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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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September 4, 2009

Robert A. Mulle, Esq.  
Chief Deputy Attorney General  
Office of Attorney General, Legal Review Section  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Re: **Final-Omitted Regulations #14-517  
Revisions to the Special Allowance for  
Supportive Services Requirements**

Dear Mr. Mulle:

We write in response to the Department of Public Welfare's recent submission to the Independent Regulatory Review Commission, the relevant legislative committees, and the Attorney General, of final-omitted regulations #14-517. These are the regulations revising the Department's policies for issuing special allowances to welfare-to-work participants for supportive services needed for participants to look for work, accept a job, or attend education or training programs. Although our offices will be commenting separately on the substance of the regulations, we write now to object to the Department's circumvention of public comment by issuing these regulations as final-omitted.

**I. Background on the special allowances program and the regulations**

Special allowances are payments made for transportation, clothing, books, and other items necessary for TANF or food stamp-only recipients<sup>1</sup> to look for work, participate in training, or accept a job. Without these payments, most TANF and food stamp-only recipients would be unable to get a job that would enable them to leave the public assistance rolls; without the means of finding or accepting a job, they would be trapped in desperate poverty and dependence. DPW pays most allowances directly to providers of supportive services and not to TANF or food stamp recipients themselves.

DPW has had statutory authority to issue special allowances for decades, though its current statutory authority, 62 P.S. §408(c), dates from 1996. DPW's special allowances regulations were promulgated in 1992, and were last revised (with opportunity for public comment) in 2002. DPW's procedures for approving and issuing special allowances have remained unchanged since 2002, and most of those procedures have been in place far longer. The current regulations require welfare-to-work participants to verify the need for the special

<sup>1</sup> "Food stamp-only" refers to persons who receive food stamps, but not cash assistance.

allowance payments (where the need is not readily apparent), and require “pre-expenditure approval” by the department before issuance of most types of allowances. 55 Pa. Code §§ 165.44, 165.46(c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (c)(6)(iii), (d).

Last month, the Auditor General released an audit of DPW’s special allowances program.<sup>2</sup> The Auditor General found deficiencies in DPW’s case records in verifying the need for individual special allowances that had been issued. He also found that DPW has not been requiring receipts verifying that allowances were actually spent for their intended purpose.<sup>3</sup>

On August 5, 2009, just before the audit was released and in response to it, DPW issued extensive subregulatory policy memos to its staff.<sup>4</sup> Among other changes, these memos increase requirements for case record documentation of the need for special allowances before issuance, and require receipts proving that allowances have been spent as intended. The new documentation and receipt requirements address the Auditor General’s major findings and recommendations, and are consistent with existing regulations. In issuing the subregulatory policy, DPW did not consult its usual stakeholders, such as welfare rights organizations, employment and training providers, and legal services programs.

The #14-517 final-omitted regulatory package largely formalizes the changes in required documentation DPW has already put in place through subregulatory policy. That is, this package requires proof of the need for a special allowance before issuance, and a receipt showing that the allowance was spent as intended. But the package also goes further, by:

- requiring recipients to spend their own savings – which may have been intended for a security deposit on an apartment and first month’s rent – on supports enabling them to participate in required welfare-to-work activities, in effect eliminating the \$1,000 TANF asset allowance and reducing welfare recipients to utter destitution<sup>5</sup>;
- imposing arbitrary yearly and lifetime limits on the amount of special allowances a family may receive, even when those limits may prevent the family from taking a job that will lift them off of TANF (for example, when a family has already reached the yearly maximum payment for mileage, car repair, and insurance, and its car has a new breakdown);

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<sup>2</sup> Jack Wagner, Auditor General, “A Special Performance Audit of the Department of Public Welfare Special Allowance Program,” August 2009, available at <http://www.auditorgen.state.pa.us/Reports/Performance/Special/speSPAL081909.pdf>. The Department’s response to the audit findings states its intention to promulgate revised regulations in the fall of 2009. See Audit p. 54.

<sup>3</sup> The Auditor General audit also details other procedural deficiencies that are not addressed by the #14-517 regulatory package.

<sup>4</sup> DPW Operations Memorandum, Employment & Training 090801, “Special Allowances for Supportive Services – Policies and Procedures” and attachments, August 5, 2009, available at <http://www.dpw.state.pa.us/oimpolicymanuals/manuals/bop/ops/OPS090801.pdf>.

