

Testimony of the Legal Aid Society, Civil Practice
Hearing on New York State's TANF-funded Welfare to Work Program
Assembly Standing Committee on Social Services
November 20, 2008

Introduction

My name is Susan Welber, and I am a staff attorney at the Legal Aid Society in New York City where I assist clients with public benefits issues. We appreciate the opportunity to come before you today to comment on our clients' experience with New York City's "welfare to work" programs and offer State-level policy recommendations that would benefit welfare recipients throughout the State and help mitigate the effects of the financial crisis facing all New Yorkers.

The Legal Aid Society is the nation's oldest and largest non-profit law firm dedicated to serving low-income families. The Society's Civil Practice has offices in every borough of the City, handling more than 30,000 civil matters for its clients each year and wins over 90 percent of the cases that go to court or administrative hearing. An additional two million individuals benefit from our pending class action litigation. The Civil Practice works to improve the lives of needy New Yorkers by helping vulnerable families and individuals on issues ranging from health care, housing, employment and training, economic development, public assistance, immigration, domestic violence and disability-related issues.

Through our Public Benefits practice, we represent a large number of clients who are forced to rely upon public assistance to get through difficult times that are often caused by a change of circumstances such as unemployment, disabling medical and mental health conditions, domestic violence, homelessness or even the need for child care. Our clients usually have two goals when they seek out public assistance. In the short-term, they seek to obtain and maintain subsistence income so they can keep a roof over their heads or end a period of homelessness and feed their children. In the long-term, they seek a path to a more stable income, whether through acquiring skills and education that will facilitate employment, finding paid employment directly or obtaining a more adequate level of public benefits they may qualify for such as Social Security.

Through our Employment Law Project, we also represent hundreds of low-income workers in Unemployment Insurance hearings and appeals and provide advice to workers through a hotline and a table at the Unemployment Insurance hearing waiting room.

The Economic Downturn Necessitates Action on the Part of All Levels of Government to Alleviate Hardship Among the Neediest New Yorkers

As the economic crisis grips New York City and State, increasing numbers of recently unemployed workers will likely seek refuge through safety net benefits programs such as cash assistance and Food Stamps. Governor Patterson has projected that over 160,000 New Yorkers will lose their jobs during the current economic downturn. We are certainly hoping that a new Congress and administration in Washington D.C. will address some fundamental flaws in the

federal welfare reform policies that make it difficult for those forced to rely on public assistance to make it back to work. In the interim, we believe there are several steps that the State Legislature can take to ameliorate these flaws – first among them the most stringent “work first” requirements that ultimately serve to hinder our clients’ ability to obtain good jobs and stay off of welfare in the long-term.

Among the most pressing problems we have identified with New York State’s welfare to work policies, through the lens of our work with thousands of individual clients in New York City, are the following:

First, public assistance application rules interfere with clients’ ability to secure jobs and keep them;

Second, clients who make it through the application process suffer an unacceptable number of sanctions which affect their ability to leave welfare by disrupting child care, educational activities and exacerbating housing instability;

Third, clients have difficulty accessing education and training necessary to meet their needs;

Fourth, clients who find work suffer unnecessary case closings which prevent them from making a smooth transition from welfare to work and adversely affect the State’s TANF participation rate; and

Fifth, households that do find full time employment are losing out on the opportunity to receive federally-subsidized “transitional benefits.”

How can the State address these issues and improve the success of welfare to work policies? Below we discuss the major problems in more detail and supply recommendations for addressing them.

Major Problems with Welfare to Work Policies and Recommendations

Problem 1: Public assistance application rules interfere with clients’ ability to secure jobs and keep them.

State rules require that employable applicants for Safety Net Assistance (SNA) endure a 45-day waiting period for benefits. Families applying for SNA or Family Assistance (FA) are required to wait up to 30 days. In New York City, this waiting period is spent in job readiness and job search activities coordinated by “Back to Work” (BTW) vendors who contract with HRA.¹ Applicants are required to attend BTW full-time. They engage in BTW activities for 8

