



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John A. McNeal
Director

MEMORANDUM

DATE: March 29, 2019

TO: Ms. Nicole Cunningham, DSS
Planning Policy and Development Unit

FROM: ~~J. Todd Webb~~ ^{G. J. N/aw} Chairperson
State Council for Persons with Disabilities

RE: 22 DE Reg. 744 [DSS Proposed Regulation on CMR Requirements for TANF Recipients (March 1, 2019)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Social Services' (DSS) proposed regulation on CMR requirements for TANF recipients. This regulation was published as 22 DE Reg. 744 in the March 1, 2019 issue of the Register of Regulations.

DSS is proposing to amend the DSS Manual to update provisions regarding the Contract of Mutual Responsibility (CMR) for TANF (cash assistance) recipients. TANF is a limited cash benefit for families with little to no income, and adult recipients must participate in work programs to receive the benefit. The CMR is an agreement between the TANF client and DSS with specific requirements that are meant to help the client achieve self-sufficiency. DSS' revisions are intended to more concisely define the TANF CMR, update the required elements of the contract, and improve the readability of policies.

The proposed regulation could be strengthened in various ways and must ensure that DSS is fulfilling its obligations under the ADA and Section 504 to provide people with disabilities equal access to the TANF program. The US Department of Health and Human Services' Office of Civil Rights (HHS OCR) has issued policy guidance for state TANF agencies that specifically addresses how they must serve people with disabilities. Among other things, this guidance emphasizes that TANF agencies must have comprehensive written policies that incorporate modifications to policies, practices, and programs to ensure that individuals are not subject to disability-based discrimination:

Clear written policies that describe in detail how to respond when a TANF participant has a disability should be provided to all TANF agency and provider staff who have contact with beneficiaries with disabilities. These policies should be incorporated into any manual, handbook or directive that sets out agency policy with respect to the State's TANF program as well any regulations promulgated by the agency.

See “Prohibition against Discrimination on the Basis of Disability in the Administration of TANF,” available at <https://www.hhs.gov/civil-rights/for-individuals/special-topics/needily-families/summary-policy-guidance/index.html>.

I. DSSM 3009.1, Imposing Sanctions for Non-Compliance with CMR Requirements

The updated version of DSSM 3009.1 explains that DSS will impose sanctions when clients fail to comply with their CMR requirements, but will not sanction a TANF case if DSS “determines a client has good cause for non-compliance with the CMR.” However, no explanation is offered regarding how DSS will make this determination. The need for DSS to explain how case workers will determine “good cause” for non-compliance is especially important given DSS’ obligations to provide reasonable accommodations under the ADA and Section 504.

Just as DSS proposes that “DSS case workers must verify that clients are compliant...before sanctions can end,” DSS should also require case workers to verify the reason for a reported instance of non-compliance before imposing a sanction in the first place. DSS should not place all the burden on families to notify their case workers of compliance barriers. Rather, DSS should take affirmative steps to contact parents to inquire about non-compliance to ensure that it is not improperly sanctioning a family. Families – particularly those experiencing hardships like homelessness, disability, or medical emergencies that lead to non-compliance – often have great difficulty getting in touch with their case workers to report obstacles to complying with TANF requirements. Improper and erroneous sanctions can then drive these families into further poverty.

II. DSSM 3010, Requiring Participation and Cooperation in Developing the CMR

DSSM 3010 does not explain in sufficient detail how DSS will accommodate people with disabilities in developing the CMR. HHS OCR guidance stresses that TANF beneficiaries with disabilities must receive an assessment that incorporates “an individualized analysis of each person’s ability to meet the program requirements.” The CMR should take the results of such an assessment into account, as well as the needs of the individual with a disability. SCPD recommends language that expressly requires CMRs to reflect any needed accommodations required by a TANF household member with a disability. DSS must have policies that explain that it will consider and grant any substantiated reasonable accommodation request from a recipient with a disability (or a member of the household with a disability) when developing or revising a CMR.

Further, in its recommendation for best practices, HHS suggests that TANF agencies address in individual responsibility plans “not only the suitability of job opportunities, but also the needs of a beneficiary with a disability for health care, benefits counseling, and disability-related services and supports...the agency [should] also [provide] comprehensive case management/service coordination.”

