002.

The Welfare Coalition believes it is in the best interest of Pennsylvania's low-income families to toll this regulatory package so that a limited and specific list of shortcomings in the regulations can be corrected prior to final implementation.

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GENERAL ASSISTANT

Prior to outlining the foundation for our request for tolling, it is imperative to stipulate that The Welfare Coalition is heartened by the Commonwealth's progressive stance of extending TANF benefits to families, who of no fault of their own, have been unable to secure economic self-sufficiency prior to exhausting their TANF benefits.

By and large, DPW's regulatory package #14-474 reflects the extensive comments offered by many of our members and is greatly improved from the previously proposed regulations. Additionally, these regulations largely recognize the complexities encountered by many families – complexities that include illiteracy, language barriers, domestic violence, and social and medical conditions. Such complexities have impeded some families' ability to both secure and retain work.

Despite DPW's improved upon regulations, The Welfare Coalition believes that a number of specific alterations prior to IRRC action will serve both to clarify the intent of the regulations and to benefit recipients and county assistance workers alike upon implementation of the regulations. The following concerns were outlined to DPW in a meeting earlier this week:

1. Fix the drafting error in the Domestic Violence provisions at Section 141.53
2. Revise Section 141.41 to insert "federally-funded" prior to all mentions of TANF so as to ensure consistency with state and federal statutes
3. Clarify within Section 141.54(b)(4)(iii) that any opportunity for a second opinion related to the Work Capacity Assessment be done de novo, not as a confirming opinion.
4. Specifically note within Section 141.58 that recipients have notice and appeal rights related to their referral to the Maximizing Participation Project (MPP) or Work Plus Program (WPP)
5. Shift the burden and fiscal implications of retrieving medical records from recipients to DPW officials
6. Clarify Section 141.52 and 141.55 to clearly stipulate that the calculation of work or approved work-related activities will be an average of 30 hours per week
7. At Section 141.55(b) make clear that participants in WPP will have a service or activities plan based on the individual's required vocational assessment
8. Provide guidance at Section 141.54(b)(3)(i)(E) that the Work Capacity Assessment will be among the considered items by the MPP Team, but not the sole basis of decision-making
9. Distinguish at Section 151.54(a) and 141.55(b)(2) that severe language barriers are a functional limitation which may be a basis for referral to MPP and that individuals with limited English proficiency who participate in WPP and who have not yet had the opportunity to participate in language accessible vocational training be permitted to engage in vocational training and intensive ESL as principle activities.

The Welfare Coalition believes that the above-mentioned concerns should be addressed prior to a vote by IRRC and look forward to your support for tolling the regulations. Thank you, in advance, for your consideration of our request. Please do not hesitate to contact me with any questions at 717-233-1110.

Sincerely,



Joel Weisberg
Chair, The Welfare Coalition

Cc: Feather Houstoun, Secretary for the Department of Public Welfare



original: 2244

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August 30, 2002

By Fax: (717) 783-2664

Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101

Attention: Jim Smith

Dear Commissioners:

We are writing to supplement the materials we had previously submitted about the need for specific clarifications in the Extended TANF regulations. We want to address three issues:

- to explain more concretely the problems we see with clients not getting the help they need from DPW caseworkers with regard to verification and the concomitant importance of DPW routinely providing help getting medical records (point # 5 in our letter of 8/23/02);
- to clarify our suggested revision concerning how compliance with the required number of hours will be determined for individuals participating in WPP (point #6 in our letter of 8/23/02); and
- to supplement the information we provided concerning the need for service plans for participants in WPP (point # 7 in our letter of 8/23/02).

The Need for Assistance with Verification/Medical Records
(Point #5 in our letter of 8/23/02)

We work in the public benefits unit at the North Philadelphia office of Community Legal Services. We have three paralegals who work full time on welfare cases, three paralegals who work full time on SSI (disability) cases, and six lawyers who work on both welfare and SSI cases. Our waiting room is full (and often standing room only) each Monday, Wednesday and Friday, with people waiting to be seen for new client intake on a range of civil legal issues. In fact, we often have a line of people waiting at the front door before we open. Unfortunately we don't have enough staff to do intake five days/week. Because of our limited staff, Community Legal Services turns away many individuals each year who have meritorious cases, but who we are unable to represent because we simply do not have enough attorneys or paralegals.

In our welfare unit, verification problems are among the most common problems we see.

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INDEPENDENT REGULATORY REVIEW COMMISSION

Much of our staff time is spent trying to get verification that clients have been unable to obtain, and that DPW caseworkers have not been willing to help with. A lot of the difficulty we see in verification cases occurs because DPW's basic rule is that the client has the primary responsibility for getting verification, and although caseworkers are supposed to assist when necessary, caseworkers are extremely reluctant to do so. Applications routinely get denied because clients are unable to obtain verification and caseworkers do not provide assistance to them. Because the requirement in the Extended TANF regulations that clients obtain medical records is new, we cannot give you examples of clients in that exact situation. What we can provide is examples of clients who have had difficulty getting assistance from DPW in obtaining other types of verification. **Brief descriptions of a few of our recent cases are attached.**¹

Common examples in our practice include clients who are unable to obtain letters from former employers for a variety of reasons: many low-wage workers work at small businesses that don't have personnel departments; some employers don't have letterhead stationary; some employers are unwilling to assist a former employee who has been fired; larger employers often require the former employee to contact a central personnel office in another state, and many of our clients don't have telephones or can't afford long distance calls. We have represented battered women who could not return to their former employer to get verification because the abuser worked there or could locate them through the former employer. We have represented women who had left a job because of sexual harassment and were denied benefits by DPW because they were unable to ask the harasser for verification that they were no longer employed there and the DPW caseworker was unwilling to assist in obtaining it.

Similarly, we often see women who are denied benefits because they have moved from another state, and DPW caseworkers have told them that they must get verification from the other state that their welfare case had been closed before benefits would be authorized in Pennsylvania. In many respects this is a situation that is most comparable to the need to get medical records—it involves dealing with another bureaucracy, and often requires multiple calls and repeated efforts.

We also see clients who have difficulty verifying that their criminal record does not preclude them from receiving benefits. DPW requires that every individual who applies for benefits, and who has a criminal record, must provide verification to establish that they are not in violation of probation or parole, do not have outstanding bench warrants, and do not have a particular type of conviction barring them from receiving benefits. Individuals who have a probation or parole officer are usually able to get a statement providing the necessary information through that officer. However individuals who have successfully completed their probation or parole, and therefore do not have a probation or parole officer, have enormous difficulty getting the required verification. There is no one in the criminal justice system with any responsibility for them, and in our experience, DPW caseworkers do not provide assistance in getting the verification. Again, this is an area that is comparable to getting medical records, in that it

¹To protect client confidentiality, the names of the individuals have been changed.

requires persistent contact with another set of agencies.

We also see some cases in which DPW staff are making absurd verification demands. For example, a couple of years ago I received a request for help from staff at a women's drug treatment program when welfare caseworkers demanded that women participating in the program obtain letters verifying their prior living arrangements in crack houses (on "crack house letterhead") and past income from prostitution, including demanding that women get letters from former customers attesting to their prostitution and to the amounts they were paid, in order to document what the welfare department calls "past management" (in effect, to answer the question, how did you support yourself before and why isn't that source of support available to you now). This would require that the women return to drug corners and crack houses, putting their recovery and their safety at risk, apart from the reality that crack houses don't have letterhead and former customers of prostitutes aren't reachable and don't provide letters of verification. While these cases are clearly not reflective of DPW policy, they would be less likely to arise if the routine assumption was that DPW would assist in getting verification, rather than to assume that the client is responsible for obtaining any document a caseworker requests.

In each verification case we handle, the DPW caseworker told the client, "getting verification is your responsibility." When we get involved in a case, we ask the caseworker to make a "collateral contact" (the DPW term for its own staff contacting someone other than the client, to obtain verification). Caseworkers routinely say they are too busy, or it isn't their job, or it is the client's responsibility. We therefore spend huge amounts of time and energy attempting to get verification, or fighting with caseworkers over whether they are required to assist in getting verification. This creates a significant burden on our staff, who could be working on other cases, and presents a major barrier to benefits for those individuals who do not come to us for help. **It represents a significant cost incurred by individuals and organizations in the private sector, which is, as your know, one of the criteria for your review.** Sometimes the caseworker will accept a letter from us documenting our efforts as a substitute for the verification. Other times the caseworker will persist in refusing to grant benefits. Although the overwhelming majority of our welfare cases get resolved before a hearing, a significant proportion of the cases we are unable to resolve, and which require hearings, involve verification issues, or delays in getting benefits because of problems in getting verification.

As troublesome as these issues are in other contexts, we believe that it will be even more difficult for clients to obtain medical records, for reasons that are discussed in greater detail in the letter being sent to you separately by Richard Weishaupt, one of our colleagues. Whatever you think of the general DPW verification policy of requiring the client to be the primary source of verification, it is inappropriate when applied to medical records, which are particularly difficult to obtain. While some types of verification are relatively easy for many clients to get -- a letter from a neighbor, or a relative, for example -- the financial reality of low-income life makes it very difficult to get verification that requires repeated phone calls, or long-distance phone calls, or trips to an office.

Many low-income households don't have telephones, and each time a client without a telephone has to make a call, she must either use a pay phone (which is quite expensive and inconvenient, since many pay phones have been removed from low-income neighborhoods to discourage drug dealers) or visit a friend or relative and request the use of their telephone. The base fare for subway or bus travel in Philadelphia is \$2.00 per person each way; transfers are an additional 60 cents each way. A round-trip for the purpose of requesting medical records involving one transfer will cost the client \$5.20. That's over half of one day's total welfare grant for a mother and child.

A maximum welfare grant in most counties in Pennsylvania is \$316/month for a mother and child, or \$403/month for a mother and two children. Grant levels have not been increased in over 12 years, and are now at about 33% of the federal poverty line. Over 80% of welfare recipients do not have any sort of housing subsidy, and the welfare grant has to cover housing costs, clothing, transportation, and all of their children's expenses. Food Stamps are an average of 80 cents per person per meal, and usually run out by the middle of the month, requiring families to use part of their cash assistance to pay for food. Welfare recipients literally cannot afford even a small additional expense.

At the IMAC/Welfare Coalition meeting with DPW on Wednesday, August 28th, DPW staff said that they intend to pay the costs of obtaining medical records. If that is so, the regulations should make it clear.

