

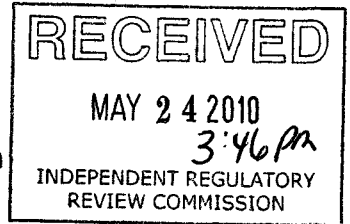
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# 14-518-5

Community Justice Project and Community Legal Services

Before the Independent Regulatory Reform Commission

Docket number 14-518



**Community Justice Project and Community Legal Services Comments on the Department of Public Welfare's Proposed Rulemaking, No. 14-518, "Revisions to Special Allowance for Supportive Services Requirements"**

(May 20, 2010)

On April 24, 2010, the Department of Public Welfare published in the Pennsylvania Bulletin proposed rulemaking No. 14-518, entitled "Revisions to Special Allowances for Supportive Services Requirements." The Community Justice Project and Community Legal Services have strong concerns about several provisions in these proposed regulations. We submit the comments below on behalf of the Income Maintenance Advisory Committee (IMAC) and Employment and Training Advisory Committee (ETAC) to the Department of Public Welfare,<sup>1</sup> as well as the thousands of low-income public assistance recipients whom we represent.

Special Allowances for Supportive Services (hereafter "supportive services" or "supportive services payments") are payments made by the Department of Public Welfare (DPW) for practical supports -- such as transportation allowances, car repairs, books and supplies for training programs -- to enable TANF<sup>2</sup> and "SNAP only"<sup>3</sup> recipients to obtain jobs and participate in training programs and thus meet program work requirements. In most instances, payments for supportive services are made, not to the recipient herself, but to the vendor/provider of the service or item needed.

Special allowances for supportive services have been an integral part of DPW's welfare-to-work programs for decades and have enabled countless thousands of adult TANF and SNAP only recipients to work their way out of poverty through employment, job search, and job training programs that lead to employment. Despite a long history of successful results, DPW is proposing significant, short-sighted limits on supportive services that will deprive TANF and SNAP recipients of the supports they need to work or to participate in work-related activities, possibly causing them to be penalized with loss of cash assistance, and most importantly depriving them of the opportunity to achieve self-sufficiency. Imposing such barriers to self-sufficiency will likely increase costs in the long run, since people with incomes at 27% of the poverty level<sup>4</sup> will encounter serious financial barriers, limiting their ability to secure employment.

<sup>1</sup> The IMAC and ETAC committees, which consist of client advocates and their legal services lawyers, were established by DPW to provide advice to the Department on a range of public assistance policy issues.

<sup>2</sup> TANF stands for "Temporary Assistance for Needy Families," a federal block grant program that serves very low-income families with dependent children. See 42 U.S.C. § 601 *et seq.*

<sup>3</sup> The term, "SNAP only" refers to households that receive Supplemental Nutrition Assistance Program (SNAP) benefits, but not cash assistance. SNAP is the program formerly known as "food stamps."

<sup>4</sup> The current TANF grant levels are at 27% of the federal government's poverty level in the most populous counties. However, many other counties have even lower grant levels, as a percentage of poverty.

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Generally speaking, adult TANF household members must meet their work requirements by working or participating in approved work-related activities.<sup>5</sup> Approvable activities include unsubsidized employment, job search, subsidized employment, community service, English-as-a Second Language (ESL), job skills training, or postsecondary education. Without special allowances for supportive services, participation in required (or voluntary) work or work-related activities will be virtually impossible for many program participants, especially those living in more rural areas. Families that qualify for these programs, especially those who receive TANF, live in desperate poverty and lack the means to pay expenses incident to their required participation in welfare-to-work activities.<sup>6</sup> Yet, failure to meet the work requirements of the TANF program has severe consequences, as non-compliance can lead to sanctions and loss of benefits.<sup>7</sup>

We are not convinced that any regulatory change is needed. The regulations seem to have been prompted by a recent audit by the state Auditor General of DPW's special allowance program.<sup>8</sup> This audit found some problems with DPW's compliance with existing regulations requiring verification of the need for each allowance issued, and pointed out that DPW had not been requiring receipts verifying that supportive service payments were actually spent for their intended purpose.<sup>9</sup> In August 2009, in response to the audit, DPW extensively revised its sub-regulatory policy.<sup>10</sup> Among other changes, these revisions (1) increased requirements for case record documentation of the need for supportive services before issuance and (2) required 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. However, these regulations go much farther and restrict eligibility for supportive services payments in ways not recommended by the Auditor General nor even envisioned by the Auditor General's report. The primary goal of these regulations seems not to ensure that supportive service payments are issued only to those who need them, but to save money by reducing help to the lowest-income Pennsylvanians who are trying to become self-sufficient.<sup>11</sup>

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<sup>5</sup> 62 P.S. §405.1. SNAP only households are not subject to mandatory work requirements in Pennsylvania, but they can volunteer to participate in DPW-approved educational or work-related activities to improve their employment prospects, and receive supportive services payments as needed.

<sup>6</sup> TANF grants in Pennsylvania are **less than 27%** of the Federal Poverty Income Guidelines (FPIG). In order to qualify for SNAP benefits in Pennsylvania a family's gross income must be at or below 160% of the FPIG, and have net income low enough to qualify for an allotment.

<sup>7</sup> 62 P.S. § 432.3.

