

Kenneth R. Stephens
Legal Aid Society
Civil Appeals and Law Reform Unit
199 Water Street
New York, N.Y. 10038

212 577 3988
212 509 8753
kstephens@legal-aid.org

THE IMPACT OF TANF REAUTHORIZATION IN NEW YORK

My name is Kenneth Stephens and I am a staff attorney at the Legal Aid Society in New York City. Thank you for the opportunity to present testimony today on this issue that is so critical to low-income 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 Division include approximately 125 attorneys and paralegals who provide services to the City's low income residents on issues ranging from health care, housing, employment and training, economic development, public assistance, immigration and domestic violence as well as disability-related issues. In our disability practice alone, we regularly provide services to more than 1,000 individuals each year, helping them with information, advice, or direct representation before the Office of Hearings and Appeals or in federal court. Our comments today are based on our experiences in dealing with low income New Yorkers, disabled clients, the City Human Resources Administration and the State Office of Temporary and Disability Assistance, as well as our consultations with colleagues in other legal services organizations and non-profit policy analysis groups. We sincerely hope this the beginning, or really a continuation, of a dialogue among advocates, legislators and representatives of the executive branch over the next several months, which could prove critical to low income New Yorkers.

This year the state of New York led by the Assembly and the Senate will be faced with the daunting task of implementing the new federal requirements created as a result of TANF reauthorization recently made law through the Deficit Reduction Act. Unfortunately, much of what is included in that legislation could put poor New Yorkers and their children at risk of slipping deeper into poverty. With your leadership, hopefully, we can avert that disaster. We can make an investment in vocational and educational training opportunities and transitional services and give clients a true path out of poverty. We can also ensure that those who are eligible receive the federal disability benefits to which they are entitled.

Reject the "Low-road approach" and Full-Family Sanctions

New York does not need to take the "low road" to meet the federal TANF participation rates. Because the federal statute has set a new baseline for the state to measure its performance, New York will have to show that an increasing number of individuals receiving assistance are

engaged in work related activities, have left the caseload or have secured employment. It may be tempting to take a short-cut approach and attempt to merely knock people off the welfare caseload. But the truth is that the federal statute will not allow New York to do this. Although the Governor has proposed full family sanctions as an approach to address New York's TANF participation rate, federal law casts serious doubt as to whether New York would even receive any credit for families knocked off the caseload due to this type of change.¹ These regulations specifically bar states from taking credit for reduced caseloads achieved by imposing more stringent public assistance rules. Thus, full-family sanctions would not achieve any result other than pulling the safety net out from under thousands of poor New York children.

In New York City, we saw the impact of families left without a safety net when for a time during the 1990's HRA used an aggressive "diversion" approach to turn families away from public assistance. At that time, we were forced to file a lawsuit *Reynolds v. Giuliani* to preserve clients' rights to apply for benefits and secure emergency benefits. At the time we filed that case in 1998, we submitted evidence from New York City emergency food providers that they had been overwhelmed with requests for food. The requests were too great to meet and many emergency food pantries closed to clients because they ran out of food.

Take the "High Road": Invest in Clients to Ensure they Get Good Jobs, and Keep Them and Help Disabled New Yorkers Secure Federal SSI Benefits

The new TANF statute requires the Secretary of Health and Human Services to promulgate regulations defining allowable activities under TANF and how these activities should be measured. The Secretary can also amend regulations which will affect the type of transitional benefits which can be provided to clients without penalty. **We recommend that the legislature and the Governor advocate with HHS for regulations which allow the State enough flexibility to allow the maximum range of countable activities and transitional benefits which will enable clients to secure decent jobs that enable them to leave public assistance. We also recommend that New York increase funding targeted at disabled individuals in order to assist them in securing federal SSI disability benefits – which would allow them to leave public assistance.**

Increase Access to Education and Training

Why take the high road and make the investment? It works. We know that those who lack skills and education have a more difficult time getting jobs. At the Legal Aid Society, we know this because of our work as co-counsel on the court case *Davilla v. Eggleston*. In that case, we came to a sensible solution in an historic settlement with the New York City Human Resources Administration and the Office of Temporary and Disability Assistance which enables TANF participants to count educational and training activities approved by HRA toward their participation requirements. The lead plaintiff in that case, Evelyn Davila, tells the story better than anyone. Ms. Davila was enrolled in an 11-month training program to become a

¹ See 45 C.F.R. §262.42(a)(1).

phlebotomist – a medical technician who draws and tests blood. Yet HRA insisted that she give up her studies and instead participate in its Work Experience Program cleaning parks. Because of the agreement in the case, Ms. Davila was allowed to complete her studies and ended up securing a job that pays \$13 per hour – allowing her to leave the welfare rolls for good.

We cannot allow the Washington bureaucracy to lead us down a path that would reverse these hard won gains. In the spirit of Ms. Davila and the thousands like her, **we urge the legislature, the Governor, and New York State Office of Temporary and Disability Assistance (OTDA) to advocate as strongly as possible that the regulations drafted by HHS increase access to education and training to the maximum extent allowable under the federal statute. We know that this represents the best path for our clients and constituents to secure good jobs in the competitive economy. We must insist to those who so recently extolled the virtues of decentralization, and locally developed solutions to the problems of we confront, do not, at this critical juncture, leave us hamstrung by restrictive regulations that would undermine our best efforts to address the brutal impact of poverty which still afflicts 20% of all New Yorkers.**

Allow Flexible Activities for Disabled Clients and Help Them Get SSI

What about clients with barriers to work? There is no question that an increasing portion of those receiving public assistance have disabilities. According to the Human Resources Administration, 55% of the TANF caseload are individuals with barriers which prevent them from fully engaging in traditional employment activities.² Many of these individuals have disabilities which, if properly assessed, treated, and accommodated, would allow them to ultimately secure employment. Many others have disabilities which are so severe that they cannot perform jobs in the competitive economy and should instead be provided federal disability benefits.

