

SENATE HEARING SLIP

(Please Print Plainly)

2
DATE: 10/30/02

BILL NO. _____
OR

SUBJECT CR 02-050

Deanne Reynolds
(NAME)

655 E. 201 E. Wask. Ave
(Street Address or Route Number)

Madison 53703
(City and Zip Code)

DWD
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10-30-02

BILL NO. _____
OR

SUBJECT Clearinghouse
Rules 02-050

MARY ROWAN
(NAME)

200 E. WASHINGTON
(Street Address or Route Number)

MADISON 53707
(City and Zip Code)

DWD
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10-30-02

BILL NO. CR 02-50
OR

SUBJECT 10-2 Rules

Karyn Rother
(NAME)

207 E Buffalo
(Street Address or Route Number)

WILCO 01.53202
(City and Zip Code)

ACLU-WI
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882
*Please note -
I am trying
to make
30m bus to Milwaukee*

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10-30-02

BILL NO. CR 02-50

OR

SUBJECT W-2 rules

Pamela Fendt

(NAME)

3326 W. McKinley Bld

(Street Address or Route Number)

Milwaukee 53208

(City and Zip Code)

W-2 Monitoring Task Force
(Representing)

Speaking in Favor:

Speaking Against: portions

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 08 30 2002

BILL NO. _____

OR

SUBJECT Rule 02-050

WISconsin Works

Pat DeLesso

(NAME)

230 W. Wells Rm 800

(Street Address or Route Number)

Milwaukee 53203

(City and Zip Code)

Legal Action of Wisconsin
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10/30/02

BILL NO. _____

OR

SUBJECT _____

Patti Seger

(NAME)

307 S Peterson #1

(Street Address or Route Number)

Madison WI 53703

(City and Zip Code)

WI Coalition Against Domestic Abuse
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10-30-02
BILL NO. SR 02-050
OR
SUBJECT U-2

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10/30
BILL NO. U-2 Rules
OR
SUBJECT _____

Carol Melaris
(NAME)

16 W. Council St.
(Street Address or Route Number)

Madison 53703
(City and Zip Code)

W. Council St. #7
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7862
Madison, WI 53707-7862

CHRIS THOMAS-CRAWER
(NAME)

P.O. Box 7851
(Street Address or Route Number)

Madison 53707-7851
(City and Zip Code)

Wis. Council on Deaf Dis.
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7862
Madison, WI 53707-7862

DISCRIMINATION COMPLAINT

submitted to

THE OFFICE FOR CIVIL RIGHTS
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Introduction

This is a complaint pursuant to Section 504 of the Rehabilitation Act of 1973, 29 USC §794 (Section 504) , and Title II of the Americans with Disabilities Act, 42 USC §12131 (ADA), on behalf of custodial parents who qualify for Wisconsin's TANF program and who have been denied benefits and services due to their disability or the disability of a family member. The complaint is filed against the State of Wisconsin's Department of Workforce Development (DWD), which is the agency charged with the administration of the TANF program in Wisconsin, and the four private contract agencies serving Milwaukee County - Maximus, United Migrant Opportunities Services (UMOS), Opportunities Industrialization Center (OIC), and YW-Works. It is also filed against Employment Solutions , a subsidiary of Goodwill Industries, the fifth W-2 agency serving Milwaukee county until December 31, 2001.¹ DWD and the five private agencies all received and/or continue to receive federal TANF funds and pursuant to 42 USC §608(a) were and are obligated to comply with the ADA and Section 504.

The complainants are Legal Action of Wisconsin, Inc, on behalf of the low-income families this office represents, including those families listed herein, complainants D.B., D.C., T.S., S.E., P.J., C.M., C.B., T.J., K.M., D.R., D.M., G.M., E.S., Y.D., D.J., M.H., P.M., A.H., E.M. T.X., M.L., P.Z. and E.F.²

Legal Action, as the federally funded legal services office serving southeastern Wisconsin, has represented hundreds of parents affected by Wisconsin's TANF program, known as Wisconsin Works or W-2. Based on our representation it is clear that DWD has failed to properly train, supervise, and monitor the Milwaukee W-2 agencies and has failed

¹ Beginning January 1, 2002 Employment Solutions is no longer operating as a W-2 agency. However, its failure to comply with the ADA and §504 has an ongoing affect on current W-2 participants.

² The problems the complainants have encountered depict the failures in the W-2 program eligible families have experienced. Although some are no longer affected by the W-2 programs' deficiencies, the concerns illustrated continue with little or no change. We have chosen to use initials rather than the complainants' full names because of the sensitive nature of the issues raised and the need to protect their privacy. However, they and many other families we represent are willing to allow OCR to review their W-2 files and related materials and to discuss their cases.

to develop methods of administration that insure that the W-2 program is operated in a manner consistent with the requirements of the ADA and §504 of the Rehabilitation Act. The W-2 agencies in Milwaukee have demonstrated, and continue to demonstrate, a pattern and practice of discriminating against, and failing to provide equal access to, parents with physical disabilities, mental disorders and learning disabilities, and parents who have family members with disabilities by failing to identify, assess and accommodate their needs.³

Before detailing the specific factual allegations of this complaint, a description of the program, its background, and policy and practice is provided.

Background

The state of Wisconsin replaced the AFDC program with three distinct programs, all of which use TANF funds. The first, and most widely known, is the Wisconsin Works program or W-2. §49.141 et seq. Wis. Stats.⁴ This program is for custodial parents. The second is the SSI Caretaker-Supplement Program which provides cash assistance to children whose parents receive SSI.⁵ §49.775 Wis. Stats. The third is the Kinship Care program which provides monthly payments to relatives who are caring for grandchildren, nieces, nephews, siblings and other related children and who satisfy certain criteria.⁶ §48.57(3m) Wis. Stats. The focus of this complaint is the W-2 program. The purpose of that program is to provide payments to custodial parents, in exchange for the completion of W-2 activities such as job search, education and work. The program also offers child care, transportation, and job access loans.

If a parent satisfies the W-2 eligibility criteria, he or she may be placed in one of the four W-2 employment positions. They are as follows:

³ The term family members is used as defined in the W-2 program to include the parent participant's dependent children, his or her spouse and non-marital co-parent living in the household.

⁴ A copy of the relevant state law is attached as Attachment 1.

⁵ The SSI-Caretaker program is limited to parents who receive SSI benefits and provides a cash supplement of \$250 for the first child and \$150 for each subsequent child. There is no state program for parents who receive Social Security Disability benefits. Parents receiving SSI or SSDI cannot access any W-2 services, including child care and transportation.

⁶ The Kinship program replaces the former AFDC - non-legally responsible relative program but unlike that program requires that the relative pass a criminal background check and that the child be at risk of abuse or neglect if he or she were to remain in their own home.

1. Transitional placements defined as placements for parents who have or will be incapacitated for at least 60 days, are needed in the home because of the illness or incapacity of another member of the W-2 group, or are incapable of performing a trial job or community service job.
2. Community service jobs defined as activities for parents who are not otherwise able to obtain employment, designed to improve their employability by providing work experience and training and to assist them to move into unsubsidized employment or a trial job.
3. Trial jobs defined as part or full-time jobs to improve the employability of parents by providing work experience and training for which the W-2 agency pays a wage subsidy to an employer to employ the W-2 participant.
4. Unsubsidized employment defined as employment for which the W-2 agency provides no wage subsidy. Under state policy this category has been defined to include both parents who are employed and parents who are not now employed but who are found job ready based on their work history, education and ability to work.

A W-2 participant assigned to a transitional placement, known as W2-T, can be assigned for up to 28 hours per week in activities such as counseling, physical rehabilitation, substance abuse treatment, or work, and for not more than 12 hours of education and training activities. A parent assigned to a community service job (CSJ) can be assigned to work activities for not more than 30 hours per week and education and training activities for not more than 10 hours a week. For parents assigned to trial jobs the activity is the employment itself and any training or education provided by the employer.

Once a parent is placed in either a W2-T or CSJ position she is eligible for payments beginning on the date of placement. W-2 participants assigned to transitional placements receive a monthly grant of \$628 and participants in community service jobs a monthly grant of \$673.⁷ Individuals assigned to W-2 trial jobs receive the wage paid by the employer, who in turn receives up to \$300 a month from the W-2 agency. A participant assigned to a CSJ or W2-T placement who fails to complete all of his or her assigned activities, without good cause, can be sanctioned (have her monthly payment reduced) \$5.15 for every hour missed.

⁷ The actual payment is issued the first of the month after the W-2 work participation period ends. For example, an individual in a community service job is placed in W-2 on January 16th, she participates from January 16th through February 15th, and is paid for that period on March 1st.

For W-2 applicants or participants who are adversely affected by W-2 agency decisions, including application denials, termination of benefits or services, payment sanctions or placement in an inappropriate employment position, a review system is provided. The first stage of review is before the W-2 agency. It is commonly known as a "factfinding". If the factfinding decision is adverse the individual may then seek review before the state Division of Hearings and Appeals (DHA).⁸

W-2 Policy and Practice

DWD establishes policy for the W-2 program through state administrative rules, its W-2 policy manual, and documents known as "Operations Memos".⁹ These documents describe the policies and procedures the W-2 agencies should follow. In addition, when determining eligibility for W-2 and the most appropriate work placement in an individual case, the W-2 workers utilize the state computer system known as CARES.

An individual seeking services from the W-2 program must first meet with a Resource Specialist. The Resource Specialist makes a preliminary determination of the applicant's eligibility for W-2, determines if she is able to work, directs her to other resources and evaluates the need for W-2. If the applicant meets the basic W-2 eligibility requirements and needs W-2 services she is referred to a case manager known as a Financial Employment Planner (FEP).

The FEP has seven days from the date of request for assistance to meet with the applicant and complete the eligibility determination and W-2 work placement.¹⁰ A recent study by the Manpower Demonstration Research Corporation (MDRC) found that this intake process is generally accomplished during a single interview, lasting a little over an

⁸ The Division of Hearings and Appeals is part of the state of Wisconsin's Department of Administration and independent from DWD.

⁹ The administrative rules are approved by the state legislature and published in Wisconsin's Administrative Code. The other documents referred to are operating guidelines or instructions issued by DWD and found in the W-2 Policy Manual and DWD Operations Memos. A copy of the state rules and W-2 Policy Manual are attached as Attachments 2 and 3. The relevant Operations Memos are attached as Attachments 4-A through 4-F.

¹⁰ The FEP is required to review the W-2 participation agreement with the applicant which outlines the basic rights and responsibilities associated with participation in the W-2 program. See Attachment 3, Wisconsin Works Manual, Chapter 5. The W-2 application and participation agreement can be found in Appendix III of the manual.

hour.¹¹ During this time the FEP is required to make the final determination of non-financial and financial eligibility, obtain any necessary verification, review the requirements of the W-2 program and, based on an informal assessment, determine the appropriate work position (i.e., job ready, CSJ or W2-T), and W-2 activities. This process is guided and controlled by the sequence of screens found in the CARES computer system.

The CARES system contains a computer screen entitled "assessment-participation readiness" which lists several conditions that might affect the applicant's ability to participate, including medical, family problems, housing, legal, no/limited English, felony conviction and other.¹² In order to complete this screen many FEP's simply ask the applicant if she has "barriers" to employment. DWD has not developed any tools, such as a series of factual questions, for use during the initial screening to determine whether a potential disability exists. The MDRC study found that the primary focus of the intake interview is the purpose of the W-2 program, its principal features (ie. payment mechanism, sanctions, and time limits) and employment. Issues that might indicate the presence of a disability are, according to the study, less often discussed. Medical issues were found to be only moderately mentioned (65% of the intake interviews observed) and child medical issues were infrequently mentioned (17% of the intake interviews observed).¹³

At the time of the initial interview and work placement, or soon thereafter, the W-2 agencies administer a basic reading and math test (usually the TABE) to determine functional educational levels.¹⁴ Three agencies, Maximus, UMOs, and YW-Works, also utilize other testing, such as the BESI (Barriers to Employment Success Inventory) and the JSAI (Job Search Attitude Inventory). These tests are generally self-administered during orientation sessions or classes. The W-2 participant is required to attend the testing or orientation class and must be able to read, write and comprehend the testing instrument.¹⁵ The tests rely on total scores and FEPs do not generally review the responses to individual

¹¹ See Attachment 6, MDRC report - Matching Applicants with Services : Initial Assessments in the Milwaukee County W-2 Program, page 63.

¹² See Attachment 5, CARES assessment - participation readiness screen.

¹³ See Attachment 6, MDRC Report, pages 79 to 88.

¹⁴ In the case of Employment Solutions, even this basic test was not administered in the early years of the program. As a result, for a significant number of W-2 participants educational levels were not known. Based on our observations, Employment Solutions did not begin administering the TABE on a regular basis until early 2000.

¹⁵ The use of testing has changed and evolved over time in all the agencies.

questions to identify possible participation concerns.¹⁶

After the initial intake, if the FEP determines that a more thorough assessment is needed to better determine the applicant's work placement and/or activities, he or she may refer the participant for a formal assessment as part of a CSJ or W2-T assignment.¹⁷ During the early years of the program "formal assessments" were rarely conducted. As participants began to near their time limits, some of the agencies began to utilize more formal mechanisms to determine if "barriers" to employment exist. Because DWD has not defined the term assessment, nor established the necessary components, there is no common understanding of what is included and the assessments that are conducted vary greatly both in terms of the information obtained and recommendations made. They include the self-administered tests described above, in-home family history and need determinations, as well as mental status evaluations (including IQ testing) by a licensed psychologist.¹⁸ In some cases, most notably that of OIC and Employment Solutions, employability plans for participants designate disability assessment as the assignment; in actuality the referral is for counseling or a worksite for disabled persons, often with no actual assessment. There is no system in place that insures that an assessment will be conducted after the intake process if a potential disability is suspected. And the formal assessments that are conducted do not routinely include an analysis of the nature of the disability, the extent to which it affects the participant's ability to participate in W-2 activities, the needed accommodations, and the participant's ability to sustain employment. Whether or not an assessment is conducted, when, and what is included, depends on the agency, the FEP involved, and the individual or agency conducting the assessment.¹⁹

¹⁶ For example, the BESI relies on the total score to determine if an individual has barriers to employment and does not trigger further inquiry if a participant raises a particular issue, such as the need for mental health care. See discussion below at page 13, case of D.C.

¹⁷ See Attachment 3, W-2 Policy Manual, Chapter 5, Section 5.4.0 which provides that the W-2 agency may refer applicants/participants for a formal assessment to determine the appropriate level of participation, but does not require them to.