Finally, it should be noted that caseworker assistance with verification will often be a reasonable accommodation of a disability required by the Americans with Disabilities Act. In its policy guidance on ADA accommodations in TANF programs, the Office of Civil Rights of the U.S. Department of Health and Human Services highlighted the need for modifications in the application process:

A TANF agency with a complicated application process modifies its application process to ensure the process is accessible to individuals with learning disabilities or mental retardation. The agency may do this by modifying the application form itself, by obtaining the information needed to apply for benefits through a verbal interview, by providing **necessary assistance for individuals with disabilities to complete the application process**, or by other means.

Policy Guidance at Section D.2 (available at <http://www.hhs.gov/ocr/prohibition.html>) (emphasis added). A commentator more fully enumerating ADA modifications required in applications for welfare benefits specifically includes "**helping individuals with disabilities to gather documentation to demonstrate eligibility for services....**" Cary LaCheen, Using Title II of the Americans with Disabilities Act on Behalf of Clients in TANF Programs, VIII Georgetown Journal on Poverty Law & Policy 1, 155.

Almost by definition, persons who need medical records for a WCA will have disabilities which will hamper their ability to collect medical records. The disability is the basis for their entry into the MPP track of Extended TANF. Persons with mental disabilities will have difficulty executing the requirement of obtaining their medical records. Persons with physical disabilities may not be able to travel to doctors' offices, if that is what their medical provider demands. Thus, ADA compliance will require caseworker assistance with collecting medical records in most cases. The most reliable way to ensure it occurs is to make provision of assistance in getting medical records a routine responsibility for DPW.

**The need for Flexibility in Determining Compliance with
the Required Number of Hours for Individuals Participating in WPP
(point #6 in our letter of 8/23/02)**

In our 8/23/02 letter we suggested that the regulations should be clarified to provide that individuals who are employed or participating either an average of 30 hours per week or who are generally in compliance with a 30 hour per week schedule will be considered in compliance, as was agreed with DPW in discussions concerning the implementation of Time-Out. We have now obtained the language used by DPW in its operations memorandum on this topic, which provides that "if the individual does not work the required number of hours in one month, the [County Assistance Office] should confirm he is still employed and that the job usually and normally requires these hours. Time out continues...as long as there is no pattern of abuse." (Operations Memorandum; a copy of the cover sheet and relevant pages is attached). We believe that this wording is preferable to the language we had suggested on 8/23/02, and that sections 141.52 and 141.55 should be clarified using DPW's wording from the operations memorandum, simply substituting "Extended TANF" for "Time out."²

A question was raised as to why this clarification is necessary given the good cause provisions. The good cause provisions can certainly be used as a defense against a proposed sanction. However it is also important that sanctions not be initiated inappropriately, and that clients, DPW staff, and contractors all clearly understand that employment or participation in a WPP program that "usually and normally" requires 30 hours constitutes compliance, "as long as there is no pattern of abuse." Placing this language in the regulations ensures that the policy is public, that the regulations clearly delineate the program as DPW intends to implement it, and that the rules are known. In contrast, Operations Memoranda are not available to the public.

**The Need for Service Plans for Participants in WPP
(Point # 7 in our letter of 8/23/02)**

²Using DPW's wording from the operations memorandum would also obviate the need to include a provision for averaging the number of hours of participation, making it unnecessary to determine the period of time over which hours would be averaged.

As CLS, the Community Justice Project, and the Women's Law Project pointed out in our 8/23/02 letter to Secretary Houstoun, DPW's proposed Extended TANF regulations do not provide for participants in the Work Plus Program to have a service plan or employment development plan based on the individual's vocational assessment, similar to the MPP service plan. The proposed final regulations currently require a vocational assessment, but do not specify what should happen as a result of that assessment. At the IMAC/Welfare Coalition meeting with DPW on Wednesday, August 28th, DPW staff said that there was no need to alter their proposed Extended TANF regulations to include an employment development plan stemming from the vocational assessment, because DPW will require the contractors to develop such plans.

Placing the requirement of a employment development plan in guidelines to contractors is vastly inferior to putting the requirement in the regulations, because clients will not be able to enforce the guidelines. If the requirement is only in guidance (to which the public does not have access), clients may not even know about the requirement. Even if they do know of the requirement, they will not be able to enforce the requirement through the fair hearing process, because hearing officers only enforce Departmental regulations. The contractor may ignore the requirement to develop a plan, or may follow a generic approach regardless of the outcome of the vocational assessment, and a hearing officer might respond that the client has no redress because the regulations do not provide a right to any plan at all.

For example, a client whose vocational assessment revealed illiteracy might nonetheless be assigned to work-related activities, such as job search, that did nothing to help her learn to read. Or a client whose vocational assessment revealed high educational attainment but poor interpersonal skills could be assigned to low-level educational classes without any attempt to improve her ability to interact with co-workers. We have heard numerous instances of clients having to sit through classes which were far too simplistic for their experience level, and of non-English speakers being required to sit through classes conducted in English, even though they couldn't understand them.. Such experiences stem from a "one size fits all" approach that many DPW contractors take in providing work-related activities. DPW has wisely decided to conduct a vocational assessment of clients reaching the 5-year time limit, but it should also require a customized plan for each client, and ensure that contractors do not ignore the assessment.

DPW might respond that its contract administrators will enforce the requirement that clients receive an appropriate activities plan stemming from the vocational assessment. Experience tells us, however, that DPW's contract administrators are highly focused on the contractors' job placement rates, and do not routinely enforce other contract requirements. For example, DPW also states that it requires its welfare-to-work contractors to serve clients with Limited English Proficiency. But CLS's survey of the language capabilities of Philadelphia welfare-to-work contractors, Attachment 9 to the 8/23/02 letter to Secretary Houstoun, shows that DPW has not enforced this requirement. Given the many other demands on DPW's contract administrators, and the importance of a vocational plan to clients, DPW's regulations should

specify that clients participating in MPP are to be provided a service or employment development plan so that clients can enforce the plan requirement if DPW does not.

In conclusion, the regulations should delineate the program as DPW intends to run it, rather than relegating important client protections to non-public documents, in violation of the Commonwealth Documents Law and Regulatory Review Act. As you know, clarity and lack of ambiguity are among the criteria you are required to consider under the Regulatory Review Act, along with reasonableness of the requirements. We believe the issues we have raised fall squarely within the Regulatory Review Act criteria.

We hope that this additional information is of use to you. We would be happy to provide any other information that might be helpful to you in your review of the regulations, and we appreciate your consideration of these issues.

Sincerely,



Amy Hirsch

Louise Hayes

for the CLS Public Benefits Unit

cc: Secretary Houstoun, DPW
Jack Kane, DPW
Senator Harold Mowery, Jr.
Senator Vincent J. Hughes
Representative George Kenney, Jr.
Representative Frank Oliver

Individual Examples of Difficulty Getting Verification, and DPW's Failure to Assist¹**Anna**

Anna moved to Philadelphia from New York, at the age of 21, with her four year old daughter. At the time of her move, Anna was visibly pregnant and in urgent need of assistance. She and her daughter moved from a shelter in New York to a shelter in Philadelphia. She notified the welfare office in New York that she had moved to Pennsylvania, and applied for benefits at DPW. She is Spanish-speaking, and was told by a Spanish-speaking DPW caseworker that she needed to get proof from New York that her case was closed there.

Anna borrowed money from friends in Philadelphia and made a series of long distance telephone calls, trying without success to get the necessary proof from the welfare department in New York. Anna told DPW that she had been unable to get the papers they wanted from the New York welfare office; the DPW caseworker said it was her responsibility. She was then sent five notices by DPW (all of them in English, which she cannot read), denying her application for benefits because she had not provided verification of the date her case closed in New York. DPW's policy is to assist individuals in getting verification from another state concerning welfare benefits. The DPW caseworkers are more likely to be successful in their request for information from another welfare office than a client, and they have a form they could have faxed to New York. Yet no assistance in obtaining verification was provided to Anna by the DPW office.

Anna was unable to understand the notices, and was baffled by receiving five of them, but again borrowed money and paid \$42 for a round-trip bus ticket to New York. She went to the welfare office in New York the week after getting the notices, and completed a form requesting that her case be closed, and brought it back to DPW. She was again denied benefits, because the DPW caseworker felt the form wasn't sufficient verification. Anna then made a further series of long-distance calls, to no avail.

Eventually she learned of Community Legal Services, and came to our office for help. A paralegal at CLS made 35 separate long distance calls to the welfare department in New York in order to get the information required by DPW. As a result of three weeks of active intervention by CLS, DPW finally opened benefits prospectively for Anna and her daughter nine weeks after she had initially applied.

It then took another seven months of advocacy by CLS to get DPW to issue Anna the back benefits she was owed. And, of course, she was never reimbursed for the cost of the bus ticket to New York, or of the long distance calls she made in her efforts to get the verification demanded by DPW. The \$42 she spent on the bus ticket was the equivalent of four days of TANF benefits for herself and her four year old. During those nine weeks of her pregnancy, while she particularly needed good nutrition, Anna and her four year old daughter were without income or food stamps.

¹Each of these cases is a real client story from the CLS welfare unit. To protect client confidentiality, the names of the individuals have been changed

Maria

Maria's teenage son threw away his paystubs. Maria tried, but was unable to get detailed wage information from his employer. This is a common problem—teenagers often lose track of their paystubs, or leave them in a pants pocket so they go through the wash and are crumpled and unreadable. The welfare department needs gross wages, not net; people often know how much they bring home, but not the gross amount, particularly when their wages vary each week. And even if the client can tell the caseworker the exact gross amount of the wages, verification must still be obtained from the employer if the client does not have paystubs to turn in to DPW. Because Maria could not provide verification of her son's earnings, their Food Stamps were suspended for a three month period. During that time Maria explained the situation to the caseworker, and described her unsuccessful efforts to get the information the caseworker wanted. The caseworker knew that was unable to get the information, but did not provide assistance. Instead of providing assistance in obtaining the needed verification of the teenager's wages, the caseworker inexplicably stopped Maria's transportation allowance, making it much more difficult for her to get to her health care vocational training program. The loss of Food Stamps for three months, along with the loss of her transportation allowance, caused great hardship for Maria and her son, both of whom are trying to move from welfare to work.