<sup>5</sup> TANF recipients are permitted up to \$1,000 in savings without affecting their eligibility, pursuant to 62 PS § 432.5(c). In addition, certain assets, such as residential property, one car, and income tax refunds, are excluded from the \$1,000 asset limit. See Cash Assistance Handbook § 140.8, available at [http://www.dpw.state.pa.us/oimpolicymanuals/manuals/bop/Ca/140/140-07.htm#P2060\\_46395](http://www.dpw.state.pa.us/oimpolicymanuals/manuals/bop/Ca/140/140-07.htm#P2060_46395).

- eliminating whole categories of special allowances that the Auditor General found no problem with, such as allowances for expenses of moving to accept an out-of-town job. Such allowances are specifically authorized by state law, 62 P.S. § 432.20;
- eliminating allowances for care of incapacitated adults needed to enable the TANF or food stamp recipient to look for a job, though federal regulations require that food stamp recipients be given such allowances when necessary; and
- enshrining limits on federally-funded food stamp special allowances, unnecessarily locking in restrictions that may be inappropriate should federal law change.

DPW acknowledges that the Department “did not receive input from the public in the development of this regulation.” Regulatory Analysis Form (RAF), paragraph 22. No affected TANF or food stamps households and no advocates were given a chance to review this package before it was submitted to the IRRC.

In sum, in response to recent criticism of policies and practices that have been in place since 2002 at the latest, DPW has without public consultation changed its policies at the subregulatory level. These new policies address the practices criticized by the Auditor General by revising its rules on documenting need for allowances and requiring receipts, and will hence eliminate the potential for waste and abuse found by the Auditor General. Nonetheless, DPW seeks to enshrine additional steps in regulation without public comment, though those steps are not necessary to address the Auditor General’s findings. These regulations have been hurriedly compiled and will harm tens of thousands of low-income families struggling to work their way out of poverty. The regulations should be rejected in favor of the public comment process envisioned by the Commonwealth Documents Law.

**II. Publication of the special allowances regulations as final-omitted violates the Commonwealth Documents Law because DPW has not shown good cause for omitting proposed rulemaking.**

The Commonwealth Documents Law (CDL) mandates a public comment process before the promulgation of regulations, with few exceptions. 45 P.S. §§ 1201, 1202. The exceptions authorize agencies to issue “final-omitted” regulations, without public comment, if

[t]he agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in [45 P.S. §§ 1201, 1202] are in the circumstances impracticable, unnecessary, or contrary to the public interest.

45 P.S. § 1204(3). DPW asserts that omitting public comment on the #14-517 regulatory package comports with this provision because:

notice of proposed rulemaking is, under the circumstances, impracticable and contrary to the public interest. Given the current economic and budget crises, stringent Federal work participation requirements, and the Department's goal of moving families towards self-sufficiency through work and work-related activities, it is contrary to the public interest and impracticable to delay revising the requirements and amounts for special allowances for supportive services for individuals receiving cash assistance or food stamp benefits who are participating in work or work-related activities. The Department is amending the maximum amount and the frequency for special allowances to maximize scarce resources so that funds for special allowances are available to the greatest number of participants with a verifiable and documented need for supportive services. Without special allowances for supportive services payments, individuals may otherwise be unable to participate in approved work-related activities including employment. The Department is also amending the verification requirements to enhance program integrity and effectiveness.

Preamble, pp. 2-3.<sup>6</sup> In essence, although the real urgency for enacting the regulations appears to be to respond to criticism stemming from the Auditor General's audit – criticism already addressed by DPW's subregulatory memos – DPW's justification for omitting public comment is a purported need to save money by taking away special allowances from low-income families who are currently eligible for them. This justification does not establish that a public comment period would be "impracticable and contrary to the public interest." These regulations are therefore not in accord with the Commonwealth Documents Law and should be disapproved by the Attorney General, the legislative committees, and the IRRC.<sup>7</sup>

At heart, these regulations are discretionary decisions by DPW, which has decided to save money by eliminating or limiting certain payments and demanding that recipients spend