¹⁸ Only UMOS, YW-Works and Maximus contract with a psychologist in limited cases. Employment Solutions' assessments were generally in-home family history evaluations. In many cases where "barriers" were noted, there was often no explanation of how they would affect W-2 participation or ability to work.

¹⁹ The MDRC report finds that formal assessment measures were discussed in 34% of the intake interviews observed - 86% at the YW Works, 30% at UMOS, 26% at OIC, 20% at Maximus and 5% at Employment Solutions. MDRC does not define the term formal assessment and appears to be referring to self-administered testing. The MDRC study suggests that the YW-Works utilizes a psychologist in all cases; it does not. In fact, FEP's have advised this office that if a participant is not maintaining good attendance she cannot be referred to the psychologist See Attachment 6, MDRC study, pages 90 and 94-95.

The failure to conduct assessments on a regular basis may be due, in part, to DWD's policy which requires the W-2 agencies to obtain completed medical examination and capacity forms from the participant's doctor or other health provider. By policy these forms are required before referral for a vocational assessment.²⁰ In practice they are also required before assignment to a W2-T placement and/or modification to a placement or assignment. This office has been repeatedly advised that a disability will not be recognized unless a properly completed medical form is produced. Individual doctors are, of course, not obligated to complete such forms, some have refused to do so and some are not able to fully assess functional capabilities.

Once it is determined that an individual is going to be placed in a W-2 work position an employability plan is developed by the FEP. The purpose of the plan is to identify the participant's placement, her employment goals and the required W-2 activities, including the number of hours of work, training, education or other activities assigned each week, who is to provide the services and the site where the activity is located. If supportive services such as child care and transportation are needed the plan is required to identify those services. W-2 policy provides that CSJ and W2-T participants are generally required to participate in activities 30 to 40 hours per week.²¹ Generally plans are not individualized, and even in those cases where a comprehensive assessment has been conducted, the plan is often not based on the assessment. Rather the focus is having at least 30 hours

A report by the Wisconsin Legislative Audit Bureau found that for the year 2000 11.3% of the statewide W-2 population were placed in the category of occupational assessment and 7.9% in disability assessment. For Milwaukee the numbers are as follows:

	Occupational Assessment	Disability Assessment
Employment Solutions	2.0	6.8
Maximus	24.2	13.0
OIC	21.7	8.6
UMOS	6.2	8.8
YW-Works	16.4	3.6

See Attachment 8, Wisconsin Legislative Audit Bureau Report 01-7, Wisconsin Works Program, page 19 and Appendix 4. These numbers are based on the assignments listed in CARES. The MDRC numbers are based on the intake interviews observed. Neither report actually reviewed the outcome (i.e. the reports generated) of the assessments.

²⁰ See Attachment 4-F, Operations Memo 01-41 (July 2, 2001).

²¹ See Attachment 4-A, Operations Memo 98-23 (March 11, 1998) and Attachment 3, W-2 Policy Manual, Chapter 7, Sections 7.3.1.2 and 7.3.2.2. See also discussion below, page 11, regarding W-2 contract standards which require assignment in at least 80% of W-2 cases to 30 hours of activity.

of participation.²²

For most activities, such as counseling, education, job training, and work assignments, the W-2 agencies contract with other agencies. The types of training and worksites are limited and all the agencies contract for at least one site for disabled persons. Generally, persons with disabilities are not assigned to CSJ or trial job positions.

If the participant misses assigned activities and does not have good cause a payment sanction is entered. State policy identifies court appearances, the unavailability of child care, and other circumstances beyond the control of the participant, as determined by the FEP, as good cause reasons for non-participation. This last reason is not defined further. State policy also requires that the W-2 participant provide timely notice to the FEP of the reason for the non-participation.²³ All the W-2 agencies require written documentation of the reason for the absence; some require it to be provided within 7 days of the absence, others within 10 days. If the participant claims the absence was the result of physical or mental health problems an excuse from a medical professional is normally required, even if she suffers from a chronic condition. FEP's are not required to review sanctions before they are entered, and in some agencies the sanctions are entered by a contract agency that has no familiarity with the participant.

W-2 Time Limits

The state of Wisconsin limits the number of months an individual can participate in the W-2 program. Like federal law, Wisconsin limits W-2 assistance to sixty (60) months. Considered are all months a payment was received, even if sanctioned, while in a trial job,

²² See Attachment 6, MDRC study, pages 93-94 noting that some FEPs felt their options were limited in both the type of assignments and hours of participation they could assign.

The MDRC study, which reviewed CARES assignments for the period of October 1997 through October 1999, found that for persons in the W2-T category 49% were assigned to physical/mental rehabilitation, 28% to employment search and 25% to work experience. For CSJ participants two thirds were assigned to employment search and work experience, 22% to education, 15% to employment training and 9% to soft skills training. See Attachment 6, MDRC report page 52.

The LAB report details the types of activities assigned to W-2 participants for the year 2000. See Attachment 8, pages 19-22 and Appendices 2, 3 and 4. The numbers receiving mental health counseling in the five agencies range from a low of 3.8% (OIC) to 8.2% (YW-Works)

²³ See Attachment 3, W-2 Policy Manual, Chapter 11, Section 11.3.0.

CSJ or W2-T position. This time limit can be extended in unusual circumstances in accordance with DWD rules.²⁴

In addition to the 60 month limit each of the subsidized W-2 positions has a 24 month time limit. These limits can also be extended in certain circumstances. As set forth in state policy, when evaluating eligibility for an extension the W-2 agencies are required to determine:

1. For transitional placements - if the participant has made all appropriate efforts to find unsubsidized employment by participating in all assigned activities and, if so, whether she has significant barriers which prevent advancement to a higher W-2 employment position.
2. For community service jobs - if the participant has made all appropriate efforts to find employment and, if so, whether local labor market conditions preclude a reasonable unsubsidized employment or trial job opportunity.

²⁴ State rules provide for extension of the 60 month time limit in the following cases:

(1.) A W-2 participant is unable to work because of personal disability or incapacitation, or is needed as determined by the agency to remain at home to care for a member of the W-2 group whose incapacity is so severe that without in-home care provided by the W-2 participant, the incapacitated W-2 group member's health and well-being would be significantly affected.

(2.) A W-2 participant has significant limitations to employment such as any of the following:

- a. Low achievement ability, learning disability or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment, but are not sufficient to meet the criteria for eligibility for SSI or SSDI, or
- b. Family problems of such severity that they prevent the W-2 participant from obtaining or retaining unsubsidized employment.

(3.) The W-2 participant has made all appropriate efforts to find work and is unable to find employment because local labor market conditions preclude a reasonable job opportunity. In this subdivision, "reasonable job opportunity" means a job that pays minimum wage, and conforms to all applicable federal and state laws. See Attachment 2, Wisconsin Administrative Code, Rule 12.09(2)(n).

3. For trial jobs - if the participant has made all appropriate efforts to find and accept employment and, if so, whether local labor market conditions preclude a reasonable unsubsidized employment opportunity.²⁵

In a more recent memo DWD advises the W-2 agencies that the 24 month criteria and the 60 month criteria have been combined.²⁶ However, a significant difference remains. In order to qualify for a 24 month extension because of a personal disability or the disability of a family member, the W-2 participant must first demonstrate that she has made all appropriate efforts to find unsubsidized employment. The 60 month criteria found in state rule does not require a participant with a disability or with a disabled family member to satisfy this precondition. (See footnote 24 above)

All extensions of the time limits must be approved by DWD. DWD policy states that extensions are available only in unique circumstances.²⁷ For each case nearing its time limit, the individual W-2 participant's FEP must consider whether, based on state criteria, an extension is appropriate. If the FEP decides that an extension is warranted, a request for approval is submitted to DWD. If the FEP decides it is not, no request is submitted. DWD does not, as a general rule, review cases in which an extension is not requested by an agency FEP to determine if the participant has a disability or a family member with a disability and to determine if appropriate services have been provided.

W-2 Contracts

DWD administers the W-2 program in each county through individual contracts. In all counties, except Milwaukee, there is one W-2 agency serving the entire county. Milwaukee County has been divided into six geographic regions of roughly equal case size. In Milwaukee, DWD contracted with five agencies, three non-profits - UMOS, OIC and Employment Solutions - and two for-profit agencies - Maximus and YW-Works - from the program's inception through December 31, 2001 to serve the six regions. Until December 31, 2001 Employment Solutions administered the program in two regions, the rest of the agencies each had one region. Beginning January 1, 2002 Employment Solutions no longer has a contract to provide W-2 services and UMOS and YW-Works now serve two regions each. W-2 participants are required to receive services from the region they reside within and when a participant moves to a new region her case is usually transferred

²⁵ See Attachments 4-B, 4-C and 4-D, Operations Memos 99-48 (June 29, 1999), 99-49 (June 30, 1999) and 99-89 (November 22, 1999).

²⁶ See Attachment 4-E, Operations Memo 01-30 (June 4, 2001).

²⁷ See Attachment 3, W-2 Policy Manual, Chapter 2, Section 2.3.2.

to that region. In most cases, the actual paper case file is not sent to the new region.

The initial W-2 contracts were for a 28 month period beginning in late 1997 and ending in December 1999. The amount of funds the W-2 agencies received for the contract period was based on the anticipated caseload the agency was expected to serve. If an agency served fewer persons it was allowed to retain a portion of the unexpended funds as profit.²⁸ Because the W-2 agencies served fewer families than anticipated all the Milwaukee agencies earned profits on the initial contracts.²⁹

In order to be selected to administer the W-2 program for the second two years (2000-2001) the W-2 agencies had to satisfy certain criteria for the 1997-1999 period, including standards for caseload size, assignment of at least 80% of the agency's participants to 30 hours of activities or more per week, a recidivism rate of less than 20%, and a developed employability plan in the CARES system in at least 95% of the cases. The five Milwaukee agencies satisfied these criteria. The contract standards for the 2000-2001 contract period were similar and, in addition, included standards for employment rates, wages, job retention (defined as 180 days), full and appropriate engagement for W-2 participants and assignment to basic education activities including high school equivalency programs, job skills training, basic education, literacy and ESL courses. Full and appropriate engagement was defined in both periods as having a current employability plan in the state's computer system and at least 30 hours of assigned activity. Each of the W-2 agencies (including Employment Solutions) satisfied these 2000-2001 contract performance criteria and were offered contracts for the latest period.

The W-2 agency performance criteria for the new two year contracts (2002-2003) are similar to the previous standards with the addition of the following: compliance with DWD training standards, informal assessments completed and documented in CARES in 80% of the cases within 30 calendar days from the date of the W-2 placement, a formal assessment completed and documented in CARES within 30 calendar days of placement in 80% of the W2-T cases, and timely and complete submission of extension requests. In addition, DWD will monitor customer satisfaction and financial accountability.³⁰

²⁸ In addition to serving new applicants the agencies were responsible for converting AFDC cases to W-2 cases if the parent satisfied the W-2 eligibility criteria and the requirements for placement in a W-2 work position.

²⁹ A 1999 State of Wisconsin Legislative Audit Bureau report describes the funding process and calculation of profits. See Attachment 7, Report 99-3, Wisconsin Works Expenditures. See also, Wisconsin Legislative Audit Bureau report 01-7, Wisconsin Works Program, Attachment 8, page 32-42.

³⁰ See, Attachment 9, W-2/FSET Performance Standards Information Map, Contracts 2002-2003. The terms informal and formal assessments are not defined. The requirement of formal assessments is limited to W2-T participants only and assumes persons

W-2 Participants

It is generally recognized that many parents who are eligible for TANF programs have disabilities or family members with disabilities. These disabilities include physical disabilities, learning disabilities, mental impairments and low IQs. A recent GAO report notes that a 1999 Census Bureau survey found that a total of 44% of TANF recipients reported having physical or mental impairments.³¹ Thirty-eight percent reported an impairment severe enough to interfere with the performance of one or more basic activities of daily life. The characteristics of Wisconsin's TANF population are no different. The following case examples, from among the many families this office has represented, illustrate the problems faced by participants and the failures of the W-2 agencies.

Denials and Terminations of W-2 Benefits and Services

D.B. - D.B. sought assistance from the W-2 program in October 2000. She has an extensive work history, but was forced to stop working due to various health problems, including fibromyalgia and major depression all of which interfere with her daily activities. D.B. met with the FEP assigned to her case and was advised that because W-2 is a work program and she is not now able to work, she was not eligible for services. She was required by the W-2 agency to sign a "voluntary decline of W-2 services" form.

This office represented D.B. and challenged the agency's action through the hearing

with disabilities are not placed in any other work category or diverted from the program.

³¹ See generally GAO report 02-37, October 31, 2001. See also report of Center on Budget and Policy Priorities, February 29, 2000 cited in OCR Policy Guidance - Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF.

The Legislative Audit Bureau W-2 evaluation concludes that the data it examined did not suggest that the current W-2 caseload consists only of those with higher than expected barriers to employment. However, the data analyzed is primarily based on the W-2 agencies identification of participants. In addition, the report acknowledges that many W-2 agencies indicate that the numbers found by the Bureau are not an accurate measure and that as many as one-third of the population have disabilities, AODA problems, mental health concerns or other substantial barriers to employment. See Attachment 8, pages 78-79 of report.

The recent MDRC study indicates that W-2 staff in Milwaukee suggest that the number of participants with disabilities and other barriers to employment is significant and has increased over time. As the study notes, the perceived increase could simply be the result of greater recognition of barriers among participants. The report also notes that among the interviews observed 40% of the applicants reported a chronic medical condition. See Attachment 6, MDRC report, pages 39-52.

process. The state DHA hearing examiner found that the agency's actions were not only wrong but "unconscionable". Because this office had received similar complaints a letter was sent to the Secretary of DWD on June 11, 2001 concerning this practice. No response has been received to date.³²

D.C. - D.C. first applied for W-2 assistance on September 18, 2001. Because she was recently employed she was found "job ready" and assigned to job search activities. D.C. completed the assessment process at her W-2 agency, including the BESI (Barriers to Employment Success Inventory). In response to the questions in the self-administered assessment, D.C. noted that she had some concern about finding mental health assistance and great concern about becoming depressed or discouraged. No one at the agency explored these issues further. On October 29, 2001 D.C. presented a letter to her FEP from her treating therapist indicating that she was suffering from major depression and, as a result, "there will be days that she will be unable to function with daily activities." Despite this medical documentation the FEP continued D.C.'s "job ready" placement.