Unfortunately Maria did not seek help from CLS on this issue until three months had passed—she did not realize that anything could be done, or that the welfare office rules required her caseworker to assist in obtaining verification if she was unable to get to get it herself. A paralegal at CLS is looking into her case now, to see what action can be taken on her behalf.

Sonia

Sonia, who is Spanish-speaking, cannot read or write in English. She received a notice telling her that her benefits would be cut off because she had failed to provide verification. The notice is in Spanish, except for the specific information about what verification is needed, which is in English. (A copy is attached). She was therefore unable to understand what information was being requested. She has psychiatric impairments which make it more difficult for her to get verification or to follow through on tasks. The verification the welfare department wants concerns wages of her husband, from whom she is separated, and which she has been unable to obtain. Although DPW is aware of her disabilities, the caseworker did not provide her with any assistance in getting the verification. She is being assisted by a paralegal and an attorney at CLS, and her appeal is currently pending. Her benefits are continuing during the appeal process only because of the intervention by CLS.

Deanna

Deanna, homeless and struggling with mental illness, was denied benefits at the welfare office because her caseworker was sure that Deanna's criminal record made her ineligible for cash assistance and Food Stamps. When she walked into the Community Legal Services office, she was living in a small homeless shelter where she was not permitted to make phone calls, and had no carfare to get to her outpatient mental health treatment or to the alcohol and drug treatment program in which she was trying to enroll.²

Deanna has a felony drug conviction: she was arrested on August 18, 1996 and convicted in 1997. She also has a later misdemeanor drug conviction. Neither of these convictions makes her ineligible for benefits; the ban applies only to *felony* drug convictions and only to convictions for conduct *after* August 22, 1996.

Deanna had been trying to get benefits for three weeks, without success. Initially, the caseworker insisted that the felony drug conviction made Deanna ineligible, erroneously focusing on the date of conviction, rather than the date of conduct. After a CLS attorney faxed the caseworker the welfare department handbook section stating that the date of conduct was what mattered, the caseworker and her supervisor then insisted that the misdemeanor conviction must actually be a felony conviction, and that benefits could not be approved without verification from a probation officer that the later conviction was for a misdemeanor.

Because she had successfully completed her jail sentence and her probation, Deanna did not have a current probation officer, and the welfare office did not want to accept Deanna's, or her lawyer's, assertions that the conviction was for a misdemeanor. Deanna's prior probation officer gave her a copy of her criminal record printout from the court computer, but would not provide further documentation since Deanna was no longer in her caseload. The DPW staff could have contacted the probation department, or the criminal court, and asked for confirmation of Deanna's criminal record, and clarification about the nature of the conviction. It seems likely that those agencies would have been more responsive to a request from DPW than they were to Deanna's request that they give her a document she could take to DPW.

When the CLS attorney provided a copy of Deanna's criminal record and of the relevant state statutes defining the crime as a misdemeanor were provided to the welfare office, the caseworker and supervisor responded: "How do we know you didn't just make that up?" Deanna's benefits were approved only after the CLS attorney called supervisors at multiple levels of both the welfare department and probation office hierarchies. Without the intervention of an attorney who was experienced in the intersection of criminal and public benefits law, Deanna would have waited several months, without benefits, for an administrative appeal hearing and decision. Even with her attorney's expertise, it took ten days, and many hours of advocacy, before Deanna received her benefits. In the interim, she had no resources whatsoever.

² The Medical Assistance program should have paid for Deanna's transportation to medical care, but, as is common, the welfare office had not explained to Deanna that these funds were available, and did not have a simple system in place to pay for medical transportation.

Tara

Tara applied for cash assistance in June of 2002. She is categorically eligible for TANF benefits as a pregnant woman. She also has a very serious chronic illness. Tara came to our office for help in when she learned that her application for cash assistance had been denied and her food stamps terminated. Upon inquiry, the CLS attorney representing her learned that her application had been denied and her food stamps terminated based on a failure to verify the relationship between her landlord and the owner of her building. Tara had rented a house from a man who told her he was the landlord. She paid rent to him, and gave the welfare office her address and his name, and a letter from him confirming that she was renting the house from him. She was then told by the welfare office that he wasn't the owner, and that she needed to get a letter from him clarifying who the owner was and what his relationship was to the owner. She provided another letter from him, which the caseworker said was insufficient. Tara, who had no knowledge of an owner other than the man she pays rent to, was unable to get verification that the caseworker would accept. The caseworker was unwilling to assist her in getting any further verification.

Tara had made every reasonable attempt to comply with DPW's request for verification by submitting a letter from her landlord, and it was clear that Tara lived at and paid rent at the address she had provided to DPW. Nonetheless, she was denied cash benefits for two months during which she attempted to resolve the confusion over the legal owner of her rented home. She only received benefits after a CLS attorney went several levels up the chain of command at the welfare office. During the two months that she was without benefits Tara, who was pregnant and ill, had difficulty getting the basic necessities of life.

COMMONWEALTH OF PENNSYLVANIA
Department of Public Welfare

OPERATIONS MEMORANDUM
Cash Assistance

SUBJECT: Implementation Instructions for the Time-Out Initiative

TO: Executive Directors

FROM: Sherri Z. Heller
Deputy Secretary for
Income Maintenance

PURPOSE

1. To introduce the Time-Out Initiative, which is effective July 2, 2001.

NOTE: This Operations Memorandum replaces the draft Operations Memorandum that was distributed and referenced during training. Of particular importance are revisions made to the requirements associated with Kinship Care and Domestic Violence.

2. To provide eligibility criteria and instructions for implementation of this initiative.
3. To provide case scenarios with accompanying flow charts and sample Agreements of Mutual Responsibility (AMRs) that illustrate the Time-Out process.

NOTE: The case scenarios and AMRs have been substantially changed since the training sessions, at my request. I was dissatisfied with the earlier versions. I expect CAO staff to review and discuss the changes and ensure that implementation of this initiative produces appropriate AMRs.

4. To provide a copy of a general informational notice sent to clients regarding the Time-Out Initiative as well as notices sent to them at 12 and 9 months before their Temporary Assistance for Needy Families (TANF) benefits are exhausted.

eligibility period is nine months since Mrs. Ivanoff previously used only three months of the maximum 12-month Time-Out period.

NOTE: When other states request a client's total amount of TANF time, the months a client has received Time-Out are not included in the total.

SPECIFIC ELIGIBILITY CRITERIA/ IMPLEMENTATION INSTRUCTIONS

1(A) Working 30/55 hours per week

The Time-Out Initiative allows an individual who is working 30 hours per week or a two-parent family in which one or both parents are working (TANF-U) 55 hours per week to receive Time-Out for up to 12 months.

NOTE: Two-parent families in which one parent is incapacitated (TANF-C) may qualify for Time-Out if the other parent is working 30 hours per week.

- The CAO will determine if the individual is working the required number of hours in paid, subsidized or unsubsidized employment as verified on the monthly reporting form. This includes self-employment. **NOTE:** Self-employed individuals must demonstrate that they are working the functional equivalent of 30 hours per week at minimum wage.
- If the individual does not work the required number of hours in one month, the CAO should confirm that he is still employed and that the job usually and normally requires these hours. Time-Out continues during the CAO review and should continue as long as there is no pattern of abuse.
- Time-Out begins on the next payment date whose deadline can be met after receiving verification of the client meeting the work requirement. (30 hours for individuals or 55 hours for two-parent households).
- Time-Out under this criterion may be approved at any time during an individual's receipt of TANF, (Pre- or Post-24-month).

Refer to Attachments 1-1 to 1-7 for a comprehensive case scenario in which a client is working 30 hours. Included with the scenario is a flowchart, AMR, narrative page, Cohort call-in letter, and individual Cohort case review.

1(B) Working a minimum of 20 hours per week plus engaged in an employment and training activity

The Time-Out Initiative allows an individual who is working a minimum of 20 hours per week to receive Time-Out for up to 12 months as long as he/she is also engaged in an employment and training activity as approved on the Agreement of Mutual Responsibility. The combined hours of work and training must equal or exceed 30 hours.

For example: Mrs. White is working 25 hours per week. She is also attending GED classes for six hours per week. She is eligible for Time-Out under the work/training criterion.

- The employment and training activity may be either self-initiated or through a contracted program.
- The approved employment and training activity may include GED, ESL, and/or post-secondary education.
- If the individual does not meet the required number of hours in one month, the CAO should confirm that he is still employed/enrolled and attending a program or working in a job that usually and normally requires these hours. Time-Out continues during the CAO review and should continue as long as there is no pattern of abuse.
- Time-Out begins on the next payment date whose deadline can be met after verification is received that the individual has worked/attended training for the requisite number of hours.
- Time-Out under this criterion may be approved at any time during an individual's receipt of TANF (pre- or post-24 months).

Refer to Attachments 1A-1 to 1A-4 for a case scenario in which a client is working 20 hours and engaged in 10 hours of training. Included with the scenario is a flowchart, AMR, and narrative page.

NOTE: Community Service is not a paid activity and does not count as work for the purpose of establishing eligibility for Time-Out.

2. Early Engager

The Time-Out Initiative allows an individual who has completed the required eight-week job search to receive Time-Out for up to 12 months as long as he begins a contracted or otherwise DPW-approved Employment and Training program for 30 hours per week or a full-time post-secondary educational activity in the first 12 months of receipt of cash assistance.

- Post-secondary education is defined as certified, full-time education that is offered by any public or private licensed or accredited institution primarily designed to educate individuals who have obtained a high school diploma or GED, for employment purposes.
- Full-time status is determined by the educational institution.
- Enrollment, attendance and satisfactory progress must be verified by the institution according to its normal standards.
- A client may be enrolled in any employment and training program as long as it is approved on the AMR and normally provides 30 hours per week of scheduled activity.



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RE: Extended TANF

MESSAGE: One last set of additional
stuff -
① information on reasons why people
have difficulty meeting the 30 hours.
② excerpt from Lathen article on
TANF ADA requirements - relevant to
issue of help getting medical records.

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program. This, however, does not necessarily remove the obligation of other entities to provide reasonable accommodations to the individual. In many situations both the work or work training program and the TANF program will have an obligation under Title I to provide reasonable modifications to TANF applicants and recipients at job placements.