<sup>8</sup> Jack Wagner, Auditor General, "A Special Performance Audit of the Department of Public Welfare Special Allowance Program," August 2009, available at <http://www.auditor.gen.state.pa.us/Reports/Performance/Special/speSPAL081909.pdf>. The Department's response to the audit findings stated its intention to promulgate revised regulations very soon thereafter. See Audit p. 54.

<sup>9</sup> The Auditor General audit also detailed other procedural deficiencies that are not addressed by the #14-518 regulatory package.

<sup>10</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>11</sup> In fact, Auditor General Wagner, in his prepared testimony to the Senate Public Health and Welfare and Senate Republican Policy Committees on December 16, 2009, warned against those who would misuse his audit to curtail this program. "There are some who would use the results of our audit as an excuse to kill or shrink the program. That would be wrong and wrongheaded, for the victims here would be the people whom government should be trying to help – Pennsylvanians down on their luck, trying to

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We have serious concerns about several of the Department's "Revisions to the Special Allowance for Supportive Services" rulemaking and urge DPW to drop or modify various provisions in the package, as recommended in these comments.

In summary, the provisions in the proposed regulations with which we are concerned would:

- 1. Impose for the first time ever: (i) annual and life-time limits on supportive services payments for transportation expenses; and (2) life-time limits on supportive services payments for books, supplies, tools, and equipment for school or training.** (Chapter 165, Appendix A). In particular, we are concerned about: the \$1500 annual limit on private and public transportation costs; the \$1500 life-time limit on payments for car insurance; and the \$2000 life-time limit on books and school supplies. Because these limits are set at unrealistically low levels, TANF and SNAP only recipients on a path to self-sufficiency will be forced to drop out of their DPW-approved education and training programs after reaching annual or life-time limits on critical supportive services, and not being able to afford to pay the costs of transportation, books, car repairs, etc. on their own. This short-sighted strategy might save on supportive services expenditures in the short-run, but will ultimately cost taxpayers more in welfare expenditures for those who will be prevented from completing education and training programs and gaining the skills needed to compete for jobs in today's very tight job market.
- 2. Require that those who are exempt from RESET (work) requirements as a result of disability, domestic violence, or other circumstance, but nonetheless wish to volunteer for education or training activities, comply with hours requirements they may not be able to meet consistently.** (Proposed 55 Pa. Code §165.1 (a). This will discourage clients with barriers from preparing themselves for eventual employment. And, we believe this provision violates the "exempt volunteer" rule in the Pennsylvania Welfare Code at 65 P.S. §405.1(b).
- 3. Eliminate the supportive services payment for moving/relocation expenses, in violation of 65 P.S. §432.20.** (Proposed 165.46(a)(5)
- 4. Impose a supportive services overpayment for non-compliance with RESET (work) requirements, without regard to the degree of non-compliance.** (Proposed 55 Pa. Code §165.44(b)(2)(viii)).<sup>12</sup> Under this provision, a client who, for example, attends her program for 29 hours in week, instead of the required 30 hours, could be required to pay back the full amount of supportive services payments issued to her in that week, even though those work supports were actually required and used for their intended purpose.
- 5. Remove a current provision that prevents unnecessary red tape and duplicative bureaucracy by stipulating that verification of the need for a supportive services payment is not required when the need is readily apparent.** (Proposed 55 Pa. Code §165.44(a)(2) The need for transportation to attend a job or job training program, in particular, is often virtually indisputable. Yet, proving the obvious can be difficult and

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improve their lot by moving from welfare to work, and who need a helping hand. We in state government need to offer that hand." (This testimony is not available on-line but we will provide a copy on request.)

<sup>12</sup> We think this may have been incorrectly numbered and perhaps should be (vii), not (viii).

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unnecessarily time-consuming for both the County Assistance Office, as well as the TANF or SNAP only client.

- 6. Unnecessarily permit the CAO to require verification that a supportive service payment was used for its intended purpose from both the client and the provider of the service.** (Proposed 55 Pa. Code §§165.44(b)(1)(i) and 165.44(b)(2)(vi) This provision invites imposition by County Assistance Offices (CAOs) of duplicative verification demands on the client and the provider and could result in clients being charged with an overpayment when, in fact, the CAO had all the verification it needed.

We explain these concerns in greater detail below.

### 1. Annual and life-time limits on SPALs.

DPW is proposing to impose annual and life-time limits on critically important special allowances for supportive services – namely, transportation and books/supplies for education and training programs. The Department provides no explanation or empirical basis for the dollar amounts it proposes.<sup>13</sup> We are concerned that the arbitrary limits proposed by DPW create a huge and unwarranted risk that TANF and SNAP only clients will lose jobs or be forced to drop out of education or training activities that would lead to family-sustaining employment, because they cannot afford to assume the cost of supportive services after the limits on these essential payments have been reached.

The annual and life-time limits are set forth in revised Appendix A of the proposed regulations. Under the proposed rules:

- Payment for all forms of private transportation is limited to an annual cap of \$1500.<sup>14</sup> This includes mileage reimbursement (at 25 cents per mile, plus parking and tolls), motor vehicle repair, and motor vehicle related expenses (driver's license fee, state inspection, emission control inspection, license plates, and vehicle registration).
- Payment for public transportation is limited to \$1500 a year.
- Payment of car insurance is limited to \$1500 in a life-time.
- Payment for purchase of a car is limited to \$1500 in a life-time.
- Payment of training and school-related expenses, including books and supplies, school fees, and tools and equipment is limited to \$2000 in a life-time.