This office represented D.C. in the review process. The agency factfinder found that D.C. should be placed in a W-2 transition (W2-T) work position. In response to questioning at the factfinding, the FEP stated that in all cases, without exception and regardless of any other medical evidence, the agency requires a completed medical capacity form before placing a W-2 eligible parent in a W-2T position.³³ Because D.C. lacked such a completed form a W2-T placement was not made.³⁴ FEPs at the other agencies have concurred with this statement of policy.

T.S. - T.S. has been diagnosed with Crohn's disease. Her treating physician indicates that as a result she suffers from chronic fatigue, diarrhea and abdominal pain. Recently she was found eligible for SSI on the ground that her ability to perform employment is severely compromised. In September 2001 her W-2 benefits and services were terminated by her W-2 FEP because she did not return a completed medical capacity form. T.S. had requested that her doctor complete the form but he declined to do so. The W-2 agency had previously received other evidence of T.S.'s medical condition and symptoms.³⁵

³² See Attachment 10, DHA decision WWW-40/47472, "Voluntary Decline of W-2 Services" form, and June 11, 2001 letter to DWD in D.B.'s case.

³³ See Attachment 4-F for a copy of the DWD required form.

³⁴ See Attachment 11, November 8, 2001 Factfinding decision, completed BESI and JSAI tests, and December 14, 2001 letter to DWD in D.C.'s case.

³⁵ See Attachment 12, the FEP's letter to T.S. and T.S.' response. See also Attachment 13, DHA decision WWW-40/42309 (January 5, 2000) a similar case in which the agency failed to properly assess the W-2 participant's needs and provide appropriate

Failures to Identify, Conduct Assessments and Provide Accommodations

S.E. - S.E. has been diagnosed by her treating psychiatrist with suffering from panic disorder with agoraphobia and depression. In April 2001 the W-2 agency referred her to a psychologist for a mental status evaluation. In his report the psychologist concludes that S.E. suffers from mood disorder, anxiety disorder and learning disabilities, that her condition has resulted "in severe impediment for full job functioning" and notes that S.E. has severe limitations in the areas of interpersonal skills, work skills and work tolerance.

Among other activities, S.E. was assigned to a W-2 worksite known as Creative Workshop for 15 hours a week.³⁶ Because of her condition and inability to function around other people S.E. did not attend and was subject to repeated sanctions. At the factfinding requested on S.E.'s behalf her FEP stated that she was unaware of the psychologist's report and S.E.'s condition. She stated further that there is only a limited number of worksites available to participants. S.E. is now assigned to a worksite for disabled persons where she performs simple tasks such as packing boxes and "snapping parts together." She receives no job training.

P.J. - P.J. suffers from left arm lymphedema and severe arthritis which affects her knees, back, hips and shoulders. Because of these conditions her ability to perform functions of daily living is severely impeded. This office, on P.J.'s behalf, repeatedly requested a formal assessment to determine what, if any, jobs she might be able to perform and the training needed. Because she had difficulty performing her W-2 work assignments (often she was required to use both hands which resulted in swelling and pain to her left arm) we also requested modifications to her assignment. Eventually she was assigned to work at the W-2 office filing and collating documents. On many days P.J. sat idle because there was no work for her to perform. Finally, the W-2 agency, referred her to an assessment at Goodwill Industries. The assessor concluded that P.J. should not look for work "until after her health has been more fully assessed and a functional capacities assessment has been completed." No further assessment was completed. P.J. is now receiving SSI benefits. In addition to being assigned to activities which aggravated her condition and being denied appropriate training, P.J. was subject to payment sanctions and advised as she neared her time limits that an extension would not be requested on her behalf.³⁷

accommodations even though it was aware of her mental health problems and her son's disability because her doctor would not complete a medical capacity form.

³⁶ See Attachment 14, W-2 Employability Plan dated June 29, 2001 for S.E. which also includes employment search for 10 hours a week as part of her activities even though she was in a W2-T position because she was unable to work, and the payment sanction notice for the month of August 2001.

³⁷ See Attachment 15, July 9, 2001 letter to Employment Solutions in P.J.'s case.

C.M. - C.M. suffers from a herniated disc and has significant limitations on her ability to sit, stand, stoop, and crouch. She experiences constant pain which is aggravated by prolonged sitting and standing. She was recently found eligible for Social Security disability benefits. The W-2 agency assigned C.M. to the 20 hours of work, 12 hours of education, 5 hours of employment search and 3 hours of physical rehabilitation activities. She was not able to perform the work activities on a regular basis because of her disability and was subject to payment sanctions. No assessment was conducted by the W-2 agency. Instead C.M. was advised that in order to be excused from her assignment she needed a doctor's statement for each day of absence even though her doctor indicated she would, because of her impairments, have good and bad days, and would be likely to miss more than four days of work a month. C.M. was not offered any training or other services that she could perform within her limitations.³⁸

C.B. - C.B. has been diagnosed as suffering from major depression and irritable bowel syndrome. On many occasions she has been unable to properly care for her own daily needs and the needs of her children and has required assistance from family members. She too has now been found eligible for SSI benefits. While enrolled in the W-2 program C.B. was assigned to work and education activities which she had difficulty performing. As a result she was subject to payment sanctions. C.B.'s case was also repeatedly transferred from one FEP to another with a no continuity of service. Despite our requests no assessment was conducted. Instead C.B. was required to have her doctor complete medical capacity forms on a periodic basis.³⁹

T.J. - In the past T.J. was diagnosed with cervical cancer and depression. She was assigned by her FEP at Maximus to a number of activities including 25 hours a week of doctor's care. She was sanctioned for not completing these activities. T.J. did not have 25 hours of scheduled doctor's visits each week, but her FEP stated that her assignment reflected the state requirement that all participants be assigned to at least 30 hours of activity.⁴⁰ Recently, T.J. once again began experiencing significant and debilitating health

³⁸ See Attachment 16, Employability plan for C.M. dated December 5, 2000 and the payment sanction notice for the month of March 2001. See also Attachment 17, DHA decision WWW-40/39137 (August 2, 1999) a similar case in which the W-2 participant was sanctioned for missing activities because she could not produce a doctor's excuse for all days of absence even though the agency knew she suffered from chronic mental health problems and was experiencing side effects from her medication.

³⁹ See Attachment 18, September 22, 1999 Employability Plan for C.B. assigning her to 30 hours of work and 10 hours of basic education for the period of September 22, 1999 through December 28, 1999 and subsequent plan dated November 11, 1999 assigning her to 28 hours of work and 2 hours of Behavioral Health Services.

⁴⁰ See Attachment 19, DHA decision, WWW-40/42671 (May 31, 2000) in the case of T.J.

problems related to her cancer. Her case had been transferred to a different FEP who was not aware of her condition and who advised T.J. an extension of time would not be requested on her behalf. Only after filing a factfinding request and submitting medical records was an extension request prepared for T.J.

K.M. - K.M. suffers from substance abuse problems, depression and anxiety. She is currently enrolled in a treatment program. Due to her condition K.M. was placed by the W-2 agency in a W2-T work position. K.M. then obtained employment on a limited basis, approximately 12-15 hours a week. She is not able to work additional hours because of her treatment and mental health problems. K.M.'s case had previously been in another W-2 region which had medical records documenting her condition, but these records were not transferred to the new agency.⁴¹ Until this office intervened on her behalf, K.M. was advised her W-2 would end because she was employed, and employed persons cannot be enrolled in a W2-T position - only a CSJ position.

D.R. - D.R. has been diagnosed as having a mild cognitive deficiency and suffering from depression and alcohol abuse. A psychologist's report indicates that she has poor to no ability to maintain regular attendance, sustain an ordinary routine where working alone without special supervision or complete a normal workday without interruptions from psychologically-based symptoms. Her W-2 activities in the past, as assigned by the W-2 agency, were to attend work and education activities for 30 hours a week with no special supports. D.R. was subject to numerous payment sanctions. On her behalf, this office repeatedly requested that a comprehensive assessment of her mental status be conducted. The agency failed to do so; instead Legal Action of Wisconsin referred her to a psychologist for an evaluation.

D.M. - D.M. has been diagnosed as cognitively disabled with a full scale IQ score of 60 and as suffering from depression by a psychologist acting as a consultant to a W-2 agency. The psychologist indicated that D.M. has severe limitations in the areas of communication, interpersonal skills, and work skills. D.M. has been subject to repeated sanctions because of her inability to complete her W-2 assignments. Other than changing her worksite to a site for participants with disabilities, the W-2 agency did not offer to modify D.M.'s assignment, (i.e. to provide specialized education, training, or a job coach). When D.M. obtained employment the agency did not offer her any supports to help with

⁴¹ See Attachment 20, DHA decision WWW-40/42367 (December 16, 1999) a similar case in which the new W-2 agency had to be ordered to obtain the participant's records from her prior region. The participant in that case had mental health problems which were documented in medical records submitted to the first agency but not sent to the new agency.

the transition to work.⁴² Her FEP at the time maintained that if she could work then she must not be disabled.

Most recently D.M. was again subject to sanction. At the factfinding requested on her behalf she stated that at her assigned worksite she receives no training and has little, if any, contact with the work supervisor. The new FEP assigned to D.M.'s case was not aware of the psychologist's report and modifications were never made to D.M.'s plan.⁴³

G.M. - G.M. has been diagnosed as cognitively disabled and suffering from depression and anxiety disorder. She frequently experiences severe panic attacks. Her treating psychiatrist indicates that she has poor to no ability to understand, remember and carry out simple instructions, maintain regular attendance, perform routine repetitive work at a consistent pace without an unreasonable number and length of rest periods, and deal with the normal stress of routine, repetitive works. G.M. contacted this office because she had been subject to repeated payment sanctions. Her employability plan indicated that she was assigned to complete 20 hours of work experience, in part to assess her ability to perform work activities, 10 hours of ESL classes (G.M. speaks only Spanish) and 2 hours to see her psychiatrist each week. Because of her illness and inability to take public transportation, go anywhere alone and be with groups of people, G.M. was not able to complete her assignment. Although G.M.'s FEP suspected that G.M. was suffering from mental health problems the payment sanctions were not modified and the agency did not refer G.M. for a comprehensive assessment with a licensed psychologist until December 13, 2000. She had been receiving W-2 since 1998. Because G.M. was visibly shaken and anxious during a factfinding, her FEP suggested that she withdraw her factfinding request but did not offer to remove the sanction. G.M. has now been approved for SSI benefits.⁴⁴

E.S. suffers from diabetes mellitus which is poorly controlled and has affected her concentration and, to a degree, her extremities. She is lethargic, experiences black-out spells and numbness in her hands and feet. When E.S. reached her 24 month time limit

⁴² See Attachments 21 and 22, DHA decisions WWW-40/37956 (May 11, 1999) and WWW-40/40484 (September 14, 1999) two cases in which the W-2 agency changed the participant's W-2 placement from a W-2 subsidized work position to an unsubsidized work position without assessing her ability to work. In the first case the participant never began the employment, in part, because she did not feel she could perform the tasks required due to back and other problems. In the second case the participant, who suffers from mental health problems, was placed in the W-2 working category and then designated job ready after working at McDonald's for four days.

⁴³ See Attachment 23, November 26, 2001 Factfinding decision and December 14, 2001 letter to DWD in D.M.'s case.

⁴⁴ See Attachment 24, DHA decision WWW-40/44638 (June 12, 2000). We requested three separate factfindings on G.M.'s behalf for seven months of sanctions. See also Attachment 25, DHA decision WWW-40/35329 (November 13, 1998), in which the participant, like G.M., was assigned to a worksite for an assessment but could not attend because of mental health problems and then sanctioned.

in the W-2 T work position she was advised that an extension would not be requested, but that she could be moved to a CSJ position if she was able to participate in regular work activities. E.S. felt she could not comply with the requirements and declined the CSJ position. E.S. was found eligible for SSI benefits in July 2001. Recently, this office sent a letter to the state DWD regarding a case which presented a similar fact pattern, a pattern we have seen repeated in a number of cases - participants with disabilities are advised that they cannot be assigned to the CSJ category unless they can participate in full work activities.⁴⁵

Y.D. - Y.D. has been diagnosed with severe depression and bipolar disorder. She is not able to care for herself or her children. Her mother and other family members assist her with the basic activities of daily living. In the spring of 2001 her mother contacted this office because Y.D.'s W-2 payments had been sanctioned for three months. At the factfinding requested on Y.D.'s behalf the FEP assigned to her case stated that Y.D. was assigned to 30 hours of work experience and 10 hours of basic education. Step 1 listed on this employability plan stated "complete disability assessment". Another plan assigned Y.D. to 20 hours of physical rehabilitation which represented her therapy sessions with her psychiatrist. Y.D.'s file contained evidence of her mental health problems. The FEP assigned to her case was relatively new and stated that he had not discussed her case with her previous FEPs and was not familiar with her problems. The factfinding decision issued on Y.D.'s behalf finds that the agency failed to properly assess and monitor Y.D. case in "light of the obvious and documented limitations Y.D. suffers from".⁴⁶

D.J. - D.J. suffers from chronic debilitating depression and anxiety attacks. A psychological evaluation conducted by a consultant with the W-2 program concluded that D.J. has severe limitations in the areas of self-care, self-direction, interpersonal skills and work tolerance. He found that she has difficulty processing information that requires attention, concentration, and organization. This evaluation was conducted on November 9, 2001 upon Legal Action's request after several factfindings concerning eight months of payment sanctions.⁴⁷

W-2 Extensions

M.H. - M.H. recently contacted this office because she had exhausted her 24 month CSJ clock, had not been offered the opportunity for an extension and had not secured employment. This office requested a W-2 factfinding review on M.H.'s behalf. At the factfinding the OIC agency representative stated that she had been assigned to M.H.'s

⁴⁵ See Attachment 26, December 14, 2001 letter to DWD in a case similar to E.S.'s case.

⁴⁶ See Attachment 27, May 9, 2001 Factfinding Decision and June 11, 2001 letter to OIC in Y.D.'s case.