Finally, if a TANF program denies benefits, sanctions, or takes other adverse action against people with disabilities based on non-compliance with work, training, job search or other requirements, and modifications were not provided to the individual, even if the TANF agency was not operating the program in question, the TANF program has discriminated on the basis of disability. Thus in some instances TANF programs may have an obligation to provide reasonable modifications at jobs or other placements they do not operate or control in order to avoid discriminating against TANF recipients.

PART III: USING THE ADA TO ADDRESS COMMON PROBLEMS IN TANF PROGRAMS

CHAPTER 11: DOES THE ADA REQUIRE TANF PROGRAMS TO HELP APPLICANTS WITH DISABILITIES WITH THE BENEFIT APPLICATION PROCESS AND WITH NAVIGATING THE SYSTEM?

The TANF application process raises two types of issues for people with disabilities. The first is barriers to access that might occur when applying for any public benefits, such as a lack of physical accessibility of offices, and the need for assistance in completing applications and navigating the system.⁷⁴⁷ The second is barriers specific to TANF programs, including diversion policies, job search requirements, and other policies and requirements intended to discourage individuals from receiving assistance.⁷⁴⁸

A. *The Obligation to Make Reasonable Modifications in the Application Process*

The ADA requires welfare agencies to provide a variety of different types of assistance to applicants for TANF benefits. This assistance is required as a reasonable modification of policies, practices, and procedures that are necessary to avoid discrimination.⁷⁴⁹ It is also required because without such assistance, welfare agencies' application processes are a method of administration that have a discriminatory effect on people with disabilities.⁷⁵⁰ Failing to provide modifications during the application process also prevents people with disabili-

⁷⁴⁷ This type of barrier is discussed in this chapter.

⁷⁴⁸ This second type of barrier is discussed *infra* Part III.12-13

⁷⁴⁹ See 28 C.F.R. § 35.130(b)(7)(1999).

⁷⁵⁰ See 28 C.F.R. § 35.130(b)(3) (1999).

TANF program goals mentioned in PRWORA, which is to "provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives."⁷⁵⁸ It is also unlikely that state law will have purposes that conflict with these modifications. The cost of providing this assistance should not be substantial. The barriers addressed by these modifications prevent some individuals with disabilities from getting any benefits, which courts are likely to view as a compelling reason for modifications.⁷⁵⁹ Finally, the modifications put everyone on an equal footing by providing an equal opportunity to receive benefits; they do not give people with disabilities "more" than others.⁷⁶⁰

As the barrier denies meaningful access to the application process, the relevant inquiry is whether individuals are qualified to apply for benefits, not whether they would ultimately be able to qualify for them.⁷⁶¹ Moreover, where welfare agencies use joint applications for TANF and other benefits, the relevant question is whether an individual is qualified to apply for any of these benefits, not just TANF.

C. Possible Reasonable Modifications

Clients may need and be entitled to a wide range of modifications during the TANF application process. A partial list of such modifications follows:

- 1) readers to read application forms for people whose disabilities impair their ability to read, including individuals with learning disabilities, mild mental retardation, visual impairments, and any conditions treated with medication that causes blurred vision;
- 2) assistance in filling out forms for individuals whose disabilities impair their ability to complete forms, such as individuals with learning disabilities, psychiatric disabilities, visual disabilities, orthopedic, musculoskeletal, neurological and other disabilities;
- 3) providing additional explanations of forms and their requirements for individuals whose disabilities impair their ability to understand the forms;
- 4) providing an aide or additional person to accompany individuals through different stages of the application process, where such assistance is needed for physical, cognitive, psychiatric or other disabilities;
- 5) providing flexibility in appointment times, waiting times, and other aspects of the appointment process.⁷⁶²

⁷⁵⁸ 42 U.S.C.A. § 601(a)(1) (West 2000).

⁷⁵⁹ See *supra* Part II.10.

⁷⁶⁰ See *supra* Part II.10.A.iii.

⁷⁶¹ See *supra* Part II.6.

⁷⁶² See *Dees v. Austin Travis Co. Mental Health and Mental Retardation*, 860 F. Supp. 1186 (W.D. Tex. 1994).

- 6) making additional phone calls, advocating for, and taking other steps to assist individuals with disabilities with other stages of the application process;
- 7) helping individuals with disabilities to gather necessary documentation to demonstrate eligibility for services, including making phone calls on their behalf, accepting alternative forms of documentation and verification, where disabilities impair the ability to gather this information;
- 8) allowing individuals with disabilities to apply for benefits and attend other appointments at alternative sites, where disabilities impair access to existing sites, either because they are not physically accessible, because auxiliary aids and services are not provided, or because of transportation barriers;
- 9) modifying the application process in other ways, by allowing applicants to apply by telephone, mail, home visits, or by other means;
- 10) allowing family members, friends or others to attend and participate in various stages of the application process even where rules would otherwise prohibit attendance or participation;
- 11) simplifying the application process in other ways, by modifying application forms, eliminating steps in the process, or by other means, as long as programs can still obtain the information needed to make eligibility determinations;
- 12) providing auxiliary aids and devices, such as qualified interpreters, note takers, transcribers, assistive listening devices (such as TTYs), open and closed captioning,⁷⁶³ when necessary to ensure effective communication with people with disabilities, giving primary consideration to the aids and devices of the individual's choice. Using a note pad to communicate with individuals who are speech or hearing impaired during some parts of the application process, may not be sufficient for more complex and lengthy interactions in which complex information must be conveyed and understood.⁷⁶⁴ Where clients have limited reading and writing skills, TTYs may not be adequate and interpreters may be required.⁷⁶⁵
- 13) using telecommunication devices for the deaf (TDDs) or equally effective means of communication (such as telephone relay services) to communicate by telephone with applicants, recipients and members of the public who are speech or hearing impaired.⁷⁶⁶ In Interpretative Guidance, the DOJ has encouraged agencies that have extensive contact with the public to have TDDs, and identified "public aid offices" as among those having extensive contact.⁷⁶⁷
- 14) extending time periods for keeping pending applications open for people

⁷⁶³ Other examples of auxiliary aids and devices can be found in the Title II regulations. 28 C.F.R. § 35.104 (1999).

⁷⁶⁴ See 28 C.F.R. § 35.160 (1999).

⁷⁶⁵ See *Bonner v. Lewis*, 857 F.2d 559 (9th Cir. 1988) (reversing summary judgment for defendant in a Section 504 case brought by a deaf inmate who argued that an interpreter was required instead of a TTY because he had limited reading skills).

⁷⁶⁶ See 28 C.F.R. § 35.161 (1999).

⁷⁶⁷ See 28 C.F.R. pt. 35 app. A § 35.161.

with disabilities to provide additional time to submit documentation demonstrating eligibility for benefits.⁷⁶⁸

Agency policies prohibiting staff at welfare centers from making any of the modifications listed above or prohibiting staff from assisting applicants with applications for benefits violate the ADA.

D. Notice of the Availability of Modifications

Title II notice requirements require TANF programs to provide notice to applicants of their right to the modifications listed above. To be effective, notices must give examples of modifications and not just use the term "reasonable modifications," which is meaningless to many people. In addition, notices should give examples of conditions that may qualify as disabilities that entitle people to modifications, including assistance during the application process. TANF programs should not assume that applicants know how "disability" is defined under the ADA. Given the high number of TANF applicants and recipients with undiagnosed disabilities, this assumption would be particularly inappropriate. Notices should give examples of disabilities, and some examples should be described not just in terms of medical diagnosis but in terms of symptoms, such as difficulty reading or writing, trouble standing for long periods of time, or extreme nervousness.

E. Do TANF Programs Need to Know Which Individuals Have Disabilities to Provide Reasonable Modifications?

TANF programs can eliminate many barriers in the application process by changing program policies and procedures, and they can do so without any need to know which applicants or potential applicants have disabilities. Requiring welfare workers to offer particular types of assistance to everyone during the application process and having a designated employee at each site to arrange for non-routine program modifications are examples of such practices. Programs can also adopt policies on how to handle modification requests and assign responsibility for providing modifications at each site. These changes require no knowledge

768. Cf. *Tatum v. Nat'l Collegiate Athletic Ass'n*, 992 F. Supp. 1114 (E.D. Mo. 1998) (allowing additional time on a timed test is a reasonable modification under the ADA for individuals with particular disabilities); *Bardett v. New York State Bd. of Law Examiners*, 156 F.3d 321 (2d Cir. 1998) (same), vacated by 527 U.S. 1031 (1999), on remand 226 F.3d 69 (2d Cir. 2000). Some states have extremely stringent documentation deadlines. New York requires applicants provide relevant medical information to welfare agencies documenting a disability within ten calendar days of receiving notice and to health care providers making disability determinations within four business days of an examination. See N.Y. Soc. SERV. LAW § 332-b(2)(a)-(b) (McKinney Supp. 1999). Wisconsin requires TANF agencies to give applicants seven working days to provide requested verification. See WIS. ADMIN. CODE § DWD 12.06(4)(b) (West 1997).

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Revised. May 13, 2002

Many Welfare Recipients Could Not Meet TANF Proposals for 40 Hours of Work
by Sharon M. Dietrich,
Community Legal Services, Inc., Philadelphia, PA

Executive Summary

Community Legal Services of Philadelphia believes that proposals that would require the states to engage a high percentage of their welfare recipients in work activities for an average of 40 hours every week would be the single most problematic change in TANF Reauthorization. Based on our experience, we believe that many welfare recipients could not meet the 40-hour mark on a regular basis, because they often cannot meet the existing 30 hour goal. Stories showing the obstacles that prevent welfare recipients from working regularly are attached at the end of this paper.

Eve W. works, but she often has to miss work to care for her autistic son, who requires 24-hour care. He is nonverbal, needs help to get dressed, cannot use a door, take public transportation, or say if he is in pain. He is in special education classes, and the school often calls Eve to come immediately because of problems. She continuously misses time from her welfare-to-work program because she is needed to provide care for him. Special needs child care has been very difficult for her to obtain. She has worked in fast food, a gas station, a bank, an outlet store, a grocery store and as a nurse's aide, but she inevitably misses hours because of needing to care for her son and loses the job.

Eve's youngest child died of Sudden Infant Death while she was working the overnight shift. She had chosen a night job because of her child care needs, thinking she could leave her two younger children with her oldest son as they slept. Although she could not have done anything to prevent her baby's death, Eve lives with the guilt of thinking that he would not have died if she had been there.