¹ BTW is merely one aspect of New York City’s welfare to work programs, but its failures well illustrate the urgent need for reform, especially as we face the prospect of increased unemployment. A recent report by Community Voices Heard on BTW documents many of the problems with the program. See Alexa Kasden & Sondra Youdelman, “Missing the Mark: An Examination of NYC’s Back to Work Program and its Effectiveness in Meeting Employment Goals for Welfare Recipients,” Community Voices Heard (November 2008) (hereinafter, “CVH”), accessible at <http://cvh.mayfirst.org/files/Missing%20the%20Mark%20-%20Final%20Report.pdf>. The study finds that merely 17 percent of applicants finish the 45-day waiting period. CVH at 50, fig. 6. Notably, the study also finds that only 9 percent of BTW participants found jobs through the program. CVH at 4.

hours a day, five days a week. During this waiting period, applicants receive no ongoing assistance other than for transportation necessary to fulfill their BTW duties. They are also eligible for an immediate needs grant if they apply, which is \$18.65 meant to account for five days worth of living expenses. There are two major ways the application process described above interferes with clients' ability to secure and keep jobs.

Applicants who only recently lost their jobs are especially suited to take advantage of recent contacts and connections and may have their best chances of securing work on their own during this critical time. Those applicants who have recently lost their jobs need flexibility not currently available under the rigid BTW attendance rules so they can find a job on their own. Other workers who recently lost their jobs may be eligible for Unemployment Insurance Benefits ("UIB"). We have heard reports of recently unemployed applicants being told by HRA staff that they should "get a UIB denial" before applying for benefits. Rather than assuming a denial, recent workers who are potentially eligible for UIB should receive assistance in obtaining these benefits.

Those applicants who face serious barriers that require time to overcome are also ill-served by the 30 to 45-day waiting period spent on job search through BTW. For these clients, a rigid job search requirement and stringent federal reporting requirements amount to a lack of flexibility in the BTW program that hinders their attempts to not only obtain welfare, but deal with their barriers and eventually move on to work. Although clients referred to BTW during the waiting period are deemed "employable" pursuant to an initial HRA screening at the time of application, many clients are still dealing with a barrier that led them to seek public assistance in the first place. Dealing with such problems makes it difficult for these clients to dedicate 35 hours a week to participation in the BTW program. Some are simply not employable. The initial HRA screening process largely relies on self-identification of domestic violence and disability issues, for example. Even where clients do self-identify, the screening tools are not foolproof. Others may be employable, but need substantial time to deal with threatened eviction, homelessness, an illness in the family or a transition from incarceration to everyday life. Each of these situations make full-time employment nearly impossible in the short term, and yet these very same clients are required to participate full-time with BTW. Their difficulties are compounded by the lack of any support other than the transportation allowance and emergency grants they receive during the waiting period.

Recommendations:

1. New York State should advocate for federal relief needed to weather the economic downturn. Specifically, to reduce the incentives created by federal participation requirements and caseload reduction credit to keep caseloads low even when need for assistance is rising, New York State should advocate for relief from federal fiscal penalties to (1) allow increased flexibility and innovation with respect to helping employable applicants find work; and (2) prevent New York from losing federal TANF money should the State fall short of federal participation rate targets.
2. Public assistance application requirements should be changed State-wide to increase flexibility that will facilitate addressing clients' immediate needs for benefits and rapid re-entry into work where possible:

- Adopt A.1085, sponsored by Assemblymember Wright, which would eliminate the 45-day waiting period for SNA applicants to allow clients to address the crises and barriers that cause their need for public assistance in the first place.
 - Provide automatically recurring grants for immediate needs until cases become active. For some clients, this will be enough to get them through a transition period before reentering the work world.
 - Allow clients to customize their job search so that they can better take advantage of contacts and connections, especially when only recently unemployed.
3. Facilitate better coordination between local welfare to work programs and State-funded programs for the unemployed operated by the State Department of Labor and programs for the disabled operated by VESID:
- Applicants for public assistance should be immediately screened for UIB eligibility. Those applicants who are likely eligible should be offered assistance in obtaining UIB, including through referrals to agencies that have expertise in this area.
 - Consolidate and streamline UIB and public assistance eligibility processes to provide for a seamless transition from UIB to public assistance, where necessary.
 - Where applicants for public assistance are already enrolled in the VESID program for rehabilitation services and training, they should be exempt from “work first” requirements and be allowed to continue with VESID activities during any waiting period.

Problem 2: Clients who do get through the waiting period suffer an unacceptable number of sanctions which affect their ability to leave welfare for work.