⁴⁷ See Attachment 28, April 28, 2001 Factfinding decision and June 11, 2001 letter to YW-Works in D.J.'s case.

case only recently and had only limited familiarity with M.H. The FEP stated further that M.H. had been denied an extension because of non-participation in her W-2 activities. However, as the factfinding decision finds, M.H.'s record does not contain evidence to support the agency's claim. M.H. completed the 6th grade in school, received special education services while in school and, according to TABE test scores from June 2000, her reading and math levels are equivalent to the second grade level. M.H. recalls only one brief episode of employment at a Goodwill store. Despite these facts, the agency could produce no evidence of an assessment of M.H.'s limitations and her ability to participate in the program and maintain employment.⁴⁸

P.M. - P.M. suffers from depression, irritable bowel syndrome and diabetes. She describes herself as a slow learner and reports she was in special education classes as a child. She has a limited work history. P.M. has exhausted both her W2-T and CSJ time clocks. On two occasions the W-2 agency declined to request an extension of time on P.M.'s behalf. Initially the FEP assigned to P.M.'s case concluded that because her case was transferred at 20 months there was "insufficient time to evaluate" it. A second FEP concluded that P.M. did not want an extension because she has not "complied fully with W-2 activities." On P.M.'s behalf, this office requested a comprehensive assessment, referral to the Division of Vocational Rehabilitation and the processing of a request for an extension. P.M. was also subject to payment sanctions, and, on at least one occasion, the sanction was for failing to attend doctor's appointments of ten hours a week, appointments not actually scheduled.⁴⁹

A.H. - A.H. contacted this office because she was informed that her W-2 services and benefits would be ending because she had reached her CSJ time limits. The extension evaluation form in A.H.'s case concludes that she is not eligible for an extension because she has "too much non-participation." The FEP who made this decision had recently been assigned to A.H.'s case which was transferred from another region. A.H. states that as a child she was a slow learner and assigned to special education classes. An assessment conducted after this office requested a factfinding on A. H.'s behalf indicates that she has a severe learning disability with language skills at or below first grade level. The assessment concludes that A.H.:

will require a great deal of support for reading any forms or other printed material and in completing applications for employment. Once placed, she might benefit from some transitional job coaching to identify any potential problems related to job task requiring reading or writing and suggesting job modifications or other accommodations.

⁴⁸ See Attachment 29, December 19, 2001 Factfinding decision in M.H.'s case.

⁴⁹ See Attachment 30, January 18, 2001 and August 31, 2001 employability plans. The first plan requires 30 hours of combined medical/therapy appointments, the second has 10 hours of medical appointments and 15 hours of job search. Neither plan includes work training. Also attached are two extension records, dated April 4, 2000 and April 27, 2001 in P.M.'s case.

There was no evidence of significant non-participation in A.H.'s case and no evidence of any prior assessment even though A.H. had been receiving W-2 services and benefits since December 1997.⁵⁰

E.M. - E.M. has been diagnosed with fibromyalgia and anxiety. Her treating doctors indicate that due to her illnesses she would have difficulty performing the mental tasks associated with even routine repetitive employment and that she has a limited ability (less than two hours without a break) to sit and stand. She uses a cane to walk. E.M.'s W-2 benefits and services were terminated on June 31, 2000 because she reached her time limits and an extension was not requested by the agency. Despite the fact that E.M. had been receiving W-2 since the beginning of the program the only assessment was a home assessment completed on January 26, 2000. That assessment recites E.M.'s physical limitations as reported by her and concludes that she is on medical leave from the W-2 program. There is no assessment regarding her ability to perform W-2 activities or her ability to work.⁵¹

Participants Caring for a Disabled Family Member

T. X. - T.X. is the father of a disabled child who suffers from significant brain damage and seizure disorder. The child must be fed through a tube and receives in-home nursing services and physical, occupational and speech therapy due to his condition and developmental delays. T.X.'s wife cannot provide other than temporary care for the child due to her own disability and her inability to understand the complexities of her son's care. In early January 2001 T.X.'s FEP informed him that because of W-2 time limits, he could continue to receive W-2 benefits only if he agreed to perform full-time work activities. Because T.X. must provide full-time care for his child, he signed a form declining W-2. His eligibility was reinstated and an extension requested only after this office intervened on his behalf.⁵²

M.L. - M.L. applied for W-2 services and benefits in the fall of 2001 after losing her employment due to frequent absences. M.L.'s absences were the result of her need to be available for her son who suffers from severe emotional and behavioral problems. At the time her son was frequently removed from school because of his behavior and was undergoing an assessment for special education services. When M.L. was placed in a work position she was assigned full activities of 30 hours a week which she had difficulty

⁵⁰ See Attachment 31, June 23, 2000 extension record and associated documents and August 2, 2001 letter to DWD in A.H.'s case.

⁵¹ See Attachment 32, January 26, 2000 CART assessment in E.M.'s case.

⁵² See Attachment 33, T.X.'s letter to Maximus and January 23, 2001 letter to Maximus in T.X.'s case.

performing because of the need to be available for her son and to attend his school evaluation meetings.⁵³

P.Z. is a Laotian refugee who speaks no English and is illiterate. She provides care for her husband who has been diagnosed as suffering from severe chronic post-traumatic stress disorder and major depression with psychotic features. P.Z. also suffers from depression and has a son who is severely developmentally delayed. When P.Z. initially reached her time limits the W-2 agency requested and received an extension on her behalf. When this extension period ended, P.Z.'s FEP informed her that a second extension would not be requested and had her sign a form declining W-2 services and withdrawing her request for a second extension. The forms were in English. P.Z.'s FEP was aware of her need to be available to care for her husband. The DHA decision in P.Z.'s case finds that the agency failed to obtain a formal evaluation of P.Z.'s and her family's medical and mental health problems to determine if she needed accommodations, and orders the agency to remedy its failures and request an extension on P.Z.'s behalf.⁵⁴

E.F. - E.F. has been receiving W-2 benefits since at least 1999. In the spring of 1999 she was assigned to 30 hours of work experience activities despite the fact that she had no child care for her severely disabled five-month-old child. The child was born with extensive brain damage and among other problems had difficulty swallowing and needed to be fed through a tube. The child could only be placed in a care setting which included skilled nursing services. At the time of her assignment E.F. advised her FEP that she was still waiting for an available space in a skilled facility and, as a result, she could not participate in W-2 activities. Her W-2 assignment was not modified until this office intervened on her behalf.

W-2 Program Failures

DWD's W-2 policy manual advises the W-2 agencies of their obligation to comply with the ADA and of the need to identify barriers to employment, provide appropriate case management services and utilize other agencies that serve persons with disabilities.⁵⁵ Despite these pronouncements, DWD has, by its policies and practices, designed a system that fails to insure individualized treatment and effective and

⁵³ See Attachment 34, December 4, 2001 letter to Employment Solutions in M.L.'s case. See also Attachment 35, DHA decision WWW-40/45495 (November 28, 2000) a case similar to M.L.'s in which the participant was subject to a sanction for not participating in her W-2 activities. Her failure was due to her need to be available for his son because of his behavior problems and school suspensions.

⁵⁴ See Attachment 36, DHA decision, WWW-40/50056 (August 24, 2001) in P.Z.'s case.

⁵⁵ See Attachment 3, W-2 Policy Manual, Chapter 1, Section 1.5.0. and Appendix II, Civil Rights Obligations and Appendix V, Case Management Resource.

meaningful opportunity to parents with disabilities and parents who have family members with disabilities. Through its policies, contract standards and financial award system, DWD has rewarded the W-2 agencies for reducing caseloads, for assigning participants to an established number of activity hours without regard to their needs or the needs of family members, and for payment sanctions. For their part the W-2 agencies have failed to develop systems to insure that W-2 eligible parents with disabilities or who have family members with disabilities are properly identified, assessed and afforded needed accommodations so they can enjoy the full benefits of the program.

The above case examples, and the many more like them, illustrate the policies and practices that result in the failure to properly serve applicants/participants with disabilities and applicants/participants with disabled family members. The policies and practices that lead to this failure are:

1. W-2 applicants with disabilities are denied the benefits and services of a W-2 subsidized work position (i.e., trial jobs, CSJ or W2-T) when they are designated job ready without being screened and/or assessed to determine how their disability affects their ability to work.
2. W-2 applicants with disabilities are denied the benefits and services of the W-2 program when they are told they are not eligible for W-2 because they cannot perform work activities.
3. Applicants with disabilities or who have family members with disabilities are not identified during the application process because effective screening tools have not been developed by DWD and/or are not being used.
4. Resource specialists and FEPs are not sufficiently trained to enable them to identify W-2 applicants who have disabilities or who have family members with disabilities.
5. Applicants and participants are not afforded the opportunity for a timely comprehensive assessment when the intake interview indicates that the disability of the participant or a family member may impact on her ability to participate in and benefit from the W-2 program. DWD has failed to develop any guidelines for use by the W-2 agencies that detail what a comprehensive assessment should include.
6. Applicants and participants are required to produce a properly completed medical examination and capacity form before being placed in a W2-T placement, having a further assessment, receiving a modified assignment, or being considered for an extension of the time limits. No adjustment to this DWD policy is made when the applicant's or participant's doctor fails or refuses to complete the form or fails to fully assess functional limitations.

7. In those cases where an assessment is obtained, employability plans are, in many cases, developed without regard to the individual's abilities and needs as determined by the assessment. Instead the focus is on full participation, defined by DWD policy as 30 hours of activities a week.
8. Participants with disabilities or who have family members with disabilities are not provided worksite accommodations that allow them to participate in the full array of training and work programs offered other W-2 participants. In many cases disabled participants are placed at worksites for persons with disabilities and given rudimentary tasks to perform. As a general rule, participants with identified disabilities or who have family members with disabilities are not assigned to CSJ or trial job positions.
9. In some cases the W-2 agencies assume that participants who have significant medical problems as identified by their physician cannot benefit from training, fail to offer accommodations so they can benefit, and instead limit their activities to pursuing SSI benefits.⁵⁶
10. Participants who are assigned to W2-T placements because of their disability or the disability of a family member receive a lower monthly payment amount (\$628) as compared to participants assigned to CSJ placements (\$673) solely because of their disability or the family member's disability even though they are often assigned to the same number of participation hours and, in some cases, the identical activities.
11. The W-2 agencies have failed to develop specialized education and training programs for participants with mental impairments and learning disabilities.⁵⁷
12. Participants with disabilities or who have family members with disabilities are not offered programs which would assist them with the transition to unsubsidized employment .
13. The FEPs who are primarily responsible for crucial decisions - determining the appropriate work placement, referring the individual for a formal assessment, determining work activities and hours of participation, entering payment

⁵⁶ On occasion, in response to questioning by this office about work activities that might be available for certain individuals we are often advised that there is little available and SSI should be considered.

⁵⁷ In the cases discussed above, D.R., D.M., G.M., M.H., and A.H. have been identified as mildly or moderately cognitively disabled or with a learning disability. Yet we are not aware of any specialized programs offered to participants like them.

sanctions, recommending that an extension be granted - are, in many cases, not trained to work with persons with disabilities.⁵⁸

14. DWD and the W-2 agencies fail to review sanctions before they are entered to determine whether the participant had the ability to perform the assigned activities and some agencies have developed systems for entering sanctions which give the responsibility to third parties who are not familiar with the participants.⁵⁹
15. DWD and the W-2 agencies require participants to produce written medical excuse for all absences without exception even where the participant or the participant's family member suffers from a chronic condition which can reasonably be expected to result in missed activities.
16. DWD and the W-2 agencies have not modified the factfinding process in any way so that applicants or participants with disabilities can utilize the process and/or receive assistance in utilizing the process to challenge adverse agency actions.
17. In evaluating participants who are nearing the time limits for W-2, DWD and the W-2 agencies use participation history as the primary test for extending benefits; if non-participation exists the FEP does not consider the next test, i.e., whether the participant has been unable to participate because of her disability or the disability of a family member.⁶⁰ FEPs are not instructed to determine if the non-

⁵⁸ One agency, Maximus, does have specialty FEP's who are generally skilled in working with disabled persons and knowledgeable about community services. In order to be assigned to the specialty unit a Resource Specialist or FEP must identify the need.

⁵⁹ In many cases a participant with a disability or a disabled family member may be sanctioned for months without any intervention or review to determine if the non-participation is related to the disability. The Legislative Audit Bureau study found that sanctions have been applied inappropriately but did not have the data to determine the numbers of inappropriate sanctions. See Attachment 8, page 57.

The MDRC study identifies the YW-Works agency as placing considerable emphasis on formal assessments. See Attachment 6, page 95. It is equally noteworthy that the YW-Works sanctioned more of its caseload, 48% for the period of October 1999 through December 2000, than any other W-2 agency in the state. See Attachment 8, LAB study, page 55. It has been our experience that while the YW-Works may conduct assessments, those assessments are often not utilized effectively and policies, such as the submission of medical excuses for each absence, are strictly applied.

In the cases of S.E., C.B., D.M., Y.D., and D.J. the FEP indicated that another individual or agency, with no familiarity with the participant, entered the payment sanction.

⁶⁰ See Attachment 4-C . Operations Memo 99-49 and the extension evaluation form included with that memo.

participation is the result of the failure to identify a disability, conduct an assessment and/or provide appropriate services. Nor are they instructed to disregard months in which appropriate services were not received because an assessment was not completed and/or needed accommodations were not provided.

18. The W-2 agencies do not regularly assess progress in W-2 activities, (i.e. education, counseling) to determine if a participant has a disability that requires accommodations to allow her to participate in the program or that interferes with her ability to benefit from the activities assigned, or to determine whether the needs of a family member with a disability interfere with the participant's ability to participate in, and benefit from, the program.
19. Participants with a disability or who have a family member with a disability and whose cases are transferred to another W-2 agency within Milwaukee County have no continuity of service because in most cases the actual case file is not transferred and medical documents and assessments are not forwarded to the new W-2 agency. In addition, participants' activities are terminated and they must be reassigned to new activities.
20. The W-2 agencies subcontract with a number of entities to provide education, training, work experience but do not provide training or oversight to insure that these subcontracted agencies understand and comply with their obligations under the ADA and §504 of the Rehabilitation Act.
21. The written materials provided by DWD and the W-2 agencies which describe the W-2 program and the rights and responsibilities of applicants/participants do not provide information regarding applicants and participants' rights under the ADA or §504 of the Rehabilitation Act. Nor are applicants and participants advised of how to file a complaint if they feel they are, or have been, subject to discrimination.⁶¹
22. DWD and the W-2 agencies have not modified their procedures to ensure that modes of communication, other than written notices, are used when the agency is aware that the participant will be unable to comprehend a written notice due to a mental impairment or learning disability.
23. DWD does not exercise oversight over the W-2 agencies to ensure compliance with the ADA and §504 of the Rehabilitation Act, has failed to take corrective

⁶¹ See Attachment 3, W-2 Policy Manual Appendix III, W-2 Forms. The only information we could find is the following statement which appears on W-2 assignment, sanction and other adverse action notices "Special needs: If you have a disability or other need, you may request help to participate by contacting the worker listed above." (Referring to the FEP). See Attachments 14 and 16, sanction notices in the cases of S.E. and C.M.

action when complaints have been brought to its attention, and has failed to develop adequate measures or contract benchmarks to insure compliance.⁶²

24. DWD has made no effort to survey or otherwise determine the needs of W-2 eligible families in Milwaukee and to review its policies, procedures and programs to insure that the needs of disabled participants and disabled family members can be met.⁶³

Conclusion

The W-2 program is presented as a program that assesses individual needs and limitations and assigns eligible parents to work positions and activities based on those assessments. However, the program is also based on a work first philosophy and a "light touch" approach offering applicants/participants only those services they request, and responding to only those needs the applicant/participant clearly articulates and documents through a medical capacity form. State policies reward the W-2 agencies for reducing caseloads, engaging participants in the maximum number of activity hours, and offering limited services. State policies do not reward the W-2 agencies for identifying disabilities, conducting assessments, and providing appropriate accommodations and meaningful services.