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<sup>13</sup> Although DPW does provide the total number of certain types of supportive services payments (although notably not transportation allowances) issued and the annual cost, it does not indicate how each category of supportive service would be affected by these proposed limits. For example, how many recipients required payment for public transportation in excess of \$1500 a year? How frequently do students exceed the \$2000 life-time limit on training and school-related expenses?

<sup>14</sup> Transportation by private automobile is rarely if ever granted for residents of cities with public transportation systems, such as Philadelphia and Pittsburgh. However, those recipients in more rural areas are dependent upon cars if they are ever to find and maintain employment and escape poverty. For them such an artificial cap is extremely onerous.

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The Department's rationale for these caps is as follows:

The Department is amending the maximum amount and frequency of special allowances to maximize scarce resources so that funds for special allowances are available to the greatest number of participants pursuant to state law.

Regulatory Analysis Form, p.3.

**A. The Department has provided no substantiation for the claim that resources for supportive services are scarce and that rationing is, therefore, necessary. To the contrary, resources to pay supportive services for TANF clients have remained constant over the years, while demand and spending on supportive services has decreased markedly due to decline in the TANF caseload.**

We note, initially, that the Department has not provided any substantiation for the claim that resources for supportive services payments are scarce and that rationing is, therefore, necessary. Admittedly, the Commonwealth faces major fiscal challenges. But the scarcity of funds for supportive services is not self-evident and should be treated as such. The TANF program, including payment for supportive services, is funded through a block grant from the federal government of \$719,499,305 million per year. Additionally, in order to receive these federal funds, the state must commit "Maintenance of Effort" (MOE) funds of its own, in the amount of \$407,125,600 per year. Of the total \$1.126 billion plus in TANF and MOE funds available to Pennsylvania, only a small fraction -- 2% (\$22,598,440 million) -- was spent by Pennsylvania in federal fiscal year 2008 on transportation and other supportive services. In fact, only 19.3% of the federal TANF and MOE funds was used for TANF cash assistance payments to families.<sup>15</sup> A significant amount of TANF and MOE spending is not used for direct aid to TANF families.

It should be noted that, although the TANF block grant funds received by Pennsylvania and the state's MOE obligation have remained constant over the years, the amount of spending on transportation and supportive services, as well as spending on basic TANF cash assistance grants to families, has **decreased** dramatically over that last several years. This decreased spending reflects a steady decline in the TANF caseload over this period. As displayed in the chart below<sup>16</sup>, the amount spent by DPW on transportation and supportive services in 2008 (\$22,598,440) is **less than half** of the amount it spent in 2005 (\$45,943,324).

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<sup>15</sup> The above referenced data is summarized in a report by the Center in Law and Social Policy (CLASP), entitled "Use of TANF and MOE Funds in Fiscal Year 2008," based upon data reported by Pennsylvania to the U.S. Department of Health and Human Services. The report can be found at: [http://www.clasp.org/admin/site/publications\\_states/files/FY08PA.pdf](http://www.clasp.org/admin/site/publications_states/files/FY08PA.pdf).

<sup>16</sup> See, CLASP reports on "Use of TANF and MOE Funds" in Pennsylvania at [http://www.clasp.org/in\\_the\\_states?id=0038](http://www.clasp.org/in_the_states?id=0038).

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	<b>TANF Block Grant Amount</b>	<b>MOE Obligation</b>	<b>Amount Spent on Basic TANF Assistance to Families</b>	<b>Percent of Total TANF and MOE Spending</b>	<b>Amount Spent on Transportation and Supportive Services</b>	<b>Percent of Total TANF and MOE Spending</b>
<b>Federal FY 2005</b>	724,155,234	407,125,600	407,136,317	30.5%	45,943,324	3.4%
<b>Federal FY 2006</b>	719,499,305	407,125,600	392,857,310	35.7	37,828,513	3.4%
<b>Federal FY 2007</b>	719,499,305	407,125,600	247,294,778	22.4%	27,690,509	2.5%
<b>Federal FY 2008</b>	719,499,305	407,125,600	218,530,827	19.3%	22,598,440	2.0%

DPW has not shown that the current level of federal TANF funding it receives, plus the amount of MOE it is required to spend, is inadequate to continue providing supportive services payments to TANF clients for as long as those works supports are needed by clients to work or to complete their approved education, training, and other work-related activity programs. The proposal to impose limits and begin rationing supportive services seems very curious to us, given the data showing that funds available to pay for these services have remained constant, while the demand for supportive services and spending on supportive services have decreased dramatically due to declines in the TANF caseload.

**B. The Department has provided no justification for the amounts of the annual and life-time limits it proposes. These amounts appear to be arbitrary and are unrealistically low. Many clients will reach their supportive services limits before completing their education and training programs and have to drop out of these programs – others will lose jobs after reaching their limits.**

The Department has provided no justification for the amounts of the annual and life-time limits it proposes. Rather, these amounts appear to be arbitrary. As shown in the sections below, it is a virtual certainty that many clients will reach their supportive services limits before completing their education and training programs and have to drop out, or that they will lose their jobs.

We think the Department would have to agree that TANF and SNAP only clients, as a rule, cannot afford to pay the full cost of transportation or books and supplies on the incomes that permit these families to qualify for benefits, especially TANF clients. And we can't imagine that DPW wants these clients to have to stop working or drop out of approved education or training programs when they have reached the cap on their supportive services payments. Yet, such results seem inevitable. That is not in the Department's best interests, and it certainly is not in the clients' best interests.