The notion that 40 hours is the regular full-time work week is a fallacy. For many, a 35-hour week is considered full-time. Moreover, workers who are considered to work full-time nevertheless frequently miss work for family and personal needs, often with paid time to allow them to do so. And while most workers may be employed with full-time hours, many employees work less, particularly in the sectors of the economy in which welfare recipients are likely to find employment.

Family and personal needs force all workers to take time away from their jobs. But welfare recipients are more likely to miss work, because they are single parents with limited resources. Welfare recipients can be expected to miss work for the following reasons:

- ▶ Caregiving obligations (child care problems, school closings, doctor's appointments, being needed at school, caring for a disabled family member).
- ▶ The worker's own disability or sickness.
- ▶ The worksite is closed (for holidays and other reasons).
- ▶ Mandatory court appearances and obligations, and jury duty (child welfare agency obligations are particularly likely to conflict with work).
- ▶ Dealing with bureaucracies (the welfare office or the public housing authority).
- ▶ Family tragedies (fires, arrests, deaths).
- ▶ Problems caused by financial difficulties (utility shut-offs, deteriorated housing).

In Pennsylvania, we have seen many people who cannot meet the existing 30 hour work participation goal, like those in our attached stories. The Department of Public Welfare, which has designed programs to create incentives for TANF recipients to meet the 30 hour goal, has modified these policies so that persons who would otherwise be precluded by the hours goal can participate.

The proposed 40-hour requirement is not needed to maximize work, as there are already many incentives in place. The consequences of a 40-hour requirement would be harsh, including: a complete lack of flexibility for states to implement their welfare-to-work programs; the sanctioning off the caseload of people who are doing their best to work; the cost of implementing such a program; and negative outcomes for children

Revised, May 13, 2002

Many Welfare Recipients Could Not Meet TANF Proposals for 40 Hours of Work

by Sharon M. Dietrich,
Community Legal Services, Inc., Philadelphia, PA¹

Introduction

TANF Reauthorization proposals put forward by the Bush Administration and others would require the states to engage a high percentage of their welfare recipients in work activities for an average of 40 hours every week for the states to continue to receive their full TANF block grant.² *Based on our experience and those of other Pennsylvanians familiar with welfare-to-work implementation in our state, Community Legal Services, Inc. (CLS) believes that the 40 hour requirement is not attainable and is the most problematic feature of the Administration proposal.*

The notion that TANF recipients are only being asked to match the number of hours routinely worked by other workers is superficial and erroneous. Many workers, even those who are considered "full-time," work fewer than 40 hours. Full-time workers typically are credited for paid time during which they do not work, including breaks, holidays, vacations, sick days and personal days — accommodations that do not appear in the 40 hour proposals for welfare recipients. Workers of all types miss work for a wide variety of reasons, resulting in far fewer than 40 hours worked. Research shows, and our experiences have been, that TANF recipients (and other low wage workers) are particularly likely to miss work, because they face more family and other demands that conflict with work and have fewer resources to deal with these demands. *In our experience, many TANF recipients who are working to capacity cannot meet even the current 30 hour goal.*

¹ Many people who are concerned about this issue contributed to this paper. Special thanks to persons who helped provide the stories: Carrie Young and Peter Schneider of CLS; Achee O'Quinn and Richard Greenwald of the Transitional Work Corporation; and Natalie Sondheimer of the Maternity Care Coalition. I also appreciate the feedback on this paper that I received from readers too numerous to mention, but most notably the extensive comments and assistance from my colleagues Louise Hayes and Amy Hirsch.

² Under the Bush proposal, the work participation rate would increase from 50% to 70% by FY 2007. Meanwhile, the caseload reduction credit would be completely phased out, except for a very limited credit in which persons leaving welfare for work would count for only three months. The upshot of these changes would be that 70% of TANF recipients would have to engage in work activities 40 hours a week by FY 2007. Twenty-four of the 40 hours would be in "work" comparable to employment; the other 16 hours could be in other specified activities. States would receive pro-rata credit for persons who met the 24 hour work benchmark but did not meet the 40 hour goal.

The consequences of requiring TANF recipients to average 40 hours of work activities every week would be severe and counter-productive. Even a person averaging 39 hours a week of work activities would count *against* the state's compliance with its work participation rates if the one missed hour was in "work." People doing their best to work would nevertheless be sanctioned off the caseload by states struggling to meet the unrealistic goals. The costs to the states of providing 40 hours of work activities would be staggering, especially in providing child care subsidies. The work participation rate regime would not focus on good employment outcomes. And children, who would spend more time apart from their parents even when they are sick or need help with school, would experience negative outcomes. Policymakers who are "pro-work" for TANF recipients should not support such a problematic proposal.

The 40-Hour Requirement Is Not Realistic

The justification advanced for the 40-hour requirement for TANF recipients is that they should be expected to work no less than their counterparts who do not receive cash assistance. This rationale is flawed, because many workers considered full-time do not work 40 hours every week. There are many legitimate reasons why workers of all sorts work fewer than 40 hours and must miss work.

American Workers Do Not Regularly Work 40 Hours Every Week

"Full-time" workers may work 35 hours per week. Of course, some full-time employees do work 40 hours or more in a typical week. However, many workers considered full-time work fewer than 40 hours. The Bureau of Labor Statistics (BLS) considers 35 hours the benchmark of full-time work.³

These hours include paid time not worked. When measuring hours worked, BLS includes hours paid for holidays, vacations, sick leave, and other compensated leave.⁴ From what is known of the Administration proposal and from TANF implementation to date, there is no reason to expect that TANF recipients subject to the 40 hour requirement will receive credit comparable to paid leave days when they miss work.

A substantial number of employees work fewer than 35 hours per week. According to BLS's annual data for 2001, 24.1% of employees work fewer than 35 hours. 16.5% work fewer than

³ See, e.g., Annual Average Table from the January 2001 Issue of Employment and Earnings, Tables 19-23, from the Monthly Labor Review Online, December, 2001, Vol. 124, No. 12, available at <http://www.bls.gov/cps/cpsaatab.htm>.

⁴ BLS Handbook of Methods, Chapter 2, available at http://www.bls.gov/opub/hom/homch2_b.htm.

30 hours.⁵ Among unmarried women, about one-third — and 37.2% of single women who were never married — work fewer than 35 hours.⁶

Hours worked vary between sectors. According to BLS data, average weekly hours vary depending on the sector of the labor economy. For instance, in manufacturing, average weekly hours have exceeded 40 hours every month since January 1992. By contrast, the service sector typically averages below 33 hours per week, and the retail sector averages 28-29 hours per week. Former welfare recipients are much more like to find work in the service and retail sectors than the manufacturing sector.

**Workers Miss Time for Many Reasons, and TANF Recipients
Are Especially Likely To Have Legitimate Reasons to Miss Work**

Workers do not perform their jobs in a vacuum. They have family and personal needs that frequently require them to miss work. TANF recipients have the same needs to miss work as other workers. Additionally, their absences from work are exacerbated by their typical status as single parents, their lack of resources to deal with non-work-related problems, and demands disproportionate or unique to poor people (such as dealing with child welfare authorities and other bureaucracies).

N.E. worked for many years (in restaurants, movie theaters and as a receptionist) before she married and had her three young children. Her husband, who abused her and the children, demanded that she stop work and stay home. Because of her husband's abuse of the children, the Department of Human Services (DHS) threatened to put her children into foster care.

In order to keep her children, and to escape the abuse, N.E. got a Protection From Abuse order, and moved first to a battered women's shelter and then in with a friend. DHS requires her to go to parenting classes and 4-5 appointments each week, plus her kids' regular medical appointments. She takes her children to special services for their developmental disabilities, including speech therapy and occupational therapy.

She was fired from her job cleaning office buildings in the suburbs 25-30 hours per week, three months after she got it, because she missed too many days of work because of her children's needs and DHS requirements.

⁵ Annual Average Table from the January 2001 Issue of Employment and Earnings, supra note 3, at Table 19.

⁶ Id. at Table 22.

Note: This is only a synopsis of N.E.'s story. Her complete story, and those of the other TANF recipients whose stories appear in the body of this paper, is presented at the end of the paper (p. 21).

Caregiving obligations. In a ground-breaking study based on interviews of more than 7,500 caregivers, Dr. Jody Heymann examined the obligations of American workers to provide for the health, educational and other needs of their children, parents, and other adults in their care.⁷ Her national findings were that in the week of the interviews, 30% missed at least one day of work to meet the needs of family members, 12% missed two or more days, and 5% missed three or more.⁸

Dr. Heymann learned that children were not the only family members for whom caregivers were required to cut back their working hours. While 42% of absences were to care for children, 15% were for parents, 12% were for spouses or other partners, 7% were for grandchildren, and 24% were for other family members.⁹

Moreover, Dr. Heymann discovered that the reasons for missing work to provide care are varied.¹⁰ They included:

Child care problems	22%
Elder care	5%
Children's school needs	3%
Transportation for family members	10%
Cope with a death	3%
Other support	31%

⁷ Jody Heymann, The Widening Gap: Why America's Working Families Are in Jeopardy and What Can Be Done About It (Basic Books 2000). Jody Heymann, M.D., Ph.D, is on the faculty of Harvard University and is Director of Policy for the Harvard University Center for Society and Health. Among the principal sources of data for her book are the Urban Working Families Study, a national Daily Diaries Study, the U.S. Department of Labor's National Longitudinal Survey of Youth, and the Survey of Midlife in the United States. Combined, the studies involved interviews of more than 7,500 caregivers across the country and included multiyear follow-ups. Id. at 7.

⁸ Id. at 24.

⁹ Id. at 27.

¹⁰ Id. at 24. BLS data show that 20.7% of people working fewer than 35 hours per week, or 6.44 million adults, did so because of child care or other family or personal obligations. Annual Average Table from the January 2001 Issue of Employment and Earnings, supra note 2, Table 20.