DWD and the W-2 agencies have long been aware of the need for better screening tools, timely comprehensive assessments and programs for participants with disabilities and those who need to care for family members with disabilities. They are repeatedly heard to say that the remaining W-2 population is harder to serve and has more significant barriers than originally recognized. Yet despite this acknowledgment, change has been slow and ineffective. Participants with disabilities or who have family members with disabilities are still not properly identified, offered the opportunity for a

⁶² For a number of years the lack of assessments and accommodations have been problems brought to DWD's attention by this agency, other advocacy groups, W-2 audits and DHA hearing decisions. See Attachment 37, March 27, 2001 letter to DWD from Legal Action in response to W-2 public hearing.

A W-2 advisory committee formed by DWD in the spring of 2001 issued recommendations late in 2001 encouraging DWD to review sanctions and cases denied an extension on a regular basis, to develop a screening process to identify persons with disabilities, to ensure that assessments are conducted, and to encourage the utilization of appropriate providers to serve persons with disabilities. DWD projects that a screening process will not be developed until the fall 2002. The benchmarks discussed in the new W-2 contracts discussed at footnote 30 above do little to address the inadequacies identified in this complaint.

⁶³ See Attachment 8, page 79, Legislative Audit Bureau report which notes that according to W-2 agency officials the data collection and management system DWD utilizes does not capture this type of information.

timely comprehensive assessment, and provided appropriate and meaningful education, training and work opportunities so they can achieve self-sufficiency. In cases where a disability is recognized after months or years in the program, DWD and the W-2 agencies offer no adjustment to the sanction or extension process, even when it is clear that the participant was not afforded appropriate services in the past. No procedures have been adopted to review past or current sanctions or cases in which a participant reaches her time limit without being offered an extension. Finally, DWD has made no effort to identify the numbers and types of disabilities within W-2 eligible families so it can take whatever steps are needed to adjust its policies, procedures and practices to ensure full compliance with the ADA and §504 of the Rehabilitation Act.

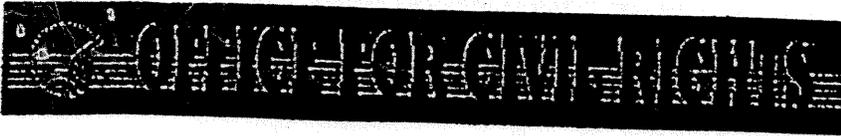
We request, on behalf of the W-2 families we represent, that OCR require DWD and the Milwaukee W-2 agencies to take all necessary corrective action to remedy their past non-compliance with the ADA and §504 of the Rehabilitation Act and ensure future compliance.

Dated at Milwaukee, Wisconsin, this 8th day of February, 2002.



PATRICIA DeLESSIO
LEGAL ACTION OF WISCONSIN, INC.
230 West Wells Street, Room 800
Milwaukee, Wisconsin 53202
Telephone: (414) 278-7722
Fax: (414) 278-7126

ANNE DeLEO
Attorney at Law
2401 North Mayfair Road, Suite 210
Milwaukee, Wisconsin 53226
Telephone: (414) 476-1015



Summary of Policy Guidance

Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families)

Department of Health and Human Services Office for Civil Rights

The United States Department of Health and Human Services (HHS) is issuing policy guidance on the prohibition of discrimination on the basis of disability in Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 in the administration of TANF programs.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) created Temporary Assistance for Needy Families (TANF), and repealed the Aid to Families with Dependent Children Program (AFDC), the Job Opportunities and Basic Skills Training program (JOBS) and the Emergency Assistance program (EA). Both the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 apply to TANF programs. See 42 U.S.C. § 608(c) (Federal TANF statute reiterating ADA/Section 504 application to TANF programs). Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12131. Section 504 of the Rehabilitation Act of 1973 prohibits the same discrimination by entities that receive Federal financial assistance. 29 U.S.C. § 794.

On August 27, 1999, the HHS Office for Civil Rights (OCR) issued two-part guidance on civil rights laws and welfare reform.⁽¹⁾ These materials explain how Federal civil rights laws apply to certain aspects of welfare reform. The purpose of the present guidance is to respond to a myriad of additional questions that have been raised by State agencies, counties, service providers, and persons with disabilities regarding the obligations to adopt methods for administering welfare programs to ensure equal opportunity for persons with disabilities in all aspects of a TANF program, including applications, assessments, work program activities, sanctions, and time limits. The guidance also is necessary because the Department has indicated that States may be subject to penalties if audits show that they "over-sanction," i.e., impose sanctions on individuals when sanctions are inappropriate.⁽²⁾

This policy guidance clarifies the obligations Title II of the ADA and Section 504 impose on State and local government entities, and on recipients of Federal financial assistance from HHS involved in TANF activities, in fulfilling their responsibilities pursuant to Title II of the ADA and Section 504 of the Rehabilitation Act.⁽³⁾ Specifically, this guidance identifies essential requirements of an ADA-504 compliant TANF program that the Office for Civil Rights will apply in its compliance reviews and/or investigations of complaints of discrimination on the basis of disability in TANF programs. These requirements are not new; rather, they reiterate ADA Title II and Section 504 principles that OCR has been enforcing for many years.

The guidance also sets out "promising practices" - policies, procedures and other recommended steps that recipients and covered entities can take to ensure meaningful access to TANF programs by people with disabilities. These "promising practice" provisions are not mandatory requirements; they are one way for a TANF agency (as noted in footnote 3, this guidance uses the term "TANF agency" to refer to all covered entities under Section 504 and State and local governmental entities under Title II of the ADA) to meet obligations to ensure equal access through the provision of appropriate services, modify policies, practices and procedures to provide such access, unless doing so would result in a fundamental alteration to the program, and to adopt non-discriminatory methods of administration. Descriptions of possible approaches that comply with Section 504 and the ADA in this guidance should not be construed to preclude States from devising alternative approaches to meet these legal requirements.

OCR has provided substantial technical assistance for more than 20 years to recipients and covered entities seeking to ensure that people with disabilities can meaningfully access social service programs. This guidance applies that experience to the relatively new challenges presented in the complex context of administering TANF programs, and is consistent with OCR's commitment to seeking voluntary compliance by recipients and covered entities and its commitment to providing technical assistance. OCR will continue to be available to provide such assistance.

Policy Guidance

**Prohibition Against Discrimination on the Basis of Disability
in the Administration of TANF (Temporary Assistance for Needy Families)**

Table of Contents

Background

- 1. Legislative and Regulatory Framework
- 2. The Challenges
- 3. State Activities
- 4. OCR Guidance

Legal Authority

The Disability Policy Framework

- a) Ensuring Equal Access to TANF Programs Through the Provision of Appropriate Services to People with Disabilities
- b) Modifications of Policies, Practices and Procedures
- c) Non-Discriminatory Methods of Administration

Coverage

- 1. Covered Entities
- 2. Protected Individuals

Legal Requirements and "Promising Practices"

- 1. The Legal Requirement to Ensure Equal Access to TANF Programs Through the Provision of Appropriate Services

Promising Practices in the Provision of Equal Access to TANF Programs

- 2. The Legal Requirement to Modify Policies, Practices and Procedures to Ensure Equal Access to TANF Programs and Services

Promising Practices in Modifying Policies and Programs to Ensure Access for People with Disabilities

The Legal Requirement to Adopt Non-Discriminatory Methods of Administration

Promising Practices in Non-Discriminatory Methods of Administration

Appendix 1: Example of Promising Practice in Modifying Policies and Programs to Ensure Equal Access -- Sample Diagnostic Review Checklist

Policy Guidance

**Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF
(Temporary Assistance for Needy Families)**

A. BACKGROUND

1. Legislative and Regulatory Framework

On August 22, 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).⁽⁴⁾ This legislation repealed the Aid to Families with Dependent Children program (AFDC), the Job Opportunities and Basic Skills Training program (JOBS) and the Emergency Assistance program (EA) and created Temporary Assistance for Needy Families (TANF).

PRWORA requires that programs established with TANF funds serve one of four purposes, to:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.⁽⁵⁾

Under TANF, States have flexibility in how they respond to individual family needs. In return, States are expected to move towards a strategy that provides appropriate services for needy families.⁽⁶⁾

PRWORA also specifies, among other things, that Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA) apply to any program or activity that receives Federal TANF funds.⁽⁷⁾

Title II of the ADA also applies to the programs and activities of all State and local government entities. Title II and Section 504 require State and local government entities and HHS Federal fund recipients to ensure equal access through the provision of appropriate services, to modify policies, practices and procedures to provide such access unless these modifications would fundamentally alter the nature of the service, program, or activity, and to adopt non-discriminatory methods of administration. The inclusion of these civil rights protections ensures equal opportunity for persons with disabilities to benefit from all aspects of welfare reform, including access to the proper support services to enable such individuals to work and to keep their families healthy, safe and intact.⁽⁸⁾

2. The Challenges

Notwithstanding gains in work for many TANF clients, other families with multiple barriers to work are at risk of losing benefits before obtaining employment or of being unable to benefit from TANF job training, education and other programs. Some former welfare beneficiaries have succeeded in moving to work despite extraordinary obstacles. However, others, due to known or unrecognized disabilities, need additional training, accommodations, and support services to prepare for or succeed at work.

According to a recent report by the Presidential Task Force on Employment of Adults with Disabilities, studies show that as much as 40 percent of the adult welfare population may have learning disabilities. The studies also found that up to 28 percent of welfare beneficiaries have mental health conditions.⁽⁹⁾ A significant number of these beneficiaries also have physical disabilities, while some have multiple impairments or face multiple barriers to work.⁽¹⁰⁾

Reports of the Presidential Task Force on Employment of Adults with Disabilities point to a multitude of employment barriers faced by persons with disabilities, including inadequate work opportunities resulting from discrimination and inadequate education and job skills, as well as lack of access to health insurance. The complexity of existing work incentives and lack of benefits counseling also raise significant employment hurdles for people with disabilities.⁽¹¹⁾

3. State Activities

In the course of its enforcement activities, OCR has found that States vary significantly in the extent to which they have planned and implemented policies, practices, and procedures to identify barriers to employment for people with disabilities and provide necessary supports and services. Many States have undertaken substantial efforts to address the needs of individuals with disabilities, especially for individuals with learning disabilities. Other States, however, have no systems established for assessing the needs of people with disabilities or for ensuring access to programs or services of their TANF programs. In still others, although States have made significant efforts to design TANF policies, practices and procedures promising equal opportunity for individuals with disabilities, TANF agency personnel lack adequate training and educational or training programs identified as necessary for beneficiaries are not available.

For some public entities, TANF policies relating to individuals with disabilities consist only of exemption from TANF requirements. This practice, however, denies individuals with disabilities access to TANF services and results in discriminatory exclusion of many individuals with disabilities from the program.⁽¹²⁾ The Federal TANF statute is founded on the public policy that individuals formerly on welfare will be better off if provided with job and/or training opportunities rather than continued public assistance. This same policy should be applied, where appropriate, to those formerly eligible for public assistance who have disabilities, but who can work if provided with modified training or accommodated job opportunities. Applying and implementing this policy may require modification of agency procedures, policies and practices to allow people with disabilities to benefit from the employment and training opportunities offered to others.

4. OCR Guidance

On August 27, 1999, the HHS Office for Civil Rights (OCR) issued two-part guidance explaining how Federal civil rights laws apply to certain aspects of welfare reform on civil rights laws and welfare reform.⁽¹³⁾ The purpose of the present guidance is to respond to additional questions that have been raised by State agencies, counties, service providers, and persons with disabilities regarding the obligations to adopt methods for administering the TANF program to ensure equal opportunity for persons with disabilities in all aspects of the program, including applications, assessments, work program modifications, sanctions, and time limits.

This policy guidance clarifies the obligations Title II of the ADA and Section 504 impose on State and local government entities that are involved in the delivery or administration of TANF programs, and on recipients of Federal financial assistance from HHS involved in TANF activities, in fulfilling their responsibilities pursuant to Title II of the ADA and Section 504 of the Rehabilitation Act. Specifically, this guidance identifies essential requirements of an ADA-504 complaint TANF program that the Office for Civil Rights will apply in its compliance reviews and/or investigations of complaints of discrimination on the basis of disability in TANF programs. These requirements are not new; rather, they reiterate ADA Title II and Section 504 principles that OCR has been enforcing for many years. This guidance is limited to the social services context, and is not intended to address the obligations of employers under Section 504 or Title I of the ADA.

The guidance also sets out "promising practices" - policies, procedures and other recommended steps that recipients and covered entities can take to ensure meaningful access to TANF programs by people with disabilities. Many of the "promising practices" are based on reports of current TANF practices in a number of States and other localities. These "promising practice" provisions are not mandatory requirements; they are one way for a TANF agency (as noted in footnote 3, this guidance uses the term "TANF agency" to mean all covered entities under Section 504 and State and local governmental entities under Title II of the ADA) to meet the obligation to provide individuals with disabilities with an equal opportunity to benefit from TANF programs, to reasonably modify TANF policies for individuals with disabilities and to adopt non-discriminatory methods of administering TANF programs. Descriptions of possible approaches that comply with Section 504 and Title II of the ADA in this guidance should not be construed to preclude States from devising alternative approaches to meet these legal requirements.

This guidance does not, and is not intended to, reflect the best of the full range of TANF practices with respect to individuals with disabilities. The "promising practices" portion of the guidance should therefore be regarded as a work in progress while States continue to develop more and better solutions to issues raised by disability in administering TANF programs.

B. LEGAL AUTHORITY

The Disability Policy Framework

The legal framework governing the administration of programs, projects, and activities by State agencies and service providers are set out in regulations promulgated by the Department of Justice⁽¹⁴⁾ and the Department of Health and Human Services.⁽¹⁵⁾ A recitation of the key provisions is set out in OCR's August 27, 1999 Technical Assistance materials concerning welfare reform and disability issues.