Another area for improvement is DSSM 3010(2) (C), which states that DSS “will give clients the opportunity to understand the CMR and its requirements,” and that DSS will give clients a copy of the proposed CMR to review outside of the DSS office at the request of the client. This language is too vague. In its effort to make sure that clients understand the requirements of the CMR, DSS should clearly require its case workers to review certain topics with clients. For example, Pennsylvania requires its case workers to explain the following areas when completing individual responsibility plans:

- List of responsibilities both for the person and for the [County Assistance Office] assisting the person;
- Right to appeal and have a fair hearing;
- What constitutes good cause; and
- Penalties for noncompliance with eligibility requirements

See PA Department of Human Services Cash Assistance Handbook at 107.6, “Completing the AMR.”

Moreover, instead of simply relying on TANF recipients to request the opportunity to review the CMR outside of the office, DSS should require case workers to inform all recipients of this opportunity so that they are aware of this option and can choose to exercise it. DSS should also ensure that the CMR uses plain language that the recipient can understand, as well as offer translated copies to persons with limited English proficiency.

DSS also proposes in DSSM 3010(2) (F) that, although clients may object to certain elements of the CMR, DSS has the final authority to determine what elements are included. More explanation is needed. How will DSS ensure that client objections are taken into account? Will DSS record these objections in the case record? What standards will DSS use in arriving at their final determinations of what elements are required in the CMR? DSS should clarify how it will ensure that case workers are not making these decisions unilaterally.

In DSSM 3010(3), the proposed amendments state that failure to comply (without good cause) in developing the CMR will result in a sanction. Again, DSS should require case workers to take affirmative steps to verify the reason for non-compliance and whether good cause exists. Further, DSS proposes that it will allow clients up to 10 days “to reach a resolution” if they are negotiating contract terms or “to complete contract review.” It is unclear what DSS means by reaching “a resolution.” Also, clients who are negotiating contract terms should still be offered additional time to review the CMR outside the office. DSS should also waive the 10-day requirement for clients with extenuating circumstances who may need extra time, such as clients with disabilities.

II. DSSM 3017.1, “Participating in the Transitional Work Program”

This proposed Subsection, which describes the Transitional Work Program (TWP) for “clients who have been determined unable to work in an unsubsidized employment setting by a health professional,” emphasizes that failure to comply (without good cause) with the TWP Employability Plan will result in sanctions. Again, DSS should require case workers to verify the reason for non-compliance before imposing a sanction so that good cause can be ascertained and reasonable accommodations offered when necessary.

In response to previous comments by CLASI, DSS has pointed to DSSM 3017.1 as “[t]he policy that speaks to ADA accommodations.” While the TWP program can be considered an accommodation, DSS should be incorporating reasonable accommodations for people with disabilities throughout the entire TANF program in order to ensure they have equal access to all TANF programs and services for which they qualify. HHS guidance cautions that “agencies should take steps to ensure that individuals with disabilities can participate in all programs and services for TANF individuals, not just those programs and services that are designed solely for individuals with disabilities.”

Finally, SCPD recommends that representation from a diverse group of persons with disabilities are consulted in the development of the draft CMR and the evaluation.

In conclusion, SCPD is requesting significant revisions to the proposed policy amendments regarding the Contract of Mutual Responsibility. DSS should provide more details on how it will accommodate people with disabilities in developing the CMR and imposing sanctions. SCPD is also requesting that DSS case workers be required to verify the reasons for non-compliance before imposing sanctions so that the burden is not only on families to report reasons that may constitute good cause. In addition, DSS should offer clear guidance on what topics case workers must review with TANF recipients when completing a CMR, as well as additional explanation on how it will ensure that TANF recipients’ concerns and objections are accounted for when finalizing the contract. Finally, SCPD recommends that representation from a diverse group of persons with disabilities are consulted in the development of the draft CMR and the evaluation.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations or recommendations on the proposed regulation.

cc: Mr. Ray Fitzgerald, DSS
Mr. Thomas Hall, DSS
Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council