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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 28, 2002

Honorable Feather O. Houstoun, Secretary
Department of Public Welfare
333 Health and Welfare Building
Harrisburg, PA 17105

Re: Regulation #14-474 (IRRC #2244)
Department of Public Welfare
Redetermining Eligibility, General Eligibility
Provisions and Income

Dear Secretary Houstoun:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce". The signature is written in a cursive style.

Robert E. Nyce
Executive Director
evp
Enclosure

cc: Honorable George T. Kenney, Jr., Majority Chairman, House Health and Human Services Committee

Honorable Frank L. Oliver, Democratic Chairman, House Health and Human Services Committee

Honorable Harold F. Mowery, Chairman, Senate Public Health and Welfare Committee

Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare Committee

Comments of the Independent Regulatory Review Commission

on

Department of Public Welfare Regulation No. 14-474

Redetermining Eligibility, General Eligibility Provisions and Income

March 28, 2002

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Department of Public Welfare (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by February 25, 2004 the regulation will be deemed withdrawn.

1. Eligibility provisions for Extended TANF - Consistency with statute; Reasonableness; Clarity.

The eligibility provisions for Extended TANF are not clear. Sections 141.51 and 141.52 briefly outline the Maximizing Participation Project (MPP), Work Plus Program (WPP) and the related vocational assessment and Work Capacity Assessment. However, the regulation does not contain substantive provisions addressing the eligibility requirements for these programs or how they will be implemented. Additionally there is no description of what support services will be available to recipients in MPP and WPP, such as childcare and transportation, to enable them to meet work requirements.

The Public Welfare Code at 62 P.S. § 403(b) states,

...In adopting regulations, orders, or standards of general application, the secretary shall strive for clarity of language which may be readily understood by those administering assistance and by those who apply for or receive assistance....

The Department should include the requirements for these programs in the regulation.

2. General. - Implementation procedures; Clarity.

In our comments on the rulemaking for the Temporary Assistance for Needy Families (TANF) program (#14-472) we stated:

The Department has stated that regulations dealing with the exceptions to the time limits will be promulgated in the near future. The Department should publish these proposed rulemakings as soon as possible. Then the Department should file

a comprehensive final-form regulation containing all TANF-related provisions as a single final-form regulation.

In the Preamble of this rulemaking (#14-474), the Department indicates that the TANF rulemaking (#14-472) will be finalized before this rulemaking (#14-474). Many questions regarding the overall TANF program will remain unanswered under this scenario.

Other contemporaneous actions the Department is taking also contribute to this confusion. The Department is developing a third TANF rulemaking to address domestic violence that probably won't be in place until after rulemakings #14-472 and #14-474 are final. In addition, the Department is implementing other policies and programs that will not be included in any of the TANF regulations. We reiterate that the full TANF program, with all applicable policies and programs, should be available for review as a single final-form regulation to allow comprehensive review of the program.

3. Section 133.23. Requirements. – Reasonableness; Need; Clarity.

The subtitle of Chapter 133 does not include Extended TANF. It should read, "REDETERMINING ELIGIBILITY PROVISION FOR TANF, EXTENDED TANF AND GA."

Also, Subsection (a)(vi) requires a "complete redetermination" of eligibility for benefits when a budget group transfers from TANF to Extended TANF. It is unclear what a "complete redetermination" is. Also, does this apply to recipients who have recently gone through a redetermination for another reason?

4. Section 141.41. Policy. – Need; Clarity.

Subsection (f)(1) describes one circumstance when a TANF recipient would not be charged for assistance against their 60-month time limit. Commentators stated there are other circumstances when assistance would not be counted toward the 60-month time limit. They include non-assistance, time-out and other circumstances described in the Department's Cash Assistance Handbook. Circumstances that do not count toward the 60-month time limit should be included in Subsection (f).

Finally, we also note that the amendments to Section 141.41 in this rulemaking (#14-474) are identical to those already proposed in rulemaking #14-472. Will the amendments to this section remain consistent with #14-472?

5. Section 141.51. Policy. - Protection of the public safety; Reasonableness; Clarity.

Subsection (a), Paragraph (1) Extended TANF for victims of domestic violence

Eligibility for Extended TANF due to domestic violence

Subparagraph (i) requires verification of domestic violence to be eligible for Extended TANF. Subparagraphs (ii) and (iii) establish eligibility when there are pre-existing waivers related to domestic violence. These provisions only apply to families who have current or past waivers from certain TANF requirements due to domestic violence. Can a family experiencing domestic

violence qualify for Extended TANF if domestic violence was not previously established under TANF? If so, the regulation should include a cross-reference to this process.

Domestic violence plan

Subparagraph (iv) requires compliance with a “domestic violence plan developed with a person trained in domestic violence services.” We have two concerns.

First, the regulation does not provide detail regarding what constitutes a domestic violence plan. The regulation should specify or cross-reference the requirements of a domestic violence plan.

Second, what specifically is “a person trained in domestic violence services”? What level of training is required to develop a domestic violence plan? Are these persons employed by the Department or under Department contract(s) for services?

Six month review

Subparagraph (v) under domestic violence waivers states, “Eligibility shall be reviewed at least every 6 months.” There are two concerns. First, what process will the Department follow to rescind a waiver when eligibility is reviewed? Second, how can an applicant appeal a finding that would rescind eligibility? These processes should be included in the regulation or cross-referenced.

Subsection (b) Compliance review and good cause

Subsection (b) establishes conditions that would cause a family to be ineligible, including failure to comply with an MPP or WPP. However, there is no reference to provisions for compliance review and “good cause.” Subsection (b) should reference these provisions.

6. Section 141.52. Definitions. - Reasonableness; Clarity.

Structure of the regulation

Definitions describe terms, but are not enforceable. As stated in our first comment, the requirements for the programs described in the definitions need to be in the body of the regulation.

Placement of definitions

The definitions section of a regulation is typically placed before the provisions of the regulation where the terms appear. The Department should place the definitions before the sections of the regulation that use the terms.

Applicability of the definitions

The scope of the definitions in this section is limited to “this section and § 141.51.” These definitions should apply to all relevant chapters or sections.

Adult

This definition is confusing and should be rewritten. It may be clearer to break the definition into a Paragraph (i) for an individual 19 years of age or older, and a Paragraph (ii) for an individual 18 years of age who is not a full-time student in secondary school, vocational training or technical training.

MPP -- Maximizing Participation Project

What are “functional limitations” and “good cause situations”?

RESET -- Road to Economic Self-Sufficiency Through Employment and Training

The phrase “within the constraints of available funds” does not belong in this definition. Because funding availability directly impacts on eligibility requirements for the program and the services offered, it is a substantive provision. Substantive provisions in a definition are not enforceable. Therefore, the Department should remove this phrase and move it to a provision establishing the parameters of and requirements for RESET.

WCA -- Work Capacity Assessment

This definition also contains substantive language. Therefore, Subparagraphs (i) through (iv) should be moved to Section 141.51.

Also, how does a physician or psychologist get Department approval?

7. Section 183.13. Potential sources. - Clarity.

Section 183.13(c)(3) excludes the applicant’s family from eligibility until the applicant complies. The identical requirement in Section 141.21(n)(1)(iii) excludes both the applicant and the applicant’s family from eligibility. Should Section 183.13(c)(3) also exclude the applicant from eligibility?