Two concepts central to Section 504 and Title II of the ADA are of particular importance to administration of TANF programs in a manner that ensures equality of opportunity for individuals with disabilities. These concepts are: (1) individualized treatment; and (2) effective and meaningful opportunity.

Individualized treatment requires that individuals with disabilities be treated on a case-by-case basis consistent with facts and objective evidence. Individuals with disabilities may not be treated on the basis of generalizations and stereotypes.⁽¹⁶⁾ Such prohibited treatment would include denying TANF beneficiaries with disabilities access to parts of the TANF agency's program based on the stereotypical view, unsupported by any individual assessment, that people with disabilities are unable to participate in anything but the most rudimentary work activities.

Moreover, individuals with disabilities must be afforded the opportunity to benefit from TANF programs that is as effective as the opportunity the TANF agency affords to individuals who do not have disabilities.⁽¹⁷⁾

and must also be afforded "meaningful access" to TANF programs.⁽¹⁸⁾

TANF agencies must provide reasonable accommodations, auxiliary aids and services, and communication and program accessibility, unless the agency can demonstrate that such provision would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. TANF agencies must also make reasonable modifications to policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the agency can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.⁽¹⁹⁾

In addition, the "methods of administration" or operating methods of a TANF agency must not have a discriminatory effect. Specifically, a public entity may not directly or through contract or other arrangement utilize criteria or methods of administration that, among other things, have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability, or that have

the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities.⁽²⁰⁾

In this guidance, the Office for Civil Rights addresses three key requirements of Title II of the ADA and 504 that are relevant to the rights of TANF beneficiaries with disabilities. These requirements are: (1) to ensure equal access through the provision of appropriate services; (2) to modify policies, practices and procedures to provide such access, unless doing so would result in a fundamental alteration to the program; and (3) to adopt non-discriminatory methods of administration. The essential components of these requirements are set forth below, along with promising practices that outline steps that TANF agencies and providers can take to accommodate the needs of TANF beneficiaries with disabilities. The promising practices are illustrative and are not mandatory requirements. Thus, a TANF agency's failure to take particular steps outlined in this promising practices will not by itself result in a finding of noncompliance by OCR.

a. Ensuring Equal Access to TANF Programs Through the Provision of Appropriate Services to People with Disabilities

The TANF agency provides TANF beneficiaries who have disabilities with appropriate services. These services are designed to afford TANF beneficiaries who have disabilities with an opportunity to participate in or benefit from the TANF program that is equal to the opportunity the agency affords to non-disabled individuals.

b. Modifying Policies, Practices and Procedures to Ensure Equal Opportunity

The TANF agency modifies policies, practices and procedures when necessary to ensure equal opportunity for people with disabilities. Modifications required may affect all stages of the TANF program, from application to training, education and work stages, to ensure that people with disabilities have an equal opportunity to benefit from TANF programs. The TANF agency should undertake a comprehensive examination of its own policies, practices and procedures to determine changes necessary to ensure that TANF participants with disabilities have an equal opportunity to benefit, or otherwise ensure that necessary modifications to policies, practices and procedures are made.

c. Non-Discriminatory Methods of Administration

The TANF agency operates its program in such a way as to ensure that individuals with disabilities are not subjected to discrimination on the basis of disability. In order to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination, the TANF agency should: train its staff to provide equal access to TANF programs for individuals with disabilities; ensure that training occurs for staff of service providers who have contractual or vendor relationships with the TANF agency; establish clear written policy that incorporates modifications to policies, practices and programs made to ensure access for persons with disabilities; conduct regular oversight of TANF programs and services to ensure that people with disabilities have equal access; or otherwise ensure that its policies and practices do not subject individuals with disabilities to discrimination.

Section D of the guidance provides additional details about legal requirements and about "promising practices" that may assist TANF agencies in carrying out their legal obligations.

C. COVERAGE

1. Covered Entities ("TANF Agencies")

Title II of the ADA covers all States, as well as counties and other local governments administering all or part of a TANF program. In addition, Section 504 covers all entities that receive Federal financial assistance from HHS, either directly or indirectly, through a grant, contract or subcontract.⁽²¹⁾

Under Section 504, "covered entities" include any State or local agency, private institution or organization, or any public or private entity that (1) operates, provides or engages in health or social

service programs and activities and that (2) receives federal financial assistance from HHS directly or through another recipient/covered entity. Examples of covered entities include but are not limited to State, county and local welfare agencies, programs for families, youth and children, job training and welfare to work agencies and their contractors, subcontractors and vendors, whether public or private, for-profit or nonprofit, and other providers who receive Federal financial assistance from HHS. As noted earlier, this guidance uses the term "TANF agency" to refer to covered entities under Section 504 and State and local governmental entities under Title II of the ADA.

2. Protected Individuals

Federal definitions govern who is considered an individual with a disability for purposes of compliance with the ADA and Section 504. The ADA and Section 504 define a "disability" with respect to an individual to mean a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. See 28 C.F.R. § 35.104 (definitions section of ADA Title II regulations); See also U.S. Department of Justice, The Americans with Disabilities Act: Title II Technical Assistance Manual, at 4-9 (Nov. 1993); See also 45 C.F.R. § 84.3(j)(1)(I) (definitions section of Section 504 regulations). The definition of disability under the ADA and Section 504 is a different definition of disability than that typically used to determine eligibility in programs that provide cash assistance based upon disability, such as the Federal Supplemental Security Income and Social Security Disability Insurance programs. It may also be different than the definition of disability that some States use in determining whether an individual may be exempt from certain program rules in TANF.

D. LEGAL REQUIREMENTS AND "PROMISING PRACTICES"

1. The Legal Requirement to Ensure Equal Access to TANF Programs Through the Provision of Appropriate Services

TANF agencies must afford qualified individuals with disabilities an opportunity to participate in or benefit from TANF programs that is equal to the opportunity the agency offers to individuals without disabilities.⁽²²⁾

In order to comply with this legal requirement, TANF agencies must provide TANF beneficiaries with disabilities with services that are appropriate, and that give these beneficiaries an equal opportunity to benefit from the agency's job placement, education, skills training, employment and other TANF activities.

The TANF statute and regulations require the TANF agency to assess the "skills, prior work experience and employability" of beneficiaries.⁽²³⁾

It is critical that TANF beneficiaries with disabilities receive an assessment that allows them equal opportunity to benefit from TANF programs and the assessment process. This assessment should incorporate an individualized analysis of each person's ability to meet the program requirements, rather than on stereotypes or assumptions about the effect of a type of a disability. TANF agencies should tell applicants and beneficiaries that, although disclosure of disability is not required, individuals can alert the agency to a disability.⁽²⁴⁾

Agencies should also inform applicants and beneficiaries that any disclosure is voluntary. At a minimum, intake workers should be able to recognize potential disabilities, and to conduct an initial screening to identify possible disability for those individuals who agree to undergo screening. Such screening should be conducted only by trained staff, using screening tools that have been properly validated. If there is an initial indication that an individual has a disability that may impact his/her ability to successfully complete or benefit from a current or proposed program assignment based on applicant or beneficiary disclosure, an initial screening or other information, the TANF agency should give the individual an opportunity for a more comprehensive evaluation or assessment.⁽²⁵⁾

The appropriate services provided by the TANF agency should be based on the agency's review of its

own programs (See discussion of "diagnostic review," in Section D.2), on TANF beneficiaries' needs as identified through the agency's screening and assessment processes, or on other methods the TANF agency utilizes to ensure that appropriate services are provided. For example, an individual with a learning disability or mental retardation may need specialized instruction in reading and writing before the individual can comply with a TANF plan that requires the individual to obtain employment. A person may also need on-the-job training and mentoring. A person may need job skills training or employment opportunities in settings that are accessible for individuals with mobility impairments.

The TANF agency's obligation to ensure equal access to TANF programs for individuals with disabilities also includes the obligation to ensure that service providers have the requisite knowledge, experience, and expertise to serve beneficiaries with disabilities.⁽²⁶⁾ Without such providers, TANF beneficiaries with disabilities may be deprived of equal access to TANF programs while they wait for services, or are diverted to inappropriate services. Since the TANF statute establishes a 60-month limit on TANF benefits and allows more stringent limits at State option, a TANF agency's failure to ensure an adequate supply of knowledgeable service providers for people with disabilities may result in their being terminated from the TANF rolls without having obtained the job skills or work experience necessary to move successfully from welfare to self-sufficiency.

TANF agencies must also ensure that individuals with disabilities have access to the entire range of TANF programs and services for which they are qualified, with or without reasonable accommodation.⁽²⁷⁾ Agencies must provide TANF programs in the most integrated setting appropriate to the needs of individuals with disabilities.⁽²⁸⁾ Thus, agencies should take steps to ensure that individuals with disabilities can participate in all programs and services for TANF beneficiaries, not just those programs and services that are designed solely for individuals with disabilities.⁽²⁹⁾

TANF agencies have the obligation to ensure effective communication with individuals who have hearing, speech, or visual impairments. TANF agencies must provide such persons with auxiliary aids (including such aids as interpreters, note-takers, and materials in alternative formats) if necessary to ensure effective communication, so long as providing these aids does not cause a fundamental alteration in the TANF program or result in undue financial or administrative burdens.⁽³⁰⁾

In addition, TANF agencies may not exclude individuals with disabilities by providing TANF services in buildings that are inaccessible to people with mobility impairments. The TANF agency is not, however, required to make structural changes in existing facilities where other methods are effective in achieving equal access.⁽³¹⁾

New construction and alterations to existing facilities must be made accessible and useable by persons with disabilities except where structurally impracticable.⁽³²⁾

Finally, TANF agencies frequently use contracts and vendors in the administration of their TANF programs. Agencies should be aware that these contractual and financial relationships do not eliminate TANF agencies' responsibility to ensure that TANF beneficiaries are not subjected to disability-based discrimination, even if such discrimination is more directly the result of unlawful treatment by TANF contractors and vendors. Implementing regulations for Section 504 and Title II of the ADA state clearly that a recipient of federal funds (in the context of Section 504) or a State or local government program (in the context of the ADA), may not directly or indirectly (e.g., "through contractual or other arrangements") put into place, or allow to be into place, a system or program which has the effect of subjecting qualified individuals with disability to discrimination on the basis of disability.⁽³³⁾

Thus, TANF agencies are responsible for ensuring that the opportunities afforded TANF applicants and beneficiaries with disabilities to participate in TANF program benefits and services are equal to the opportunities afforded to applicants and beneficiaries without disabilities, even if the TANF agency carries out its program through the use of contractual or other arrangements.⁽³⁴⁾

Promising Practices in the Provision of Equal Access to TANF Programs

Examples of practices that, if effectively implemented, would assist TANF agencies in ensuring that individuals with disabilities are provided with an assessment that affords equal opportunity to benefit from TANF programs, including the assessment process, include:

- The TANF agency utilizes a combination of screening and assessment tools to determine whether TANF beneficiaries face a variety of obstacles, including physical, emotional, learning or behavioral disabilities.⁽³⁵⁾
- The TANF agency trains its case workers to administer a client interview guide and objective screening instruments designed to identify TANF beneficiaries who may have learning disabilities. The TANF agency then refers beneficiaries who appear to have learning disabilities for an in-depth assessment by the State vocational rehabilitation agency or by mental health or education providers.⁽³⁶⁾
- When there is an initial indication that applicants and beneficiaries may have disabilities as a result of applicant or beneficiary disclosure, an initial screening or other information, these individuals are offered the opportunity to receive a comprehensive assessment. This assessment determines: whether the individual in fact has disabilities; the nature of any disability; the extent to which the individual is capable of employment or participation in employment-related (e.g. job training or education) activities and under what conditions; the implications of the disability on securing and maintaining employment; the appropriateness of a particular work assignment or plan for employment; the need for reasonable accommodations, reasonable modifications to policies, the provision of auxiliary aids and services and communication assistance; the need for training and education prior to employment; the applicability of work participation rules and time limits, and the appropriateness of applying sanctions. To the extent the State requires the development of an individual responsibility plan, the components of the plan must be based on results of such assessments as are undertaken by the State.
- The TANF agency ensures that qualified personnel, including specialized staff, conduct comprehensive assessments.⁽³⁷⁾ Specialized staff may provide assessments and other assistance for TANF beneficiaries who are unable to complete work activities, do not remain employed and who are recommended for further assessments by a service provider.⁽³⁸⁾ The agency might also decide to adopt a team approach to assessments, including psychologists and other medical, vocational, and rehabilitation experts, who are trained in making assessments of adults with disabilities in the employment context.
- The agency ensures that any screening or assessment tools it uses are validated for the purposes for which they are intended.

Examples of practices that, if effectively implemented, would assist TANF agencies in providing appropriate services to ensure equal access to individuals with disabilities include:

- A TANF agency provides appropriate counseling services (e.g., mental health services, anger management counseling) to TANF beneficiaries with mental or emotional disabilities who have barriers to employment and self-sufficiency.⁽³⁹⁾ The TANF agency establishes linkages and partnerships with other public (including State education and vocational rehabilitation agencies, State community colleges), nonprofit or private agencies to fulfill these aspects of their obligations under the Title II of the ADA and Section 504.
- To evaluate and properly serve TANF beneficiaries who may be hampered by a variety of barriers to employment, the TANF agency enters into a partnership with the State vocational rehabilitation agency to provide assessment and follow-up services for long-term TANF beneficiaries. TANF beneficiaries who are eligible for vocational rehabilitation services are provided with such services. The vocational rehabilitation agency develops an "employability plan" for beneficiaries who are ineligible, and refers these beneficiaries back to the TANF agency for plan implementation.⁽⁴⁰⁾
- TANF beneficiaries identified by case workers as having learning, mental and physical

- disabilities are referred to providers who have contracted with the agency to provide services for individuals with these disabilities and for other TANF beneficiaries identified by the agency as "hard to serve." The contractors help TANF beneficiaries prepare for, find and maintain jobs.⁽⁴¹⁾
- In order to ensure an adequate supply of providers, the TANF agency reimburses providers in such a way as to facilitate, rather than impede, equal opportunity for individuals with disabilities to benefit from the TANF program. Where the State establishes a system of outcome-based reimbursement (i.e., of paying service providers only when TANF beneficiaries complete a program) the TANF agency takes into consideration the additional costs of providing services to persons with disabilities so that service providers do not reject such persons, or provide them with inappropriate or inadequate services to persons with disabilities.
 - When individuals with disabilities leave the TANF program, the TANF agency conducts "exit interviews" that include a discussion of whether the individuals believe that any disabilities they have were appropriately assessed, and whether the individuals' disability-related needs were addressed and accommodated. The agency utilizes this information to refer individuals with disabilities to other support services that may assist them after they are no longer TANF beneficiaries, and to evaluate the agency's own effectiveness in serving beneficiaries with disabilities (See, e.g., discussion of "diagnostic review," in Part D.2, below).