In many cases, clients who reach their annual or life-time limit will not be able to work or participate in any work-related activity at all, due to their inability to assume the costs of supportive services they need in order to participate. When clients are not participating they are subject to sanction and possible loss of all or a portion of their TANF grant. And of course, without work supports, they will likely be unable to get a job enabling them to get off of TANF and support their family.

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But, also, clients who are not working or participating in a work-related activity cannot be counted by DPW toward the federal work participation rate (WPR) that the state must meet under the federal TANF statute. Failure to meet the WPR can result in a substantial penalty to the state (about \$35 million)<sup>17</sup>, more than twice the amount the \$14.130 million in state funds DPW projects to save as a result of the limits proposed in these regulations.<sup>18</sup>

Below, we examine each of the caps and show, based upon available information, the impact that the caps proposed by DPW can be expected to have on clients who are working or engaged in approved education and training plans.

### Transportation Caps

#### Private transportation

With regard to the annual and life-time transportation limits, the Department has provided no empirical information whatsoever from which one could conclude that the level of its proposed cap is reasonable. The \$1500 annual and life-time limits appear to have been pulled out of thin air.

However, based upon publicly available information, and using some simple math, it is apparent that the \$1500 annual private transportation limit is too low and will be exceeded in many cases.<sup>19</sup> Costs for vehicle registration (\$36), and state inspection/emission control (\$65) for these clients are a given. It costs \$33 for a four year driver's license, or \$8.25 per year. If we subtract these fixed, known costs from \$1500, a client would be left with \$1390.75 per year for mileage reimbursement. At the Department's current mileage reimbursement rate of 25 cents per mile, this would allow for 5563 miles of reimbursed travel per year. That translates to 107 miles per week or 21 miles per day. We can safely predict, then, that any client who has to travel **more 10.5 miles** each way to take her children to day care and get herself to work or to her welfare-to-work program site will exceed the \$1500 annual transportation limit.

But, 10.5 miles a day of reimbursed travel assumes that the car needs **no** repair work. The cost of car repair must also be taken into account, as these costs fall within the private transportation cap.

- If we assume, very conservatively, car repair costs of, say, \$200 in a year, the amount available for mileage reimbursement is reduced to \$1190.75 per year or 18 miles per day (**9 miles** each way).
- At \$400 a year in car repair costs, the amount left over for mileage reimbursement would be \$990.75 or 15 miles a day (**7.5 miles** each way).

Even in the best case, but unlikely scenario that the client's car requires no repairs, it is unrealistic to assume that most clients will have to travel less than 10.5 miles to the child care provider and then to work or the training site, even in suburban areas of the state. And in rural parts of the state, these distances are going to be much greater. Factor in the inevitability of

<sup>17</sup> The penalty is 5% of the state's federal TANF block grant. 45 C.F.R. §260.51(b)(1).

<sup>18</sup> See Regulatory Analysis Form, p.5.

<sup>19</sup> We think it safe to assume that the impact will be great because in many rural and suburban parts of the state transportation by car is often the only practical way for clients to get their children to day care and themselves to their work or training program site.

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needed car repairs and we're likely looking at the vast majority of TANF and SNAP only recipients who rely on private transportation exceeding the annual cap and having to finance their own transportation costs well before the end of one year. Again, recognizing the sub-poverty income of many of these families, having to assume the cost of transportation really means loss of job or dropping out of an education or training program.

### Public transportation

A \$1500 annual limit on transportation is also unrealistic for those who rely on public transportation. Some TANF and SNAP only recipients who live in Philadelphia attend education or training programs outside the City limits, in the Philadelphia suburban counties. Monthly transportation passes for these clients range from \$142.50 to \$181.00, or \$1,710 to \$2,172 per year.<sup>20</sup> In addition, by enshrining such limits in the Pennsylvania Code, DPW is much less likely to increase allowances as a public transportation authority inevitably raises its fares in order to keep up with the rising costs of transit.<sup>21</sup>

### Car insurance

We estimate very conservatively that the cost of insurance for a year is between \$500 and \$2000.<sup>22</sup> At \$500 per year, a TANF or SNAP only client would reach the limit for car insurance assistance in 3 years. At \$2000 a year, the limit would be exceeded in the first year, with the client having to make up the \$500 difference between the actual charge and DPW's limit.

We are concerned that few families will be able to obtain auto insurance at the low end of the range and that, more typically, households will be charged more, with some paying over the \$1500 life-time limit in the first year alone. Many TANF and SNAP only clients in education or training programs need two years or more to complete their programs and qualify for good jobs. This cap is too low to permit many of them to finish.

### Car purchase

Though we hope that clients who receive TANF benefits will be able to find gainful employment relatively quickly, not all will be able to do so within the life expectancy of the kind of car that can be purchased for \$1500. A TANF family would be lucky to get two years out of such a car.

Consider also a person who receives a car purchase allowance, gets a job, and leaves TANF. Some years down the road this person may lose her job and have to return to the TANF

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<sup>20</sup> See, SEPTA fares at: <http://septa.org/fares/trailpass.html>. Destinations outside the City limits would likely be Zones 3, 4, 5, and 6 on the rate chart.