Dr. Heymann found that the work/caregiving dilemma is particularly bleak for low income workers, because "they have both the most substantial problems and the most limited resources."¹¹ She characterized low income parents as being in "multiple jeopardy: single, with limited support, and without job benefits," a profile which fit 38% of low-income working parents in her national study.¹² Among the challenges to low income workers that she identified were greater likelihood of child care problems;¹³ higher incidence of sickness and chronic health conditions among low income children;¹⁴ evening and night work and irregular schedules;¹⁵ under-resourced schools;¹⁶ and lack of money to pay for substitute care when needed (such as days when a child is sick or school is closed).¹⁷

Eve W. often misses her welfare-to-work program because she must care for her autistic son. He is nonverbal, needs help to get dressed, cannot use a door, or take public transportation, or say if he is in pain. He is in special education classes, but the school often calls Eve to come immediately because of problems. Eve has worked in fast food, a gas station, a bank, an outlet store, a grocery store and as a nurse's aide, but she inevitably misses hours because of needing to care for her son. Tragically, her youngest son died of Sudden Infant Death while she was working the overnight shift, which she chose to try to minimize her child care needs. While there is doubtlessly nothing she could have done to prevent his death, Eve lives with the guilt of thinking that the baby would still be alive if she had been there for him.

The demands on low income workers of providing care for disabled family members are particularly noteworthy. Dr. Heymann found that 41% of mothers on welfare for more than two years and 32% of mothers on welfare for two years or fewer had a least one child with a chronic

¹¹ Heymann, supra note 7, at 117.

¹² Id. at 134.

¹³ Dr. Heymann found that 33% of caregivers with income below 125% of poverty had to miss hours from work because of child care, compared to 21% of middle and upper income persons. Id. at 28.

¹⁴ Id. at 166.

¹⁵ Id. at 128.

¹⁶ Id. at 131.

¹⁷ Id. at 132.

health condition.¹⁸ With fewer financial resources for help, the working poor must provide the care themselves. Among those with a disabled child, 49% spent more than one working day a month providing care; 15% spent more than 40 hours per month. Caregiving demands for other disabled family members are similar.¹⁹ Moreover, a disabled child may have special educational needs as well as caregiving needs, requiring additional parental time at school and with homework.²⁰

Alice W. has four children: a 16 year old son, and three daughters ages 9, 8, and 6. She has worked at various jobs, including the night shift at UPS, and has received TANF on and off for several years. She has a hard time keeping a job, because of the health of her 8 year old daughter, who has both sickle cell anemia and an eating disorder. The child has been hospitalized repeatedly, has had a feeding tube, and needs frequent blood transfusions and specialist appointments. Alice has not been able to find a child care provider to care for her daughter when she is sick. In addition to her 8 year old's daughters' problems, Alice's six year old daughter has just been diagnosed with asthma, and needs multiple medical appointments. Alice has tried to participate in education and work programs as recommended by her welfare caseworker, but has been unable to finish because of her daughters' illnesses.

Sickness or disability of the worker. In addition to providing care for sick or disabled family members, the adult's own sickness or disability may require absences from work.²¹ Most higher income workers receive paid sick days in acknowledgment of this reality. But under an inflexible 40 hour a week standard, TANF recipients might be required to make up any missed days, extending their workweek beyond 40 hours in a later period.²²

¹⁸ Id. at 124.

¹⁹ Id. at 124-25.

²⁰ Id. at 74-87.

²¹ BLS data shows that 759,000 adults working fewer than 35 hours per week did so because of health or medical limitations. Annual Average Table from the January 2001 Issue of Employment and Earnings, supra note 3, Table 20.

²² We assume that making up time missed in one week in another week would be allowed and encouraged, because the Bush proposal (which is not in the form of a bill at the time of this writing) requires that families "average" 40 hours per week of work activities and 24 hours per week of work. However, the proposal is not explicit on whether hours can be made up in another week.

Ironically, under Title I of the Americans with Disabilities Act, an employer must allow an employee with a disability to work a modified or part-time schedule as a reasonable accommodation, absent undue hardship.²³ If the 40 hour work requirement were to be enacted, that could create the incongruous situation where an employer would be legally required to modify its attendance requirements, but the TANF recipient might still be found in non-compliance with the requirements of the TANF program. Moreover, under Title II of the ADA, the state TANF agencies have obligations to ensure that their policies do not discriminate against people with disabilities.²⁴ Thus, an inflexible 40 hour rule could also place the states in a legal quandary.

The worksite is closed. A typical reason for closing is a holiday. At CLS, where we host “transitional workers” who are TANF recipients, our offices are closed for holidays at least once every month from September through February. Under a strict 40-hour policy, our transitional workers would not only not get paid for these holidays, but would have to find a way to add hours (at a time that our office is not open for business) to make them up, to avoid losing their cash assistance.

Mandatory court appearances and obligations, and jury duty. In our experience, low income clients are particularly likely to have court involvement, such as child welfare system cases, domestic violence hearings (to obtain and enforce protection from abuse orders), criminal cases, and support matters (particularly because child support cooperation is a TANF requirement). Actual court appearances are often outnumbered by court-ordered meetings and activities, such as meetings with child welfare agency staff and with probation officers. These court-related appearances typically conflict with day-time work schedules.

The child welfare system is particularly likely to place heavy competing demands on welfare recipients, placing them in a dilemma between working to keep their income and complying with their family service plans to keep their families intact.

For Nicole C., a mother trying to reunite her family, the daily activities required by the child welfare agency to bring him home are so extensive that they are comparable to a full-time job. The welfare department appropriately has recognized good cause for her not to participate in a 30-hour per week

²³ Equal Employment Opportunity Commission, Enforcement Guidance on Reasonable Accommodation (eff. March 1, 1999), Q&A 22, available at <http://www.eeoc.gov/docs/accommodation.html#12> (citing Ralph v. Lucent Technologies, Inc., 135 F.3d 166, 172 (1st Cir. 1998)).

²⁴ See, e.g., Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families), Office for Civil Rights, U.S. Department of Health and Human Services, January, 2001 (“the OCR ADA guidance”). It can be found at <http://www.hhs.gov/ocr/prohibition.html>.

work program because of these obligations. Her two year old son, "N," lives with her, and she is trying to bring her four year son, "R," home from foster care.

Nicole goes to a parenting program called the Family School every Tuesday and Thursday from 9 am to 2 pm. Every Wednesday she takes R. to his weekly therapy appointment, and to family therapy. It takes from 9 am to 1 pm to pick him up from his foster home, take him to the appointment, and return him to his day care. Every Friday and Sunday she has court-ordered all day visitation with R., often monitored by social workers. Each of these activities requires a long commute to and from the Family School, the foster home, the therapy appointments, and the visitation.

Nicole is making good progress in her Family Service Plan, and the Department of Human Services has said they will ask the Judge to let R. come home soon. But Nicole will continue needing to go to Family School for 3 to 6 more months, and taking R. to therapy. Later she hopes to get training and go to work. But for now, as the welfare department recognizes, she is unable to attend a work program because of everything she needs to do to get her son back.

Jury duty may seem like a small distraction from work. However, the Philadelphia Unemployment Project (one of our group clients) assisted a participant in the Work Opportunities paid work experience program who was expelled for attending mandatory jury duty to which she was summoned. This is an example of the consequences of rigid work attendance policies.

"Poor people's shuffle." In addition to court appearances, low income workers frequently deal with bureaucracies that demand their attendance during work hours and often require them to wait for hours, such as public housing authorities and the welfare office itself. The appendix at the end of this paper contains a narrative description prepared by the People's Emergency Center, a provider for the homeless in Philadelphia, of the nature and extent of the mandatory appointments required of its TANF clients.²⁵

Family tragedies. For low income people to experience tragedies — children being incarcerated, houses burning down, deaths — is not unusual. For instance, the director of Philadelphia's Transitional Work Corporation reports that several participants in his program have

²⁵ In addition, Dr. Heymann in her study relates the story of a low wage father who decided to go with less food for his family rather than missing work to go to the welfare office to fill out papers for food stamps. Heymann, *supra* note 7, at 120.

had children who committed suicide. Parents living through these tragedies cannot be expected to keep up with a relentless 40 hour a week work schedule.

Problems caused by financial difficulties. Low income workers are more likely than their higher wage counterparts to face utilities shut-offs, which require immediate measures to restore service. Homes in serious disrepair often deteriorate to the point of a housing crisis. Such problems, in addition to causing discomfort, could lead to child welfare agency staff removing children from the home if they are not promptly rectified.

Other typical reasons people miss work. Like other workers, low income workers are late to work or miss it because of transportation problems. Because they are more likely to use unreliable cars or public transportation, low wage workers have less control over these transportation problems.²⁶ Like other workers, low wage workers occasionally must stay home to await the plumber or a public utility worker. But the 40 hour requirement would provide no flexibility to deal with such emergencies.

Many TANF recipients experience these problems cumulatively. Even TANF recipients without a single overwhelming problem such as a disabled child or child welfare agency obligations often miss a great deal of work, because of an accumulation of the issues discussed above.

Sandra H. is dealing with multiple caregiving responsibilities. Two of her three sons have ongoing medical problems; her year old baby has been ill since birth with seizures and severe respiratory problems requiring hospitalization; her eight year old son has attention deficit and hyperactivity disorder. Sandra also provides care for her mother, who has multiple health problems, for her adult brother, who is severely mentally retarded, and for two of her mother's grandchildren, who live with them.

Sandra is also dealing with domestic violence and stalking by her abusive former partner. Although she has gotten a Protection from Abuse order, he has continued to harass her and forced her to leave a welfare-to-work program by repeatedly showing up at the program and creating problems there.

Sandra has worked at various jobs, including as a waitress, as a telemarketer, and as an usher at a movie theater. Her learning disabilities have made it

²⁶ Our Philadelphia clients often travel to suburban jobs by public transportation. These commutes, which may require several connections, can easily take two to three hours a day. The commutes add to the time crunch that our clients experience, even when they work less than full-time. See the story of N.E. (page 18).

hard to keep a job, as have the harassment by her abuser, and the needs of her family members. "I wish I could work steady and support my family. But these problems often cause me to miss work, and I don't see that changing in the future."

Experiences in Pennsylvania in Hours Worked Among Current and Former TANF Recipients

Our experience has been that our clients have been unable to meet a standard of 30 hours per week, much less 40 hours. One way of examining this experience is through the individual stories of welfare recipients that are appended to this paper. Another is to review the attempts by the Pennsylvania Department of Public Welfare (DPW) to maximize hours worked by current and former TANF recipients by structuring its programs to require the number of hours established by the TANF work participation rates. In the face of the reality that many workers were unable to achieve these hours goals on a regular basis, DPW has had to modified its policies to build in flexibility.