Examples of practices that, if effectively implemented, would assist TANF agencies in affording individuals with disabilities access to all TANF programs for which they are qualified include:

- The TANF agency enters into a partnership with a non-profit agency to provide supportive services that enable individuals with developmental disabilities to participate in the work activities of subsidized public and private employment.
- The TANF agency provides a special job training course for TANF beneficiaries with speech and hearing impairments, but it does not require these individuals to participate in the special program or refuse to permit individuals with speech and hearing impairments to participate in job training courses in which both individuals with disabilities and individuals without disabilities participate.

Examples of practices, that, if effectively implemented, would assist TANF agencies in providing individuals with disabilities with equal access to TANF programs when TANF services are provided through contractual and other relationships include:

- The TANF agency obtains information from contractors and vendors as part of the agency's diagnostic review process (see discussion of diagnostic review in Part D.2 below) that includes information about accessibility, reasonable accommodations and appropriate services for people with disabilities.
- The TANF agency provides training and technical assistance to contractors and vendors regarding the needs of and appropriate services for individuals with disabilities.
- The TANF agency provides training and technical assistance to contractors and vendors regarding reasonable modifications to policies, practices and procedures and reasonable accommodations and auxiliary aids for individuals with disabilities.
- The TANF agency monitors contractors and beneficiaries for compliance with Title II of the ADA and Section 504 (see additional discussion of monitoring in Part D-3, below).

2. The Legal Requirement to Modify Policies, Practices and Procedures to Ensure Equal Access to TANF Programs and Services

Program providers are required to make reasonable modifications to policies, practices, and procedures that deny equal access to individuals with disabilities unless a fundamental alteration in the program would result.⁽⁴²⁾

In order to ensure that necessary modifications are made, the TANF agency may need to conduct a diagnostic review of agency policies, practices and procedures. Based on this review, the agency would

determine changes necessary to ensure that people with disabilities have an equal opportunity to benefit from TANF programs. As part of this review, the TANF agency would conduct a thorough assessment of the prevalence of various populations of people with disabilities who participate in its TANF programs. Based on this information, the entity analyzes each step of the TANF program to determine what changes are necessary to ensure people with disabilities have an equal opportunity to access and benefit from TANF programs and related activities. Appropriate areas for modification following a diagnostic review include: (1) the application process and procedures relating to notifying beneficiaries of their rights; (2) the nature and requirements of TANF programs; and (3) policies and practices to aid individuals in sustaining TANF program participation. Programs appropriate for a diagnostic review include TANF, "welfare to work," child care, and any other forms of Federally assisted or State or local government-run programs related to TANF activities. Alternatively, the TANF agency may engage in other means to ensure that necessary modifications are made to policies, practices and procedures.

TANF agencies should also make reasonable modifications in policies and practices that govern exemptions for individuals who are unable to meet requirements and sanctions for such failure. For example, TANF agencies may exempt individuals with disabilities from work requirements or time limits when, due to their disabilities, these individuals are unable, with or without reasonable accommodation, to participate in work or other TANF program requirements.⁽⁴³⁾

In addition, rather than sanctioning TANF beneficiaries who, due to their disabilities, do not comply with work or other program requirements, TANF agencies may make reasonable modifications that facilitate compliance, or grant extensions or temporary exemptions to TANF requirements.⁽⁴⁴⁾

Promising Practices in Modifying Policies and Programs to Ensure Access for People with Disabilities

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities include undertaking a "diagnostic review" of current programs and practices:

- In order to better understand the barriers to employment for TANF beneficiaries, the TANF agency conducts a study to determine the prevalence of specific barriers among the TANF population, including learning disabilities, mental disabilities, physical disabilities, and possible low IQ.⁽⁴⁵⁾ Based on this information, the agency develops screening mechanisms and services designed to assist TANF beneficiaries with these barriers to participate in the TANF program.⁽⁴⁶⁾
- With respect to each step of the welfare or TANF program, the TANF agency develops an "ADA/504 checklist" to ascertain accessibility for persons with various types of disabilities. See Sample Diagnostic Review Checklist at Appendix 1. The checklist covers every aspect of the entity's program, from the application stage (including checklist questions regarding assistance provided to individuals with disabilities); to the screening/assessment stage (including checklist of methods to determine the existence of disability and necessary accommodations); to the education/training and employment stage (including checklist questions used by the agency to ensure that contractors and vendors are educated about and implement appropriate accommodations).

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities include modifications in the application process and procedures relating to notifying beneficiaries of their rights:

- 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 similar means.
- A TANF agency includes the following language in notices:

...40n.nt

"If you have a physical or mental condition that substantially limits one or more major life activities, you may have rights under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. Physical or mental conditions include, for example, a learning disability, mental retardation, a history of drug or alcohol addiction, depression, a mobility impairment, or a hearing or vision impairment.

You can let us know if you have a disability.

If you cannot do something we ask you to do, we can help you do it or we can change what you have to do.

Here are some of the ways we can help:

We can call or visit if you are not able to come to our office.

We can tell you what this letter means.

If you are on [insert the name of the TANF program], we can help if you cannot do something in your plan.

We can help you devise an employability plan that allows you to work even though you have a disability.

We can help you appeal.

If you need some other kind of help, ask us. Call your caseworker or call.. "(47)

- Where a TANF agency's notice is sent to a person the agency knows will be unable to comprehend the notice due to a mental impairment or learning disability, the TANF agency modifies its procedures to ensure other modes of communication are attempted, such as oral communication, phone calls, and home visits, before taking a negative action based upon the notice.
- Where the TANF beneficiary would like the agency to involve a family member, a legal representative, or another advocate to assist the person in understanding TANF agency rules and the consequences of not following them, and to assist the agency to understand the beneficiary's limitations, the TANF agency incorporates such persons in the process. The TANF agency would not, however, avoid its own obligations to explain policies in a meaningful manner, or to provide interpreters or other required assistance.
- When communicating with TANF beneficiaries, the TANF agency routinely includes: (1) easy to understand instructions for those with developmental or mental impairments; (2) TTY numbers for persons who are deaf/hearing impaired; and (3) location of accessible sites for people with mobility impairments. The TANF agency also posts signage alerting people with disabilities how they can obtain further assistance.

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities include modifications in education, job training, work and other TANF programs:

- The TANF agency provides services appropriate to address the needs of beneficiaries with disabilities as identified by the beneficiary in the screening process or assessment processes, or at some other time. For example, a person with a specific learning disability or mental retardation is provided with specialized instruction in reading and writing so that the individual can comply with a TANF plan that requires the individual to obtain employment.
- The agency modifies procedures to ensure that beneficiaries with disabilities receive on-the-job training, and/or training and supports over a longer period than typically afforded if necessary, and

time limits are suspended. For example, a TANF agency allows TANF beneficiaries who score below the ninth-grade level on a standardized adult basic education test to enroll in adult basic education classes. The TANF program's time limits and work requirements do not apply to these beneficiaries until beneficiaries either reach the ninth-grade level or complete adult basic education courses.⁽⁴⁸⁾

Similarly, an agency suspends State-imposed time limits while individuals with suspected learning disabilities are being assessed.⁽⁴⁹⁾

- The TANF agency continuously reviews the progress of TANF beneficiaries to ascertain whether a beneficiary's disability is affecting the ability to make progress toward meeting an employment goal. This responsibility includes providing follow-up contact on missed appointments or missed deadlines and referral for additional comprehensive assessments if the beneficiary is not making progress in ability to find work or in work assignments.

- A TANF agency broadly defines activities that "count" toward the State's TANF work participation rate.⁽⁵⁰⁾

in order to assist TANF beneficiaries with disabilities, such as including supported work activities⁽⁵¹⁾ in the definition of subsidized private employment.⁽⁵²⁾

TANF allows States to use their discretion in defining "countable" activities.⁽⁵³⁾

- A State TANF agency establishes practices that permit TANF beneficiaries with disabilities to engage in certain "allowable" activities, such as granting work credit for TANF beneficiaries who are engaged in remedial education if those beneficiaries are also working part-time, even though such activities will not "count" for purposes of the State's TANF work participation rate.⁽⁵⁴⁾

States may establish their own work requirements, and may choose to recognize participation in other activities toward these requirements. States may use TANF funds for a wide variety of activities designed to meet the purposes of TANF, whether or not these activities are countable toward either State or federal work requirements.

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and practices to ensure access for people with disabilities include modifications in policies and practices concerning exemptions, extensions and sanctions:

- The TANF agency modifies work program procedures to ensure that, where a TANF beneficiary has a known disability that prevents the beneficiary from carrying out work requirements with or without reasonable accommodations, the individual is exempted from the work requirement.
- A TANF agency exempts individuals with disabilities from State-imposed time limits, or provides an extension to the 60-month limit imposed by federal law.
- A TANF agency requires a beneficiary with a disability to complete ten job contacts within one week. The beneficiary completes only six contacts, explaining that her disabilities - active cancer and a chronic mental illness - prevented her from securing ten contacts. Instead of sanctioning the beneficiary, the TANF agency takes her disability into consideration, and modifies the job search requirement to six contacts per week.
- A TANF agency grants TANF beneficiaries who have been diagnosed with learning disabilities an extension to State-imposed time limits for completing education and training programs when the failure to complete these programs in accord with time limits is the result of the beneficiaries' disability.⁽⁵⁵⁾
- A TANF beneficiary who receives mental health counseling on a regular basis during the work day requires a flexible schedule. The employer to whom the beneficiary is referred is unwilling to permit this flexibility and will hire the beneficiary only if the beneficiary agrees to keep a consistent, pre-established schedule. Rather than sanction the beneficiary for failure to obtain employment, the TANF agency either works with the employer to make the accommodation

required by the beneficiary or provides the beneficiary with an alternative referral.

Examples of promising practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities also include modifications in policies and practices that aid individuals in sustaining TANF program participation:

- A TANF agency that utilizes individual responsibility plans addresses in the plan 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. Because many persons with disabilities face multiple barriers and require interventions funded by a multiplicity of agencies and programs, the agency also provides comprehensive case management/service coordination.
- The TANF agency takes steps to ensure that the person with a disability is applying for benefits for which the person or his/her children may be eligible, including benefits available through State-operated programs such as Medicaid, Children's Health Insurance Program benefits, Food Stamps, child care, transportation assistance.
- Where a family has a child whose disability affects the parent's ability to work, the TANF agency modifies its practices to facilitate the parent's compliance with an employment plan. For example, the TANF agency grants the parent an extension of time to meet work requirements until the time that specialized child care required by her child is available, or helps identify appropriate child care so that the parent can work. Similarly, where the parent does begin to work and then is unable to work because of the repeated need to leave work to care for the child with a disability, the TANF agency establishes procedures which ensure that the parent and her family are not sanctioned for the parent's inability to retain her job.⁽⁵⁶⁾
- Where a TANF beneficiary, as a result of a disability, needs intervening assistance, training, or treatment in order to continue working, the TANF agency provides it. When there is a break in a person's work or training due to a disability, the agency does not simply determine the person is no longer eligible for supports such as child care, transportation, and training when she is able to return to work or training. Further, time limits may be extended.

3. The Legal Requirement to Adopt Non-Discriminatory Methods of Administration

TANF agencies may not utilize methods of administration that have the effect of subjecting qualified individuals with disabilities to disability-based discrimination.⁽⁵⁷⁾

This legal requirement governs both activities engaged in directly by the TANF agency, as well as activities that the agency carries out through contractual or other arrangements.⁽⁵⁸⁾

The phrase "methods of administration" refers to the "official written policies" of the TANF agency and to the "actual practices" of the agency.⁽⁵⁹⁾

TANF agencies may need to fulfill their obligation to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination by TANF agencies by training staff to provide equal access to TANF programs for individuals with disabilities. Effective training is one means of ensuring that there is not a gap between a TANF agency's written policies and procedures, and the actual practice of employees in the front line interacting with persons with disabilities. Effective training ensures that employees are knowledgeable and aware of policies and procedures relating to persons with disabilities and are trained to work effectively with persons with disabilities. The TANF agency should also ensure that similar training is provided to staff of TANF contractors and vendors to help these providers carry out TANF activities that comply with Title II and Section 504.

TANF agencies may need to fulfill their obligation to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination by developing and implementing a comprehensive written policy that incorporates modifications made to policies, practices and programs. 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.

Finally, TANF agencies may need to fulfill their obligation to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination by conducting regular oversight of TANF programs and services to ensure that people with disabilities are being served. Agencies and service providers should also monitor their policies and procedures in all programs they administer regarding persons with disabilities and their implementation. For example, such monitoring should evaluate the current needs of TANF beneficiaries with disabilities, and determine whether existing screening and assessment tools and procedures are adequate, whether assistance provided is meeting the needs of such individuals, whether staff is knowledgeable about policies and procedures and how to implement them, and whether sources of and arrangements for assistance are current and viable. Further, the TANF agency should also establish procedures to monitor periodically all aspects of compliance with Section 504 and the ADA by service providers and other entities with whom it has entered into contractual or other arrangements.

Also integral to operating a non-discriminatory system consistent with Section 504 and Title II of the ADA is the obligation to establish several types of procedural safeguards, including procedures for processing ADA/504 complaints; procedures for addressing disability-related issues in placement; and procedures for raising disability-related problems prior to any imposition of sanction.

Promising Practices in Non-Discriminatory Methods of Administration

Examples of promising practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to employ non-discriminatory methods of administration include **appropriate training practices and the creation and implementation of written policies ensuring access for people with disabilities:**

- The TANF agency trains caseworkers and service providers to:

- (1) look for and recognize the possibility that an applicant or beneficiary has a disability;
- (2) treat TANF beneficiaries with disabilities as individuals, and not on the basis of disability-based stereotypes;
- (3) understand disability issues and services (including reasonable accommodations, reasonable modifications to policies, auxiliary aids and services), and referral arrangements and in the use of screening instruments;
- (4) work with agencies with specialized expertise in addressing the needs of persons with disabilities such as vocational rehabilitation agencies;
- (5) become knowledgeable about State policy regarding provision of services to persons exempt from work participation requirements; and
- (6) become knowledgeable about disability benefit programs such as SSI, SSDI, Medicaid, and Medicare, as well as other benefit programs.