In New York City, HRA has set up a program known as WeCARE to serve this population. WeCARE is targeted at identifying the barriers each disabled individual has to securing jobs and assisting them with appropriate treatment, vocational, educational, training or work activities to help them overcome those barriers. WeCARE also refers disabled individuals for federal disability benefits. Although we have some disagreements with the way in which this program was implemented by HRA, we certainly agree with its goals. We agree with the goals of WeCARE and that **the regulations drafted by HHS should allow clients to participate in the maximum amount of rehabilitative activities such as treatment, rehabilitation, vocational training, and work readiness.**

There is one other way that the State could achieve better performance under TANF: by helping disabled individuals get SSI disability benefits. These individuals who do secure these federal benefits receive increased benefits; leave the public assistance caseload; and the federal

Testimony of David Hansell 2/10/2005 before House Ways and Means Committee at 1.

government reimburses the state for all of their public assistance benefits paid from the date of their SSI applications. We are grateful that the legislature has funded a state Disability Advocacy Program which funds civil legal services programs throughout the state to represent poor New Yorkers in SSI cases.

DAP advocates have achieved an average “win” rate of over 80%, significantly higher than the national average. Such a high success rate has resulted in considerable “cost avoidance” for the state – helping people obtain more appropriate federal disability benefits results in an average of almost a \$6000 savings in state public assistance expenditures per successful case.

The DAP program has been a tremendous success; every dollar provided to fund legal services has been more than recouped each year through direct payments from the federal government, and the avoided costs of non-reimbursable Safety-Net expenditures that would otherwise be borne by State and local governments. The funding should be increased and the program should be expanded to serve SSI applicants

With increased funding, the DAP program could serve more clients and return more savings to state and local governments. The program currently only focuses on appeals and could be expanded to assist poor New Yorkers who apply for these federal benefits. Helping clients at the initial application level could improve the allowance rate greatly. Less than 40% of clients who apply for SSI win at the initial level – but more than 60% who file appeals win. However, the average wait for an appeal decision is one to two years – all while the client is on the public assistance caseload. Many times, clients need help gathering sufficient evidence to win. Funding the DAP program to help clients at the application stage would allow many more clients to win SSI benefits, would save the state money, and would decrease the denominator for the TANF participation rate. Indeed, reliable estimates indicate that at any given time, more than 10% of the public assistance caseload are individuals who *should* be receiving federal SSI or disability benefits. Helping these individuals obtain the benefits they are entitled to will prove to be one of the most cost-effective measures the State can undertake to meet its participation requirements.

Focus on Transitional Benefits and Improve Them

What happens when clients leave the caseload? Do they keep their jobs? Unfortunately, too often the answer is no. In New York, cycling back onto the caseload is a significant problem. In fact, an analysis of one study found that of those who left the welfare rolls for employment, only 30% managed to be “continuously employed” one year later.³ And even more troubling, that

³ Office of the State Comptroller, *Staff Analysis of New York State’s Welfare Evaluation Report: After Welfare: A Study of Work and Benefit Use After Case Closings* (Albany, NY: Office of the State Comptroller, November 2000), p. 1, available from: www.osc.state.ny.us/reports/welfare/welf11-00.pdf, accessed March 1, 2006, analyzing Terrence Maxwell, *After Welfare: A Study of Work and Benefit Use After Case Closing (Revised Interim Report)* (Albany, NY: The Nelson A. Rockefeller Institute of Government, December

same analysis showed that 27% of those who left the caseload returned to the rolls within two months. In New York City, another study looked at the percentage of cases that left the caseload and then reapplied for benefits –known as “cycling.” **This study found that between 1996 and 2001, reapplications for public assistance increased 142 %, from 25,348 to 61,303. left welfare returned.**⁴ So, it is clear that we have to look at the TANF caseload in the big picture and focus on long-term solutions which provide a real route out of poverty.

Do we know what effective supports clients need to stay employed? Yes. They need transitional Medicaid, Food Stamps, child care, transportation assistance and housing assistance. We can do two things to increase access to these benefits for New Yorkers who are leaving the public assistance caseload for work. First, transitional benefits should be enhanced. Second, transitional benefits should be managed so they are actually awarded to clients.

Transitional benefits can be enhanced through regulation. Transitional benefits do not count as public assistance benefits if they fall outside of the definition of “assistance” provided in the regulations. **Thus, we recommend that the legislature and OTDA urge HHS to amend its regulations to allow a broader definition of non-assistance so that families could receive housing subsidies, child care and transportation to enable them to keep their jobs.**

We can also do a better job of managing these benefits to ensure that they are actually awarded to clients. Under the current system, there is little incentive for most welfare workers to inform clients about appropriate transitional benefits and earned income disregards – rather than just closing out their cases. In many cases, clients are told by their workers to just not pick up their next check or just not show up for their next recertification appointment. As a result, many clients who leave the caseload with a job are likely not recorded as working on the local district’s statistical summary. In addition, many clients do not know that they can receive earned income disregards and transitional benefits.

Again, on behalf of the Legal Aid Society, our clients and the communities we serve, we thank you for this opportunity to speak with you today, and look forward to continuing this dialogue.

March 2, 2006

1999), available from: www.otda.state.ny.us/otda/welfare/welfarestudy.pdf, accessed March 1, 2006.

⁴ Douglas Besharov, *Full Engagement Welfare in New York City: Lessons for TANF’s Participation Requirements*, (August, 2004), at 139 available at http://www.welfareacademy.org/pubs/welfare/nyc_hra.pdf, accessed March 1, 2006.