<sup>21</sup> See, e.g., "SEPTA seeks first fare hike in three years" (Philadelphia Inquirer, 3/12/10). Available at <http://www.philly.com/philly/news/breaking/87462927.html>

<sup>22</sup> We arrived at this range by looking at the Pennsylvania Insurance Department's "Rate Comparison Guide for Automobile Insurance." \$510 to \$2094 was the average range of rates for limited (vs. full) coverage in Centre County, a typical rural Pennsylvania county in which a car is a necessity for most TANF and SNAP only participants. Costs in Centre County were typical of the twelve counties for which costs are displayed, excluding Philadelphia County in which costs of course are much higher. The following is a link to the Rate Comparison Guide:

[http://www.portal.state.pa.us/portal/server.pt/community/auto\\_insurance/9187](http://www.portal.state.pa.us/portal/server.pt/community/auto_insurance/9187).



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program. What if the car that DPW helped her purchase originally is no longer running several years later when she needs help again? Or what if her car is totaled through another driver's negligence but the insurance company won't pay for a new one because the book value on the car purchased for \$1500 is too low? What if the car is stolen?

We believe that once in a life-time is unrealistic given the numerous circumstances in which a \$1500 car might legitimately need to be replaced before the client is able to get by on her own without the aid of TANF or SNAP benefits. DPW should not impose arbitrary limits on car acquisition, given the absolute necessity of a car in rural areas for getting and maintaining employment.

### Books, School Supplies, Tools, and Equipment

As to the life-time limit on books, school supplies, and tools, neither the Department's reasoning nor its numbers justify the limits it proposes. Here is the rationale given by DPW for limiting these SPALs:

The reduction in the maximum allowances and frequency of the provision of special allowances for tools and equipment, books and supplies, and fees **will not adversely affect participants who receive these supportive services**. Findings support the average amount per issuance for some of these supportive services was notably less than the currently regulated maximum allowance. For example, the average payment is \$384.88 for tools and equipment, \$308.93 for books and supplies, and \$106.18 for fees.

Regulatory Analysis Form, p.4. (emphasis added)

First, **maximum** allowances, logically, should be based, not on the average amount of DPW payments, but upon the upper end of reasonable costs paid – the most it could reasonably cost to pay for a semester's worth of books, for example. An average by definition means that some costs were higher and some costs were lower. If the maximum is based upon the average amount, then those with verified, actual costs above the average are at risk of reaching their life-time limit before they have completed their programs because they will be using up their allowance at a faster rate.

Second, DPW has ignored completely the length of a person's education or training program as a factor, which is particularly short-sighted in a time such as this of high unemployment, where the need to obtain more skills in order to compete in the labor market is crucial. In order to determine whether a life-time limit of \$2,000 for books, school supplies, fees, equipment and tools is reasonable, one must know, not only how much these items cost per semester, but also how many semesters on average it takes persons to complete their programs. Setting the life-time limit without regard to the length of the program creates a risk that some TANF and SNAP only recipients will reach their life-time limit before they have completed their education or training program. We think that this is, in fact, exactly what will happen.

We had occasion in the summer of 2008 to survey Pennsylvania's community colleges to determine how many semesters it takes TANF and SNAP only parents participating in DPW's KEYS program to complete their Associate Degree or certificate programs. The KEYS program is a highly successful collaboration between DPW and Pennsylvania's fourteen community colleges that has prepared TANF and SNAP only recipients for well-paying jobs in high demand occupations. Recent KEYS program data shows that the average wage earned by KEYS

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graduates is \$14.77 per hour (compared to an average wage of under \$8.00 per hour for DPW's other welfare to work programs). The graph attached at Appendix 1 shows how many semesters it took 128 KEYS graduates to complete their community college programs.

Using DPW's average figures for books and school supplies (\$308.93) and fees (\$106.18), we calculate that TANF and SNAP only recipients will have used up their entire life-time allowance for these costs and had to start dipping into their own resources at the 5<sup>th</sup> semester. The graph shows that of 128 KEYS program graduates surveyed only 14 (11%) completed their programs in 5 semesters. The remaining 114 (89%) would have exceeded their life-time limit on books, school supplies, and fees before completing their programs and likely would have had to pay these expenses on their own.<sup>23</sup> In all probability, most would not have been able to afford these expenses and would have had to drop out of school. Remember, though, that the foregoing analysis assumes that the cost of books, supplies, and fees was the average cost. Those who had to pay more than the average amount for books and supplies would have reached their limit even sooner than the 5<sup>th</sup> semester.

Note also that of the 114 KEYS students who needed more than 5 semesters to complete their programs there were 23 nurses, 2 dental hygienists, 2 respiratory therapists, and 1 surgical technician – all very high paying, in-demand, health care professions. It is safe to say that many of these graduates would not be where they are today (most making over \$45,000 per year) had DPW's life-time limits on supportive services payments been in place while they were in the program.

DPW's annual and life-time limits are arbitrary and short-sighted. They will have an especially negative impact on TANF and SNAP only participants in education and training programs that lead to jobs at higher wages and permanent independence from the welfare system.<sup>24</sup>

A life-time limit also stacks the deck against workers whose skills need updating in order to compete in a rapidly changing economy. Many are the clients who were trained in one industry, only to find that the industry has dramatically changed or that the jobs have moved overseas. Jobs in the automobile and steel industries were once plentiful in Pennsylvania, but are now scarce. Are we to tell workers who moved from welfare to work that their initiative is going to be penalized by telling them that they cannot be retrained for jobs in the green economy? Are we going to tell older workers who can no longer do physically demanding jobs that they cannot be retrained to use their skills and acquired wisdom to do jobs that are more sedentary and less demanding? A lifetime limit dooms us to poor public policy that will make the Commonwealth less attractive for employers and will hurt those with the courage to try again.