- Through an interagency memorandum of understanding, a State provides cross-training for employees of its TANF and vocational rehabilitation agencies regarding the needs of TANF beneficiaries with physical and developmental disabilities, and the services provided to this population by each agency. (60)
- Under a contract with the State Department of Education, the State TANF agency hires a "disability support specialist" to train TANF case managers to identify TANF beneficiaries with learning disabilities and arrange for reasonable accommodations for these beneficiaries in the TANF work program. The disability support specialist also trains GED instructors to identify,

modify and adapt instructional materials to meet the needs of TANF beneficiaries with learning disabilities.(61)

- A State provides training to employees of various State agencies, including the TANF and vocational rehabilitation agencies, regarding the modification of teaching instruction, materials and policies and practices for adults with learning disabilities. The State also conducts a "train-the-trainer" workshop for other States in its geographical region.(62)

Examples of practices that, if effectively implemented, would assist TANF agencies in employing non-discriminatory methods of administration include monitoring compliance with Title II of the ADA and Section 504 and establishing procedural safeguards:

- The TANF agency monitors its staff, its contractors and its sub-contractors to ensure implementation of programs, projects and activities in a nondiscriminatory manner by analyzing data and records and conducting reviews. The agency imposes penalties on and requires corrective actions of contractors and sub-contractors for violations noted during a review. Additionally, the agency's monitoring rules include a process for reviewing policies and procedures.
- The TANF agency systematically and routinely investigates and assesses which beneficiaries are being sanctioned and why to determine whether or not beneficiaries who are sanctioned have a disability and whether the disability substantially contributed to the beneficiaries' noncompliance. The agency's ADA/Section 504 notice includes information regarding the right to have disability taken into account if disability is a basis of non-compliance.
- The TANF agency establishes and publishes procedures for resolving complaints under Section 504 and the ADA that follow the guidelines established by the Department of Labor for implementing the welfare-to-work programs and the Workforce Investment Act.(63)
- Where a beneficiary tells the TANF agency that the proposed work assignment is not compatible with his or her disability, the agency has a procedure in place that permits the beneficiary's claim to be fully considered before placement can be made.

APPENDIX 1

EXAMPLE OF PROMISING PRACTICE IN MODIFYING POLICIES AND PROGRAMS TO ENSURE EQUAL ACCESS

SAMPLE DIAGNOSTIC REVIEW CHECKLIST

Application Stage:

Notice/Information Issues

1. Do staff ask applicants whether assistance will be necessary during the application process due to disability?
2. Is this inquiry accompanied by examples of such assistance (e.g., "if you have a disability that affects your ability to understand or respond to questions in the application, we can help. For example, we can assist you by reading the questions to you; recording your answers, etc. Do you need this or another kind of help to fill out the application?").
3. When communicating with beneficiaries about TANF, does the agency routinely include further instructions for people with disabilities who need extra help in responding? Are these additional instructions easy to understand for those with developmental or mental impairments? Do the instructions include (1) TTY numbers for persons who are deaf/hearing impaired and (2) the location of accessible sites for people with mobility impairments?

4. Do TANF agency offices prominently feature posters or other signage alerting people with disabilities how they can obtain further assistance?

Initial Screening for Disability and Accommodation Needs

- Do initial intake procedures used by TANF staff include a screening of applicants to ascertain potential disability and accommodation needs? Do these intake procedures allow staff to ascertain whether the person may need a more comprehensive assessment to make such a determination?
- Are intake workers trained to recognize potential disabilities? If there is an initial indication that an individual has a disability that may impact his/her ability to successfully complete or benefit from a current or proposed program assignment based on applicant or beneficiary disclosure, an initial screening or other information, does the intake worker give the individual an opportunity for a more comprehensive evaluation or assessment?
- Do TANF workers inform individuals that they can disclose a disability and/or a need for a reasonable accommodation?
- Is it made clear that disclosure of disability is voluntary?
- Are screening instruments validated for the purpose for which they are used?

Assessment of Accommodation Needs for People with Disabilities

1. Does the agency provide for an assessment after initial intake where appropriate? Does the assessment determine:

- Whether the individual has one or more disabilities;
- Nature of the disability;
- Extent to which an applicant is capable of employment or participation in employment-related activities;
- Under what conditions the individual is capable of employment;
- Implications of the disability on immediately securing employment;
- Appropriateness of a particular work assignment;
- The need for reasonable accommodations, reasonable modifications to policies, provision of auxiliary aids and services and communication assistance, and/or additional training and education; and
- Applicability of work participation rules and time limits, and the appropriateness of applying sanctions.

2. Is it clear that participating in an assessment is voluntary?

3. Are qualified personnel conducting these comprehensive assessments?

4. Where necessary to ensure equal opportunity for individuals with disabilities, does the TANF agency involve in the assessment process medical, psychological, vocational, and rehabilitation experts who are trained in making assessments of adults with disabilities related to employment?

Job Training/Education Stage

1. Where a TANF program features training or educational opportunities, are these opportunities accessible for beneficiaries with disabilities? Specifically, are they accessible for people with mobility impairments? People with impairments affecting communication? People with developmental impairments? People with mental or emotional impairments?

2. To the extent these job training and education programs are operated by other agencies or entities, are TANF agency staff trained in how to get beneficiaries with disabilities enrolled in these programs?

3. To the extent these programs are operated by other agencies or entities, has the State or primary TANF agency made the other entities aware of their obligations under the ADA and Section 504 to modify policies and procedures to ensure that people with disabilities have an equal opportunity to benefit?

4. How does the TANF agency monitor how individuals with disabilities function in training programs? Is there a method in place to ensure close tracking of whether an individual's accommodation needs are being met?

Work Program Stage

1. Was there a determination of whether modifications or accommodations to job opportunities are necessary due to disability?

2. Is the TANF agency working with employers to ensure that employers are aware of ADA obligations regarding reasonable accommodations for individuals with disabilities?

3. Is the agency working with employers to ensure that beneficiaries with disabilities are not steered to dead-end jobs?

4. How does the TANF agency monitor how individuals with disabilities function in job placements? Is there a method in place to ensure close tracking of whether an individual's accommodation needs are being met?

5. Is the agency ensuring that potential obstacles to sustaining employment for people with disabilities are being addressed?

1. "Civil Rights Laws and Welfare Reform—Overview" and "Technical Assistance for Caseworkers on Civil Rights Law and Welfare Reform," Office for Civil Rights, U.S. Department of Health and Human Services, August 1999, <http://www.hhs.gov/ocr/tanfintro.htm>.

2. 64 FR 17793 (April 12, 1999).

3. For ease of reference and readability, in this guidance we use the term "TANF agency" to mean both "covered entities" as defined by Section 504 (including any State or local agency, private institution or organization, or any public or private entity that (1) operates, provides or engages in health or social service programs and activities and that (2) receives federal financial assistance from HHS directly or through another recipient/covered entity), and State and local governmental entities covered by Title II of the ADA.

4. P.L. 104-193. This legislation is codified at 42 U.S.C. §601 et seq. Regulations implementing the legislation may be found in 45 C.F.R. Parts 260-265.

5. Section 401 of TANF (42 U.S.C. §601); 45 C.F.R. §260.20. While this guidance focuses largely on the first and second purposes of TANF, the information in the guidance also applies to the third and fourth purposes.

6. 64 FR 17722 (April 12, 1999).

7. Section 408(d) of TANF, 42 U.S.C. §608(d); 45 C.F.R. § 260.35.

8. Presidential Task Force on Employment of Adults with Disabilities, "Re-charting the Course: First Report of the Presidential Task Force on Employment of Adults with Disabilities" at Appendix-17 (November 15, 1998), <http://www.dol.gov/sec/public/programs/ptfead/1998rpt/1998rpt.txt>, (hereafter "Re-charting the Course"). The Task Force was established pursuant to Executive Order 13078 (March 13, 1998). Other statutory requirements affecting the civil rights of beneficiaries with disabilities in the

context of welfare to work may also apply. See, e.g., Section 188 of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. § 2938, and its implementing regulations at 29 C.F.R. Part 37. These provisions bar discrimination on various grounds, including disability, in programs and activities that are operated by One-Stop partners and are part of the One-Stop Center delivery system established by the WIA, even if the programs are not physically located within a One-Stop Center. See 29 C.F.R. §§ 37.2(a)(2), 37.4 (definition of "recipient"). If States opt to include their TANF programs as part of their One-Stop systems, their programs may be subject to the jurisdiction of the Department of Labor's Civil Rights Center.

9. Id.

10. Eileen P. Sweeney, *Recent Studies Indicate that Many Parents Who are Current or Former Welfare Recipients Have Disabilities or Other Medical Conditions*, Center on Budget and Policy Priorities, February 2000, <http://www.cbpp.org/2-29-00wel.htm>. Of course, not every person with such disorders or conditions is covered by the ADA or Section 504. Individuals are protected by these statutes when their physical or mental condition substantially interferes with a major life activity. See discussion of legal definition of disability in Part C, infra.

11. "Re-charting the Course" at page 5; Presidential Task Force on Adults with Disabilities, *Re-charting the Course: If Not Now, When? The Second Report of the Presidential Task Force on Adults with Disabilities*, at 1, (Nov. 15, 1999), <http://www.dol.gov/dol/sec/public/programs/ptfead/ifnotnow.htm>. Other barriers include the lack of adequate care for a child with a disability and inaccessible or non-existent transportation. See, e.g., Timmons, Jaimie Ciulla, Susan Foley, Jean Whitney-Thompson and Joseph Green, *Negotiating the Landscape: The Path to Employment for Individuals with Disabilities in the TANF System*, Institute for Community Inclusion/UAP Research and Training Center on Promoting Employment, Children's Hospital, at 27-28 (March 1999), <http://www.childrenshospital.org/ici/publications/text/tanfntext.html>.

12. See, e.g., "Civil Rights Laws and Welfare Reform-- An Overview" and "Technical Assistance for Caseworkers on Civil Rights Law and Welfare Reform," Office for Civil Rights, U.S. Department of Health and Human Services, August 1999, <http://www.hhs.gov/ocr/tanfintro.htm> (stating that although individuals with disabilities may be eligible under some State programs for exemptions from work requirements and time limits, program providers may not refuse to allow a person with a disability to participate in training programs or be employed because the person has a disability).

13. Id.

14. 28 C.F.R. Part 35.

15. 45 C.F.R. Part 84.

16. See 28 C.F.R. Part 35, Appendix A, § 35.130(b), at 466 (Department of Justice commentary to ADA Title II regulations, identifying regulatory provisions as "intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do."). See also *School Board of Nassau County, Fla. v. Arline*, 480 U.S. 273, 284 (1987) (Supreme Court decision stating that Section 504's "basic purpose" is "to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others.")

17. See 28 C.F.R. § 35.130(b)(1)(ii), (iii), (iv), (vii) (ADA regulations); 45 C.F.R. § 84.4(b)(1)(ii), (iii) (Section 504 regulation). See also *Alexander v. Choate*, 469 U.S. 287, 304-06 (1985) (Supreme Court decision, discussing proper interpretation of HHS' Section 504 regulations requiring that individuals with disabilities be provided with health and human services that offer an equal opportunity to benefit from such programs and thus, are "as effective" as services provided to individuals without disabilities).

18. See Choate at 301-07 (discussing proper interpretation of Section 504 requirement that individuals with disabilities have meaningful access to federally assisted benefits).
19. See 28 C.F.R. § 35.130(b)(7), 28 C.F.R. § 35.149-151; 28 C.F.R. § 160-164. See also Choate at 301 (eligibility for federally assisted benefits "cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made.")
20. 28 C.F.R. §35.130(b)(3); 45 C.F.R. §84.4(b)(4).
21. See 42 U.S.C. § 2000d-4a (defining "program or activity" with respect to the applicability of Section 504 in federally-assisted programs).
22. See 28 C.F.R. § 35.130(b)(1)(ii),(iii) (ADA regulation); 45 C.F.R. § 84.4(b)(1)(ii),(iii) (Section 504 regulation).
23. See 42 U.S.C. § 608(b)(1); 45 C.F.R. § 261.11.
24. We recognize that TANF agencies may benefit from further technical assistance concerning certain issues related to screening and assessment, including appropriate agency decisions regarding which beneficiaries should be offered screening or assessment, the point at which screening or assessments should be offered to beneficiaries, agencies' obligations if a beneficiary refuses to disclose a disability or refuses an accommodation that is offered after screening or assessment, and how TANF agencies can appropriately implement screening or assessment practices.
25. TANF agencies should also protect the confidentiality and privacy of information regarding the existence of disability. Employers are subject to specific requirements with respect to obtaining information about the disabilities of employees and job applicants. See 42 U.S.C. § 12112(d); 29 C.F.R. §1630.14 (ADA statutory and regulatory provisions governing disability-related inquiries in the employment context); See also U.S. Equal Employment Opportunity Commission, "Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act," (July 27, 2000), <http://www.eeoc.gov/docs/guidance-inquiries.html>, and other information available on the EEOC website, <http://www.eeoc.gov>.
26. The ADA and Section 504 prohibit TANF agencies from utilizing "methods of administration" that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. See 28 C.F.R. § 35.130(b)(3)(I) (ADA regulations); 45 C.F.R. § 84.4(b)(4) (Section 504 regulations). Commentary to ADA regulations makes clear that the "methods of administration" covered by these ADA includes agencies' "official written policies" and "actual practices." See 28 C.F.R. Part 35, Appendix A § 35.130, at 467 (1996).
27. Regulations promulgated under the ADA and Section 504 prohibit the provision of "different or separate aid, benefits or services" to people with disabilities "unless such action is necessary to provide [these individuals] with aid, benefits or services that are as effective as those provided to others." See 28 C.F.R. § 35.130(b)(1)(iv) (ADA regulations); 45 C.F.R. § 84.4(b)(1)(iv) (Section 504 regulations).
28. 28 C.F.R. § 35.130(d).
29. 28 C.F.R. § 35.130(b)(1)(iv); 28 C.F.R. § 35.130(b)(2) (ADA regulations); 45 C.F.R. § 84.52(a)(5) (Section 504 regulations). For example, a TANF agency should establish an explicit practice of allowing qualified individuals with disabilities access to all services and programs that are a part of the State's TANF program.
30. See 28 C.F.R. § 35.160(b) (ADA regulations); 45 C.F.R. § 85.52(d) (Section 504 regulations). For example, if a TANF agency generally provides printed information about job training programs, it must, where necessary and not a fundamental alteration, provide this information in Braille or on audiotape for