For instance, in February 1999, DPW established a 25 hour per week eligibility standard for persons not receiving TANF (many of them former TANF recipients) to receive subsidized child care. Because of repeated incidents of parents not qualifying for the subsidies due to working fewer than 25 hours per week, DPW agreed to a policy change that recognized a limited number of temporary exceptions from the 25 hour requirement, for work missed because of disability, medical appointments, employer closings or domestic violence. Nevertheless, many parents continue to have difficulty meeting the 25 hour goal, leading advocates to press for reduction of the hours requirement back to the original goal of 20 hours per week. A common reason that clients miss the 25 hour goal is that they are in jobs providing 20 hours per week of work, and they are unable to convince their employers to increase the hours.

Another manifestation has been attendance at the Transitional Work Corporation program (TWC), Philadelphia's highly regarded paid work experience program for TANF recipients. TWC was designed to require 25 hours per week of paid work experience at work sites in government and non-profit jobs and 10 hours per week of "professional development" (training and career advising) at TWC's offices. TWC has consistently insisted that its participants, who have been screened as being among the "hardest to serve," meet these attendance requirements, but many have been unable to do so on a regular basis. In a recent DPW audit of the hours of 20 TWC participants, only 80% of work site hours and 50% of professional development hours were met, despite the high quality of services offered at TWC. Overall for the period of July 1, 2001 through March 1, 2002, TWC's participants averaged 19.76 hours of work (79% of the 25 hour goal) and 5.5 hours of training (55% of the 10 hour goal).

In conjunction with the DPW audit, TWC examined the reasons why its participants fell short of the 25/10 hours goals. Among its conclusions were the following.

- ▶ Because TWC is a 35 hour program, making up missed hours is difficult.
- ▶ Because TWC works with the hardest to serve (persons with multiple employment barriers), its participants have difficulty with time and attendance. The program's challenge is to identify the underlying causes for absenteeism and to work with its participants to address these causes.
- ▶ Often when TWC participants are not in attendance, they are dealing with barriers to employability that require their attention during the workday, such as child care, housing, domestic violence, or drug and alcohol addiction. It is unfair to ask them to address these employment barriers and then penalize them for not being at the program.
- ▶ Work sites that are closed for holidays create problems in reaching the goals. Sickness among participants and their family members were other common reasons for absences.

During the summer of 2001, DPW announced a program called "Time Out," pursuant to which TANF recipients who are engaged in work activities for 30 hours per week are taken off the TANF 60-month time clock. *Based on the DPW audit, not one of the 20 participants whose time records were reviewed would qualify for Time Out if their actual hours were counted on a weekly basis, even though TWC provides 35 hours per week of work activities.* Along with complaints from advocates that too few persons in 30 hour per week work programs were qualifying for Time Out, the sharp focus brought to this issue by the TWC participants led to clarification by DPW that general compliance with the attendance requirements of a work program of 30 or more hours would qualify a TANF recipient for a Time Out. The reasoning is that a person without good cause would be sanctioned; so if a person below the hours goals remains in the program, they must have good cause for their absences.

What our experiences in Pennsylvania show are that even the current 30 hour goal is unrealistic for many — possibly the majority — of working TANF recipients. If the hours goals are to be adjusted from current law, the adjustment should be downward, not upward. Alternatively, the work participation rate regime must be flexible. Currently, the caseload adjustment credit provides states breathing room to not penalize their working TANF recipients who are doing their best. As in the case of Pennsylvania, it allows them to recognize "good cause" for not meeting the hours goal.

The Consequences of a Requirement that TANF Recipients Work an Average of 40 Hours Per Week Are Counter-Productive.

If an inflexible 40 hour work activity standard were incorporated into the TANF work participation rates, a *de facto* three-tiered system would be created for dealing with family and personal needs that are in conflict with work.

- ▶ *Good jobs* provide some paid leave time to deal with sickness, vacation, and personal needs. They may also permit job protection, through the form of unpaid leave, under the Family and Medical and Leave Act.²⁷
- ▶ *Bad jobs* provide no paid time, but may allow a worker to take unpaid time to deal with these problems.
- ▶ *TANF work requirements* would require a welfare recipient to work 40 hours each and every week, or make up for missed time. While a low wage worker without paid leave time loses pay, a TANF recipient faces total loss of the safety net that provides income for his or her family.²⁸

The irony is that a TANF recipient may have the least capacity to adhere to a 40 hour per week schedule. As noted above, TANF recipients are primarily single parents, with few or no resources to deal with their caregiving and other problems. They may have the most barriers to employment (particularly those remaining on the caseload five years after welfare reform), and they need help to address their barriers, not an inflexible 40 hour requirement.

The broader consequences of a 40 hour standard to the welfare system include the following.

No flexibility for states to work with TANF recipients facing barriers. Administration officials and supporters of the Administration's work proposal have repeatedly said that their proposal provides a great deal of flexibility for the states. This assertion could not be more incorrect. Given the structure of the work participation rate proposal, a person who does not average 24 hours per week of work would count *against* the state's compliance, even if engaged in 40 (or more) hours of more broadly defined work activities. Additionally, even a person meeting the 24 hours of work would not count fully for the state if his or her overall average of work activities were 39 hours or fewer. *Applying the Administration's approach to the welfare recipients' stories that follow, none of them would meet the test, because they could not regularly meet both the 24 and 40 hour benchmarks.* This rigid and demanding formula may be the worst possible manifestation of a "one size fits all" approach to welfare reform.

At a recent forum on TANF Reauthorization, a proponent of the Administration's plan suggested to a former TANF recipient who is attending Community College subsequent to her layoff that she could continue her education if she were receiving TANF, because of the flexibility during

²⁷ 29 U.S.C. § 2601 *et seq.* (providing for up to 12 weeks of leave per year for parental leave and leave because of the worker's own serious health condition or that of a parent, child or spouse).

²⁸ This is in contrast to the unemployment insurance (UI) program. In Pennsylvania, a worker who is fired for attendance reasons receives UI benefits if there was good cause for the absence.

the 16 hours to perform a broad range of activities (which has been said to potentially include literacy and GED training, substance addiction and mental health treatment, and structured family activities). She responded that if she were required to engage in work for 24 hours a week, she would not have time to engage in education for 16 hours, because her family and other demands will not permit her to fulfill 40 structured hours per week. This exchange captures the fallacy of the alleged flexibility of the Administration proposal.

People who are doing their best to work will be sanctioned. To meet their work participation rates, states will have no choice but to sanction off people who cannot work 40 hours per week, even if those persons are working to the best of their ability. If the states were to keep such people on their caseloads, their work participation rate compliance would be adversely affected.²⁹

No connection to good outcomes. The goal of the work requirements should be to help TANF recipients to move towards self-sufficiency. However, the 40 hour requirement is a rigid "work for work's sake" requirement that is not connected to this goal.

Providing 40 hours of activities is costly and difficult. Creating both work and other work activities will be very costly and time consuming for the states. Many states will need to develop a large scale work program that does not currently exist. Costly work supports, such as child care and transportation allowances, also must be provided. For both work programs and work supports, existing programs will need to be expanded by 33% capacity (to cover the jump from 30 to 40 hours per week). These financial costs will be hard for states to meet with flat TANF funding. Moreover, they will divert resources from other priorities, such as helping former TANF recipients move towards better jobs.

Availability of work is ignored. There are no provisions for more lenient goals during period of high unemployment, such as the current recession, or in areas of high unemployment, such as Southwestern Pennsylvania.

Children's education, development and health would be adversely affected. Without adequate child care for every contingency — the work hours during which children are not in school (because of vacations, early dismissals or pre- or after-school hours), evening hours when children need help with homework, or days that children are sick — the children will suffer if their parents are not available for them. The research has shown that the lack of parental availability because of

²⁹ Conversely, the proposed formula creates a perverse incentive for states to keep on the caseload the people who are most able to work, because they will count in the states' favor. If the TANF time limit provisions do not change, this will harm working TANF recipients by using up their 60 months of benefits unnecessarily.

work obligations leads to poor education and health outcomes, and that families with single low-wage parents are particularly at risk.³⁰

Theresa B. is an honorably discharged Army veteran. She has three children, aged 13, 10 and 8. She left the Army when her 10 year old son, Chae, was repeatedly hospitalized for major depression. She is meeting the current work requirements by doing 20 hours per week of community service, and conducting an independent job search. She is able to fit these activities around her son's weekly psychologist appointments, his regular psychiatrist appointments, supervising his homework (he cannot do his homework unless he has constant supervision), and dealing with his behavioral problems at school. "I am afraid of working too much. Based on what happened when I was in the Army and not around for Chae, I am very scared that he could be hospitalized again if I do not spend enough time taking care of him. I very much want to find a job that will enable me to get off welfare and support my family. But I am also very concerned about my children's health and well-being. I feel that I am in a "lose-lose" situation."

If parents are forced to put in 40 hours per week no matter what their family needs, their children will share in the consequences. A 40-hour schedule will actually require the parent to spend many more hours away from the child when transportation time is included. These demanding time requirements doubtlessly will lead to more time during which children are alone without adult supervision, creating risks for young children and adolescents alike. The next group of children of welfare recipients to reach adulthood will face negative impacts of having spent too much unsupervised time with too little parental attention.³¹

³⁰ See Heymann, *supra* note 7, at 39-66.

³¹ The recently announced Administration plan to count organized family activities such as Scouts, educational programs and sports participation helps little. While those activities might be laudable, the point of this paper is that parents receiving TANF have many competing needs that are not compatible with the 40 hour requirement, and the narrowness of the structured family activities that Administration would count does not resolve this dilemma. Soccer coaching is not a substitute for caring for a disabled child, making sure the family has adequate shelter, or keeping a welfare office appointment.

The TANF Statute Currently Provides Enough Penalties and Incentives to Maximize Work Activities.

Pennsylvania's number of participants meeting the work participation rate for Fiscal Year 2000 — 11.2% — may be cited as evidence that the state has not been motivated to make its TANF recipients work. Nothing could be further from the truth.