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<sup>23</sup> DPW policy allows KEYS students 24 months (or 6 semesters) to complete their programs before having to combine 20 hours per week or work with their full-time studies. DPW Cash Assistance Handbook, Section 135.4, [http://www.dpw.state.pa.us/oimpolicymanuals/manuals/bop/ca/135/135-03.htm#P1585\\_36412](http://www.dpw.state.pa.us/oimpolicymanuals/manuals/bop/ca/135/135-03.htm#P1585_36412). Extensions of up to an additional 12 months (3 semesters) before having to combine 20 hours per week of work can be made for clients with extenuating circumstances.

<sup>24</sup> Note that this is a factor DPW has completely overlooked in its cost-savings estimates. Every TANF client who loses a job due to a cap or is prevented from completing an education or training program that would have led to a good job represents additional costs to the Department in the client's continued reliance on TANF, Medicaid, and other public benefits. In fairness, these additional expenditures should be offset against the \$5.3 million in savings to the Commonwealth DPW claims will be realized through the proposed annual and life-time limits on supportive services payments.

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### **C. Annual and life-time limits on transportation and books and supplies are not needed to enhance program integrity, as there are already effective safeguards in place, and more proposed in this regulatory package, to prevent unnecessary spending.**

Another general rationale cited by DPW for its proposed supportive services regulations, including the proposed annual and life-time limits, is the enhancement of "program integrity and effectiveness."<sup>25</sup>

Annual and life-time limits on supportive services are not necessary to improve program integrity. Elsewhere in these regulations, DPW is strengthening measures already in place to ensure that supportive services are paid only where they are truly needed and are used only for their intended purpose. For example, in the proposed regulations, DPW has tightened its supportive services payments procedures by: (i) requiring TANF and SNAP only participants to verify that the requested supportive service is "**required**" by the training program or for employment (the current regulations use the phrase "necessary for" the person to work or participate in a work-related activity)<sup>26</sup>; and (ii) imposing a new regulatory requirement for receipts verifying that the SPALs was used for the purpose for which it was granted.<sup>27</sup> These changes ensure that supportive services payments will be issued only where they are indisputably needed for work or an approved work-related activity and have been used for their intended purpose. Capping at unrealistically low levels supports that have been certified to be required serves no legitimate purpose and will only undermine the clients' work efforts and participation in welfare to work programs. Caps are not needed as a safeguard against unnecessary spending when other effective measures are already in place to address that concern.

**RECOMMENDATION:** The Department should drop its proposed annual limits on private and public transportation, its proposed life-time limit on car insurance payments, and its proposed life-time limit on books, tools, equipment, supplies, and fees.

### **2. Requiring RESET volunteers to comply with hours requirements they may not be able to consistently meet, as a result of disability, domestic violence, or other good cause circumstance.**

We are concerned that DPW appears to be proposing for the first time to impose hours requirements on persons who are exempt from participation in RESET<sup>28</sup>, but who choose to volunteer for education or training programs that could prepare them for eventual employment:

An exempt individual may volunteer to participate in an approved work or work-related activity and shall comply with the requirements of the AMR or EDP.<sup>29</sup>

<sup>25</sup> Regulatory Analysis Form, p.3

<sup>26</sup> Notice of Proposed Rulemaking, p. 6.

<sup>27</sup> Notice of Proposed Rulemaking, p. 8.

<sup>28</sup> RESET stands for Road to Economic Self-sufficiency through Employment and Training. It is the term used in the Public Welfare Code to describe DPW's welfare-to-work program. 62 P.S. §405.1(a.1).

<sup>29</sup> "AMR" stands for Agreement of Mutual Responsibility, a contract between a TANF recipient and the Department regarding what work activities the recipient will undertake and the work supports to be issued by the Department. "EDP" stands for Employment Development Plan, a comparable document used in the SNAP program.

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Proposed 55 Pa. Code §165.1(a) (bold added for emphasis)

The Pennsylvania Welfare Code expressly allows persons who are exempt from RESET (work) requirements to voluntarily participate in education and training activities. 62 P.S. §405.1(b).<sup>30</sup> The statute does not require a volunteer to commit to a specific number of hours of participation, nor does it authorize the Department to take any adverse action against a volunteer, a consequence that is implied by DPW's "shall comply" language. While the proposed language does not expressly state that the "requirements of the AMR or EDP" include required hours of participation, we are not sure what other kinds of requirement this regulation could mean if not that. The language of this regulation is dangerously ambiguous.

Since shortly after the enactment of Act 35, the Department has recognized that persons who are exempt or have good cause for not meeting RESET work requirements, nevertheless may benefit from participation in a RESET activity in order to prepare for eventual employment. Over the years many clients, especially victims of domestic violence, have been helped enormously by DPW's volunteer policy. We have seen, for example, women who have sustained emotional or other injuries that limit their ability to withstand the stress of the work place take courses at community college, or pursue ESL instruction or a GED in order to prepare themselves for employment after they have had time to progress in their recovery.

Often, however, the nature of the very circumstances, such as disability or domestic violence, that make a person exempt from RESET prevents that person from being able to maintain 100% attendance at their education or training program. Imagine, for example, a DV victim whose abuser has discovered where she is going to school. The victim feels unsafe leaving the house until she can put in place an adequate safety plan -- and she may miss some classes in the meantime. Similarly, an individual with, for example, severe, yet episodic, depression or bipolar disorder may be able to participate in a work-related activity on many days, but not all days.