Those clients who do make it through the arduous waiting period, sometimes only after multiple attempts to become eligible, suffer an unacceptable number of sanctions which affect their ability to leave welfare. Under Social Services Law section 342, when a client is sanctioned, he or she loses assistance for up to six months for failure to comply with public assistance employment programs, even if the client is willing to comply with work rules immediately and, in many cases, even though he or she had a good reason for missing an appointment or a day of a work assignment. The duration of the sanction depends on how many prior sanctions have been imposed on the case. A client with a family loses his or her pro rata share of assistance during the duration of the sanction; whereas a single-person household has his or her case closed. According to HRA’s own data, as of October 12, 2008, roughly one-quarter of engageable recipients of cash assistance were either being sanctioned (13.9 percent), or in the process of being sanctioned (10.3 percent).

Clients are often not to blame for sanctions placed on their case. Although sanctions are meted out as a punishment intended to exact program compliance, many sanctions are not caused by any failure to comply on the part of the welfare recipient. In order to impose a sanction a finding of willfulness is required. However, in reality, this is almost never the case. More often, operational errors cause sanctions. In large part, this is due to HRA’s use of a method of administration called “autoposting.” Through autoposting, once the time for a client appointment has passed, the computer will automatically generate a “failure to report” code, unless an HRA staff person affirmatively records the recipient’s attendance in the computer. Often clients are hit with a sanction despite having attended an appointment or having received an excuse for their absence from their worker because the worker fails to record the attendance

or excuse in the computer. Sanctions also happen when HRA sends appointment notices to a wrong address even though the client has informed HRA that her address has changed.

Sanctions often result in a loss of any momentum the employable client has found toward employment and self-sufficiency. Disqualification for lengthy periods of time runs counter to the goal of the State's public assistance employment programs to assist persons in need of public assistance in enhancing their work skills and in moving expeditiously into private, paid employment. Needless to say, it also represents a crushing hardship for individuals who lose all cash aid for periods of three, five or six months and for families who lose all aid for the sanctioned individual for a period of three or six months. There are other consequences to being sanctioned. For example, a client engaged in education will lose her child care, making continued attendance at school or other educational programs nearly impossible. Sanctions also often result in a loss of a public assistance based rent supplements such as FEPS, causing the accrual of rent arrears and housing instability and putting families at risk of homelessness. Ultimately, sanctions result in the same types of instability that drive clients to seek public assistance in the first place. States as diverse as Arkansas, Maryland, Massachusetts and Utah have rejected punitive sanctions and now impose sanctions that last only until an individual is willing to comply.

Recommendations:

The State should adopt policies that reduce the adverse effect sanctions have on moving people from welfare to work:

- Amend SSL § 342 to eliminate incremental, durational sanctions. Follow the lead of other states which have rejected punitive, durational sanctions and instead have adopted sanctions that last only until an individual complies with program requirements.
- Short of eliminating durational sanctions, revive the "clean slate" policy, so that periodically clients have the opportunity to re-set the sanction clock and start over.
- Require local departments of social services such as HRA to address underlying operational problems that lead to excessive sanctions. Specifically, HRA should be required to eliminate autoposting and should address mailing problems.

Problem 3: Clients have difficulty accessing education and training to meet their needs.

Education and training are the surest route out of poverty. A recent survey conducted by the U.S. Census Bureau shows that workers in New York State earn more with higher levels of education. The survey found that workers age 25 and over with less than a high school degree have median annual earnings of approximately \$19,000. Those same workers who finished high school or a GED, have a median salary of approximately \$27,000. Some college or an associate's degree raises the median earnings to \$34,000, and a bachelor's degree raises earnings even higher to \$48,000. See U.S. Census Bureau, 2006 American Community Survey, "Median Earnings in the Past 12 Months (in 2006 Inflation-Adjusted Dollars) by Sex by Educational Attainment for Population 25 Years and Over," available at: www.census.gov.

Despite the relationship between education, training and leaving poverty, a small

percentage of welfare recipients in New York State fulfill their work requirements through these activities. According to HRA's own data, as of October 12, 2008, only 2.2 percent of engagable recipients of public assistance were enrolled in education and training.