Pennsylvania dealt with the work participation rates by adopting an aggressive "work first" approach, in which TANF recipients were encouraged to become employed in unsubsidized employment and leave the cash assistance rolls as soon as possible. As a result, it has achieved a large caseload reduction credit. The state's caseload decline statistics are very revealing in this regard. *Of almost 170,000 families on the TANF caseload in February, 1997, when TANF implementation began, by the summer of 2001, only around 9,000, or 5.3%, were facing the five year time limit in March of 2002.*

Moreover, as has been noted, DPW designed several of its programs to have hours requirements that mirrored the hours required to meet its work participation rates. These include its work programs and its Time Out program, both of which require 30 hours a week of work activities.

Finally, in addition to being pushed by DPW to maximize their work, TANF recipients in Pennsylvania have had positive incentives to increase work hours. The more time worked, the higher the person's wages and Earned Income Tax Credit, as well as the likelihood of participating in the Time Out program. Like other workers, TANF recipients are likely to want to maximize their income, to the extent possible.

Conclusion

The work participation rate formula proposed by the Bush Administration and others is severely flawed. Many TANF recipients doing their best to work, given their competing non-work obligations, will not be able to meet the hours benchmarks. The states will face daunting challenges in both adequately serving their TANF populations and in complying with the work participation rates. More flexibility, not less, is needed in the TANF work participation rates.

Story of Eve W.

A Working Mother with a Disabled Child

My name is Eve. I live in Philadelphia. I have received welfare since about 1997. I have had three children: my son Woodley, who is now grown up and in away in the Job Corps; my 18-year-old son, Naquaine; and my son Andrew, who died as an infant. I am the sole caregiver for Naquaine, who suffers from autism. Because I need to take care of Naquaine, I simply cannot work 40 hours a week, every week.

Naquaine needs 24 hour a day care. I have been the only one to provide it since my husband left a long time ago. Naquaine has many special needs and behavior problems because of his autism. He is non-verbal. He cannot say if he is in pain or if something is wrong. He needs help to get dressed. He cannot use a door. He cannot take public transportation by himself. It seems like every year, Naquaine has a different behavior problem. It's also unpredictable — you don't know when a spell will happen.

Things are always coming up with Naquaine that make me drop everything to take care of him. If his bus is late, I need to wait with him. If he acts up at school, the teachers call me and expect me to come immediately. Naquaine is in special education in the School District of Philadelphia, where he will continue until age 21. I spend a lot of time for appointments at the school.

Finding safe child care for a special needs child is so hard. I am in a welfare-to-work program called the Transitional Work Corporation, and they helped me find after-school care for Naquaine. The after-school program has been a great help. But the welfare office cut off my child care subsidy, and the program is getting ready to put him out, because I cannot pay. I am so worried about losing my care for him.

Even with good child care, there are many times when I have to fill in. For instance, this week school is closed for the week. There is no way I can work the full week, because I need to take care of Naquaine at times when otherwise he is in school.

When you are a single parent, it is very hard to both work and take care of your children. When I came on welfare, I tried to do it by working the 11:00 p.m. to 7:00 a.m. shift, when my children were sleeping, so I could take care of them during the day. I left Naquaine and my baby Andrew with my older son Woodley when I went to work, because I didn't have anyone else to care for them. My baby died one night while I was at work; he just stopped breathing. They say it was Sudden Infant Death. I feel like if I had been there, Andrew would not have died.

People on welfare have no problem working if their children are safe. I want to work. I've worked all my life. I have worked in fast food, a gas station, a bank, an outlet store, a grocery store, and as a nurses' aid. But it always ends up that I get fired because of missing work. No employer is willing to put up with my having to miss work. Everything may be going well on the job, then something comes up, and I lose it.

TWC, the program that I am in, has almost full-time hours. I miss a lot of time from the program. When I am able to go to work, it is hard to take care of my business, because I am supposed to put in so many hours every day. When I am done working or attending the program, everything is closed. Trying to get an appointment at the welfare office is very hard. When I leave messages, they don't return my calls, and they aren't open after I'm done with work. The last time I did manage to go there, they rushed me through my application because they wanted to close.

My life is very hard. It takes a lot of energy to deal with these things all the time. Sometimes you feel like you will have a nervous breakdown. I really hope that the welfare law will not be changed to make people work 40 hours.

Kim's Story:**A Typical Participant in a Transitional Work Program**

The following profile was prepared by the Transitional Work Corporation of Philadelphia (TWC) about one of our successful participants. By success, we mean that she achieved full-time regular employment before she used six months of paid work experience, she has been continuously employed for at least two full business quarters, and she remains employed today. Her personal success has been accentuated by the fact that she attained a job within her chosen field, and she has been promoted to a supervisory position. But despite the fact that she was very motivated and able, she missed a great deal of work while she was in our program. Her name is Kim.

When Kim enrolled in TWC, she had held only two jobs for a combined period of less than three years since leaving high school in 1984 to begin raising her first of five children. By the time she enrolled in TWC, she had already used three of her five years of TANF and had still made no progress toward becoming attached to the workforce or attaining her GED. Kim was committed to succeeding in our program, but her success did not come without absences that in a non-transitional work setting would likely have resulted in her termination.

Kim enrolled in TWC in May of 2000. By the end of her first month, Kim had already missed her first appointment with the welfare office to determine her continued eligibility for TANF. The appointment was rescheduled during business hours, in spite of Kim's explanation to her caseworker that she was working and could not take time from her employment for the re-evaluation. By the end of her first month, Kim had already missed a half day of work.

By early July, Kim began having two simultaneous problems that would overshadow her efforts to achieve self sufficiency for the rest of her enrollment with TWC: child care and housing. These two problems caused her to miss a substantial amount of work and training.

Not having worked since 1997, Kim came into the program unsure of how her child care would be affected by her employment. She experienced several child care problems caused by her inexperience with the child care subsidy system, her inexperience in the workforce, and her licensed daycare provider's reluctance to accept a child whose payments were coming from the welfare office.

Kim's first problem with child care arose because she did not understand the reimbursement structure for private child care. At the beginning of July, Kim had to negotiate a payment schedule with her private child care provider because she discovered that she would not be provided money at the beginning of each month to pay for her daycare. If she could not come to terms with her provider, she would risk losing her child care altogether. For the next two months, Kim struggled with this issue as she moved her child from her private provider to a licensed daycare.

In early September, this looming crisis came to a head when Kim's provider informed her that he had found a job and could no longer care for her child. This put Kim into a position in which she had to get her child into daycare immediately. However, as she attempted to enroll her child in a licensed facility, the facility initially refused to accept him because they could not settle upon a verification procedure with the welfare office to guarantee that they would receive the subsidies on time. In spite of all efforts by the welfare office to verify that Kim was eligible and would be given her child care allowance, the facility continued to refuse child care. Kim missed three days in September caring for her child while she worked with TWC and the welfare office resolving this crisis.

Also in July, Kim began to experience severe housing problems. Kim's house was in severe disrepair, and twice over the next two months she would miss days because of this. Kim was not receiving any form of housing assistance when she enrolled. Her landlord was unresponsive to her requests to fix her home when Kim requested minor repairs. In July, her roof caved in. Later in the month, the floor beneath the hole in the roof also collapsed. Kim missed several days visiting a housing assistance program that assisted her in signing up for housing assistance, and that would help her repair the her home.

By late July, the housing crisis worsened. Her landlord had not only failed to provide sufficient repairs; he had also failed to pay taxes. Kim became so distraught that she was sent home early from work on the day that she had received a notice from License and Inspection that the house would be put up for a sheriff's sale because of back taxes owed on the property. The sale would take place in early August. Again, Kim was sent for housing assistance and missed several days working toward resolution of her pending homelessness.

During her five and a half months in our program, Kim also missed two days because her child was ill. Because she had difficulty finding a back up child care provider, Kim necessarily had to miss work on these days.

All told, Kim was in a transitional program requiring thirty-five hours of work and training. She was in the program 20 weeks. She was able to meet the 35-hour work requirement only nine of those weeks. She averaged 31.25 hours per week. If she had been in unsubsidized employment, she would certainly have lost several positions. However, because she was given a transitional opportunity, she was given the opportunity to work on problems that confronted her, she was given the opportunity to work with someone to resolve those problems, and she was given the opportunity to succeed. If the welfare rules were changed to require her to average 40 hours every week, Kim might have been sanctioned out of our program, rather than being allowed to remove her barriers to success.

Story of N.E.

A Mother Trying to Leave An Abusive Husband and Keep Her Family Together

I am a 31 year old woman living in Philadelphia, Pennsylvania. I have three young children, ages 5, 4, and 2. My two older kids have developmental disabilities. I have had to work very hard to keep my family together, because my ex-husband was abusive, and the Department of Human Services (DHS) threatened to put my children in foster care. I have so many things to deal with to keep my family together that I cannot possibly work 40 hours a week. I got fired from a job in which I was supposed to work 25-30 hours, because I missed too much work.

Before I got married and my children were born, I always worked. I worked in restaurants, movie theaters, and as a receptionist for a local business. I got my first part-time job when I was only 14 years old. But when I got married 5 years ago, my husband demanded that I stop working and stay home with the children, so I did.

After my youngest child was born, my family was reported to DHS. They investigated and opened a case, because my husband was physically and emotionally abusive. My DHS caseworker told me that if I did not leave my husband, DHS would put my children in foster care. I was so scared. I got a Protection from Abuse order and went to a shelter for battered women, where I began receiving TANF benefits to support the family. But the environment of the shelter was not good for my young children, and I left a few weeks later to move in with a friend. Every day, I worried that my husband would find my kids and me, or that DHS would take my kids away.

In addition to leaving my husband, DHS required that I go to parenting classes, get a job, and find safe housing. I also had to make sure that my children got all necessary services for their developmental disabilities, including speech therapy and occupational therapy. I regularly had to attend 4 or 5 appointments per week, plus my kids' regular medical appointments.

Somehow, I managed to participate in a work program that I was sent to my welfare caseworker. I was offered a job cleaning office buildings in the suburbs for about 25-30 hours per week. I took this job because I was scared I would lose all my benefits and custody of my children if I did not. The job was very hard, because my schedule changed every week, and the commute using public transportation was at least one hour each way. I had a hard time finding adequate child care for my older children, and an even harder time attending my regular parenting classes and my children's speech therapy appointments and occupational therapy appointments every week. I was fired from my job 3 months after I took it, because my supervisor said I had missed too many days of work in order to care for my children.

I am currently participating in another work program that my welfare caseworker sent me to. I would like very much to find a job that will support my family, but this will be so hard to do, because of my other responsibilities and the requirements imposed on me by my DHS worker.