The problem with DPW's proposed revision to Section 165.1 is that it arguably would require volunteers to commit to a specific number of hours per week for their programs, even though circumstances beyond their control relating to their disability or domestic violence could prevent them from meeting their hours commitment. The "shall comply" language strongly implies that an adverse consequence will follow if the person is unable to make her hours. This will surely discourage clients with barriers from volunteering for programs that could be very helpful in enhancing their employment prospects further down the line.

We believe this proposed revision of the current regulation, because it can be read to require specific hours of participation and a penalty for not meeting these hours, conflicts with the Pennsylvania Welfare Code at 65 P.S. §405.1(b) and, thus, exceeds DPW's statutory authority. This proposed change represents a regrettable reversal of course for the Department, one which would have a particularly harsh impact on DV survivors.

**RECOMMENDATION:** We recommend that the proposed revision to Section 165.1 be modified

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<sup>30</sup> "Any applicant or recipient exempted from subsection (a.2) [RESET] may participate in employment or work-related activities. RESET

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as follows:

An exempt individual may volunteer to participate in an approved work or work-related activity, and shall comply with the requirements of the AMR or EDP.

### **3. Elimination of Supportive Services Payments for moving allowances.**

DPW proposes to eliminate the special allowance for moving costs (formerly at Section 165.46(c)(5)), an allowance specifically authorized by the Pennsylvania legislature where needed by a TANF or SNAP only recipient to "secure gainful employment."<sup>31</sup> The Department's justification: maximizing scarce resources.<sup>32</sup>

In today's economy, where jobs in manufacturing and other sectors of the economy, have fallen way off, it is more important than ever for people to have the option of moving in order to accept a job opportunity in a viable occupation. There are many low-income Pennsylvanians who receive TANF and food stamps living in areas of high unemployment. We think it is short-sighted of the Department, and contrary to the expectation of the legislature, to deny people who are willing to relocate their families a moving allowance to accept an offer of gainful employment in another part of the state. This allowance has been very little used in the past, so its elimination will save the Commonwealth very little.

**RECOMMENDATION:** We recommend that DPW retain the special allowance for moving/relocation.

### **4. Imposition of a supportive services overpayment for non-compliance with RESET (work) requirements, without regard to the degree of non-compliance.**

In a proposed new subsection, 55 Pa. Code §165.44(b)(2), DPW lists the circumstances in which it will process supportive services overpayments. One of the circumstances listed is:

(viii) The participant did not participate in or comply with RESET, including meeting hourly and other work and work-related requirements as specified on the AMR or EDP.

Proposed 55 Pa. Code §165.44(b)(2)(viii).<sup>33</sup>

We are concerned that this imprecisely worded provision could lead to clients being charged with overpayments for minimal non-compliance with hourly work requirements, even where the supportive services payments issued to her were used for their intended purpose. As worded, a client who, for example, attends her program for 29 hours in week, instead of the required 30 hours, could end up being charged with an overpayment and required to repay the full amount of, say, a bus pass issued to her in that week, even though she came to her program every day, needed the transportation allowance to get there, and used the supportive services payment for its intended purpose. There are six other circumstances listed by DPW, which quite adequately cover the spectrum of scenarios in which recovery of supportive services payments would be appropriate.

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<sup>31</sup> 62 P.S. §432.20.

<sup>32</sup> Notice of Proposed Rulemaking, p. 9.

<sup>33</sup> We think this may have been incorrectly numbered and perhaps should be (vii), not (viii).

**RECOMMENDATION:** The Department should drop subsection (b)(2)(viii).

**5. Requirement for verification of the need for a supportive services payment, even when the need is “readily apparent.”**

Current regulations already require that TANF recipients verify that a special allowance is “necessary to enable the participant to engage in an approved education or training activity or to apply for employment.”<sup>34</sup> The current regulations also provide, however, that no such verification is required where the need is “readily apparent.”<sup>35</sup> DPW’s proposed regulations eliminate this exception, requiring verification of need, even in cases where the need is obvious.<sup>36</sup> This change will require TANF participants to gather unnecessary paperwork, and it imposes needless work on DPW caseworkers.

For example, it is obvious that a TANF or SNAP only recipient cannot get to work or a training program without transportation if the work site or training program is more than walking distance away. Often the DPW caseworker, who knows the local area, will know that the work or training site is greater than walking distance. Alternatively, the caseworker could easily confirm the distance using MapQuest. But, DPW’s proposed regulations would not permit such a common-sense approach. Instead, verification of the need for an allowance would be required from “sources such as employers, prospective employers, school officials, employment and training providers or providers of supportive services.”<sup>37</sup> It is not at all clear how these sources will be able to verify that the participant needs transportation. Employers and job training providers likely have no more knowledge than the DPW caseworker of the participant’s home address and need for transportation; indeed, we have already seen instances of employers reluctant to sign statements that transportation is “required” for a job, based on their ignorance of their employees’ transportation circumstances. Furthermore, the involvement of employers, school officials, training providers, and providers of social services in such red tape exercises is a pointless burden that DPW should be taking care to avoid.

**RECOMMENDATION:** DPW should amend its proposed revisions to Section 165.44(a)(2) as follows:

(2) [Verification of the need for] verification, including collateral contact, that the special allowance for supportive services is required [only when it is not readily apparent] will be provided prior to authorization, unless, with regard to the need for transportation readily available information regarding the travel distance demonstrates the need.