Fortunately, changes to the Final TANF Rule that were issued in February 2008 offer states the opportunity to facilitate enrollment of a greater number of public assistance recipients in education and training activities. The Final TANF Rule permits States to count programs that lead to a baccalaureate or advanced degree as part of the definition of "vocational educational training" and "job skills related to employment," and permits hours spent on homework to be counted as an allowable work activity. OTDA has acted quickly and issued a directive that permits homework to be counted as a work activity. See 08-ADM-07. The Legislature should amend the Social Services Law and take advantage of these long-awaited changes in counting educational activities.

Recommendations:

The State can increase educational and training opportunities by implementing the recent changes in federal TANF rules as soon as possible:

- Adopt A.11297, sponsored by Assemblymember Wright, as soon as possible to take advantage of changes in federal TANF rules and allow enrollment in a college degree program or other advanced degree to count as a work activity for the purposes of federal participation requirements.
- Amend SSL § 335-a to require that adults without dependent children's preferences for education and training be recognized just as are the preferences of adults with dependent children.

Problem 4: Those welfare recipients who do find work often face case closings despite continued financial eligibility for welfare, jeopardizing their ability to maintain employment and adversely affecting New York City's participation rate.

Welfare recipients with dependent children retain financial eligibility for public assistance as long as they do not earn more than 185 percent of the poverty line for their family size. The earnings of such families are subject to an "earned income disregard" which is currently 50 percent. The earned income disregard is essential to help families, especially those whose earnings are at the minimum wage level, to escape poverty, as they are able to retain their earned income and maintain eligibility for public assistance, maximize their income and retain public assistance administered rent subsidies that are often necessary for low wage earners to afford high New York City rents. The earned income disregard also helps New York City to meet federal participation requirements because clients' work counts towards New York State's participation rate.

Yet many families who would qualify for the earned income disregard are not receiving it because HRA erroneously calculates their income to exceed the 185 percent level. This happens because sometimes a first pay check represents more weeks of work than other pay checks that reflect a week or two week period. Consequently, the worker's average weekly earnings are over-estimated, and, rather than apply the disregard, their cases are closed. Seasonal workers and workers with sporadic earnings are also at risk of losing benefits because the amount of their

earnings is over-estimated or not calculated properly under existing State rules. As more and more State residents are limited to part-time employment in a failing economy, more residents are at risk of losing housing subsidies and accessible child care. The State and its localities lose out on the opportunity to maintain and increase the participation rate by assuring that paid employment of these recipients gets counted as a work activity.

Recommendations:

- Adopt A.10467, sponsored by Assemblymember Wright, which would amend the Social Services Law to repeal the 185 percent rule and increase the earned income disregard to 67 percent.
- Expand application of the Earned Income Disregard to the earned income of adult recipients without dependent children.
- Require OTDA to track and audit cases closed or rejected due to earnings to identify system errors and insure that eligible clients are not denied in error. Require OTDA to report to Legislature on its findings. Resolution of erroneous denials has the added benefit of increasing New York's participation rate.
- Improve procedures for handling sporadic earnings to ensure those eligible for public assistance are not denied, and require OTDA to track and audit cases closed due to sporadic earnings and report its findings to the legislature.

Problem 5: Households that do find full-time employment are losing out on the opportunity to receive “transitional benefits.”

Despite finding employment, even those households who are properly found to exceed the 185 percent rule face the added burden of losing out on “transitional benefits” to which they are entitled. Such benefits include child care for twelve months and continued receipt of Food Stamps for up to five months as well as transitional Medicaid. Each of these transitional benefits are federally funded, all or in part. CVH's study found that only 10 percent of BTW vendor sites met or exceeded HRA's requirements in presenting transitional benefits to clients. CVH at 39. Only 5 percent of BTW participants who left welfare for work were helped to apply for transitional benefits. Id. Such transitional benefits are essential for making a smooth transition from welfare to work.

Recommendations:

- Require OTDA to track and audit clients who have had cases closed due to earnings and determine what percentage receive transitional benefits and for how long. Require OTDA to report to the Legislature on these findings.
- Require local districts to improve percentage of cases that receive transitional benefits by at least 25 percent.

Conclusion

We at the Legal Aid Society remain available to answer any questions the Assembly's Standing Committee on Social Services may have about policies that can be changed to assist New Yorkers move from welfare to work. Thank you for this opportunity to present this information based on the experience of our clients.