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<sup>6</sup> The CDL also authorizes the promulgation of final-omitted regulations if the "administrative regulation or change therein relates to . . . Commonwealth property, loans, grants, benefits or contracts." 45 P.S. § 1204(1)(iv). DPW asserts that this language authorizes the publication of the TANF regulations as final-omitted, Preamble, p. 2, but this argument proves too much: it would justify omitting public comment for every regulation governing DPW's cash assistance, medical assistance, food stamps, and child care subsidy programs. The language regarding Commonwealth grants and benefits is clearly intended to apply only to unique transactions akin to property transfers and contracts, and not to a regular program of benefits issued to thousands of individuals a year. Excusing from public comment all regulations governing DPW benefit programs was certainly not the General Assembly's intent, nor has it been DPW's consistent practice. Indeed, 15 of the 18 regulations DPW has promulgated in the last five years have been proposed with the normal public comment process. DPW can hardly be serious in this argument, as is indicated by its more extensive reliance on the "impracticable and contrary to the public interest" provisions of § 1204.

<sup>7</sup> We understand that the IRRC does not believe it has jurisdiction to pass on the form of regulations submitted to it. Even if this is true, the IRRC should be able to take into account the public's curtailed opportunity to comment on the regulations in reviewing the "clarity, feasibility and reasonableness" of the regulations. 71 P.S. § 745a(i)(3).

their funds to participate in its welfare-to-work programs. The regulations will disqualify 4,243 food stamp participants from special allowances (RAF paragraph 15). DPW states that the regulations will save \$5.3 million this fiscal year, and \$7.1 million in fiscal year 2010-11 (RAF paragraph 19). This is not “amending the maximum amount and the frequency for special allowances to maximize scarce resources so that funds for special allowances are available to the greatest number of participants” – this is simply cutting special allowances and serving fewer individuals to save money.

It is of course widely known that the Commonwealth is facing a budget crisis. But DPW has not shown or contended that it lacks funds to pay supportive services to those who need them in order to look for a job, accept employment or attend education or training. It is our understanding that special allowances are included in the New Directions appropriation that was enacted as part of the stopgap budget signed by the Governor last month. This year’s appropriation is only slightly below last year’s funding.<sup>8</sup>

DPW’s other stated rationales for urgent action – beyond the desire to save money -- likewise do not warrant bypassing public comment. Payment of special allowances is indeed essential to families’ attempts to move off the welfare rolls into family-sustaining jobs. And such payments are also essential to DPW’s success in meeting the federal TANF work participation rate, as families will be unable to afford a job search on the meager \$403 monthly grant for a family of three. But *reducing* eligibility for these payments, as DPW is planning to do, will not help families obtain jobs and the state achieve its work participation rate. Moving families from welfare to work is a matter of great public importance. It is therefore very much in the public interest to allow the public to weigh in on whether DPW’s intended action will accomplish the goals it has set out, and to require Department to explain how its policies advance these important goals in response to such public comment.

These regulations are not needed to prevent fraud and abuse, as DPW has already acted under its existing regulations to ensure that special allowances are issued only as needed and are spent only as intended. Instead, the regulations represent new policy choices on DPW’s part. Informed comment would alert the Department to ambiguities, illegalities, and policy issues that it had not considered. By curtailing the regulatory review process, DPW is thwarting the General Assembly’s intent to resolve objections to regulations and reach “consensus among the commission, the standing committees, interested parties and the agency.” 71 P.S. § 745.2. Many of the objections to the proposed special allowances regulations are substantial. Rather than offering the committees and the IRRC an opportunity for meaningful input into the content of the regulations, however, DPW has forced them to approve or disapprove the proposed regulations as a whole, regardless of the improvements they might offer. Such a forced choice is not necessary.

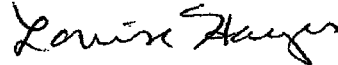
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<sup>8</sup> The 2008-09 appropriation for New Directions, which is DPW’s welfare-to-work budget line, was \$59,274,000. The partial 2009-10 budget signed by Governor Rendell on August 5 includes \$57,534,000 for New Directions. See “2009-10 General Fund Bridge Budget Line-Item Appropriations and Veto Amounts,” available from the Governor’s Budget Office web page, at <http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4566&mode=2>.

It is not "impracticable and contrary to the public interest" for the public, the standing committees of the General Assembly, and the IRRC to be given the opportunity to comment on DPW's new regulations. The Department has not shown the requisite "good cause" for omitting proposed rulemaking. Its proposed TANF regulations should therefore be rejected in favor of a process that allows public comment.

Thank you for the opportunity to comment on this important issue. We would welcome an opportunity to discuss this matter further should you wish it.

Sincerely,



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Independent Regulatory Review Commission