**6. Permitting CAOs to require verification that a supportive services payment was used for its intended purpose from both the client and the provider of the service.**

DPW proposes to authorize CAOs to require verification that a supportive services payment was used for its intended purpose from **both** the provider of the supportive service, as well as the client.

<sup>34</sup> 55 Pa. Code § 165.44(a)(1)(i). As mentioned above, DPW proposes to strengthen this regulation by changing the word, “necessary” to the word, “required.” Notice of Proposed Rulemaking, p. 9.

<sup>35</sup> 55 Pa. Code §165.44(a)(2).

<sup>36</sup> Proposed 55 Pa. Code §165.44(a)(2)

<sup>37</sup> Proposed 55 Pa. Code §165.44(a)(3).

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The Department may require that the participant or provider of the supportive service, or both, verify that the participant received the approved special allowance for supportive services and that the provider received payment for the amount the participant was eligible to receive.

Proposed 55 Pa. Code §165.44(b)(1)(i) (Bold added for emphasis)

This provision invites the County Assistance Office (CAO) to impose duplicative verification demands on the client and the provider of the supportive service. A separate, similarly worded provision, then authorizes the Department to charge the client with a supportive services overpayment if one of these two parties fails to provide the requested verification, even if the other party has provided it.<sup>38</sup> We do not see what purpose is served by such duplication of effort and we are concerned about the potential for wrongful imposition of financial penalties on clients.

**RECOMMENDATION:** We recommend that DPW delete the “or both” language from each of the above regulations, as follows:

165.44(b)(1)(i). The Department may require that the participant or provider of the supportive service, or both, verify that the participant received the approved special allowance for supportive services and that the provider received payment for the amount the participant was eligible to receive.

165.44(b)(2)(vi) The participant or provider of supportive services, or both, did not provide verification, such as a receipt, that the supportive services requested were obtained using the special allowance payment.

### Conclusion

For the reasons stated above, we urge the Department of Public Welfare to amend proposed rulemaking No. 14-518 as recommended in these comments.

Respectfully submitted,

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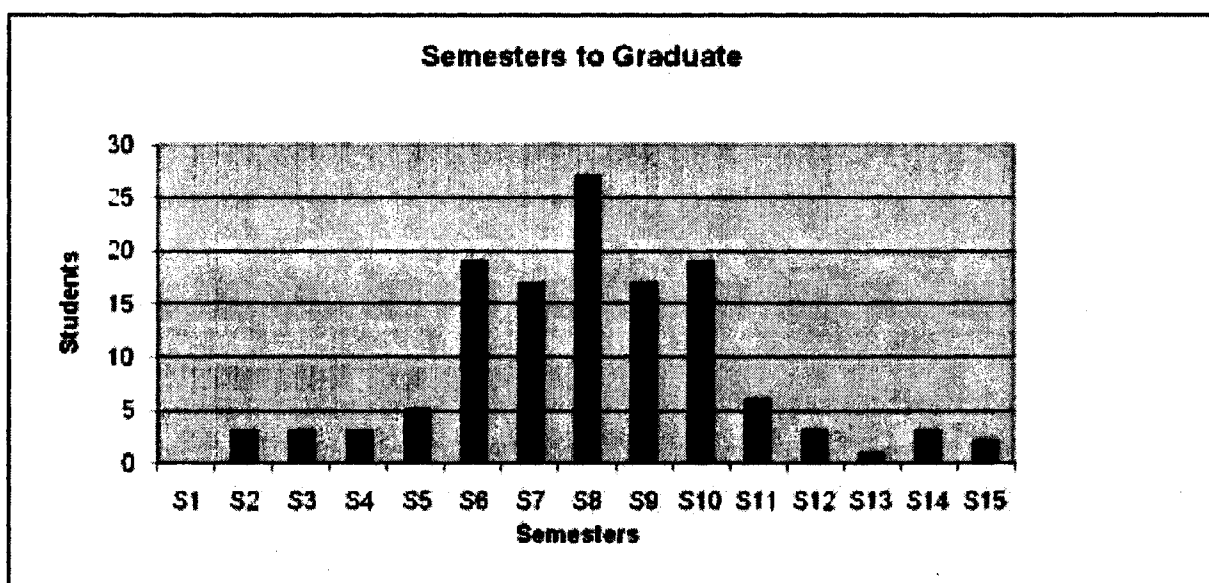
<sup>38</sup> Proposed 55 Pa. Code §165.44(b)(2)(vi)

## Attachment 1

### How Long It Took KEYS Graduates to Complete Their Community College Programs

The graph below shows how many semesters it took 128 KEYS graduates from thirteen of the fourteen community colleges participating in the KEYS program to complete their Associates Degree or certificate program.<sup>39</sup>

- Those who completed their programs within 5 semesters are indicated in blue. Those students who needed more than 5 semesters are indicated in red.



- Only 14 of 128 KEYS graduates (11%) were able to complete their community college programs within 5 semesters.
- The remaining 114 KEYS graduates (89%) needed more than 5 semesters to complete their community college programs.
- Those who required more than 5 semesters include 23 nurses, 2 dental hygienists, 2 respiratory therapists, and 1 surgical technician -- all high paying, in-demand, health care professions.

<sup>39</sup> The survey for this report included all KEYS graduates through May 2008.