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REPORT ON LEGISLATION BY THE SOCIAL WELFARE COMMITTEE

A.2669-B **M. of A. Wright**
S.4830 **Sen. Savino**

AN ACT to amend the social services law, in relation to clarifying notice requirements conciliation procedures and sanctions in cases when the recipient of public assistance programs refuses to comply with employment program requirements

THIS BILL IS APPROVED

The New York City Bar Association's Social Welfare Committee ("the Committee") supports A.2669-B/S.4830, which would clarify and re-focus the conciliation process for New Yorkers receiving public assistance by enabling local districts to promote re-engagement of welfare recipients in welfare-to-work activities to either avoid or end sanctions. The bill accomplishes this by, among other things, requiring social service agencies to determine if there is an exemption, lack of child care or transportation, or an accommodation for disability before issuing a re-engagement notice; prohibiting sanction during the re-engagement process; retaining conciliation but only as a way to avoid a sanction; establishing a written reminder of a participant's ability to comply after 30 days of non-compliance; instituting a participant's right to cure; and ending durational sanctions.

New Yorkers seek out welfare or "cash assistance," as it is generally known in New York, to get through difficult times that are often caused by a change of circumstances such as unemployment, the onset of disabling medical and mental health conditions, domestic violence, homelessness or even the unmet need for child care. They usually have two goals. 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 assistance under another benefit program, such as Social Security.

With the advent of welfare reform wrought by the Personal Responsibility and Work Opportunity Reconciliation Act ("PRA") of 1996,[1] states have enjoyed increased flexibility in the ways in which assistance is administered. The primary constraint imposed upon the states is the mandate to meet work participation rates imposed by the PRA at the risk of financial penalty for noncompliance.[2] The ways in which local social services districts, including New York City,

[1] Pub. L. 104-193, 110 Stat 2105 (Aug. 22, 1996)

[2] 42 U.S.C. § 607(a)(i)(2).

meet these goals are largely prescribed by State law. This bill would make various amendments to the State's Social Services law to ensure compliance with employment program requirements without unfairly sanctioning New York's neediest citizens.

BACKGROUND - NEW YORK CITY'S PROCESS

It is well documented that it is harder than ever to obtain and maintain cash assistance in New York City. Through the Great Recession and in its aftermath, the cash assistance program has remained, by design, virtually unresponsive to this major economic decline and historic unemployment. The reality is that our safety net is not accessible to many low income New Yorkers who desperately need these benefits to protect themselves and their families. While the number of clients who are receiving Food Stamps and Medicaid has increased in response to need,[3] many of our clients who are living in poverty are denied access to cash assistance and, thus, are unable to pay for rent and utilities and basic necessities.

Those clients who do make it through the arduous application process, sometimes only after multiple attempts to become eligible, suffer an unacceptable number of sanctions which affect their ability to leave welfare. When a client is sanctioned, he or she loses assistance for up to six months or more 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.[4] 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.[5] According to New York City Human Resources Administration (HRA) data, as of March 2012 caseload work activities engagement report reveals that 34% (20,995) of the total households (61,263) engaged in welfare work programs in New York City are sanctioned or in the sanction process, and 22% of the broader category of "engageable" households (92,149) are sanctioned or in the sanction process.

There is ample evidence that sanctions are often imposed in error. In State administered fair hearings, New York City has a poor track record in defending its decisions to sanction. In 2010 its withdrawal rate for sanctions related to work activities was 63% (in contrast the withdrawal rate in the rest of the state was half that, or 29%). Moreover, in that same year, HRA won only 23% of fair hearings involving sanctions related to work activities (compared to a success rate of 66% in the rest of the state). HRA's success rates were similarly low in the two

[3] In the midst of the recession, during a March 2010 City Council budget hearing, current HRA Commissioner Robert Doar boasted that the welfare case load is the lowest since 1963. He juxtaposed this with the jump in Food Stamp caseload and the agency's accomplishment of reaching more Food Stamp eligible households. From March 2006 to March 2011 the number of Supplemental Nutrition Assistance Program (SNAP —formerly Food Stamp) recipients in NYC increased by 66% and the Medicaid roles increased by 10%. By comparison, during that period the public assistance caseload dropped 12%.

[4] Soc. Serv. L. § 342.

[5] Id.

years prior, with an affirmation rate of only 20% in both 2008 and 2009.

Sanctions often result in a loss of any momentum the employable client has found toward employment and self-sufficiency. Sanctioned clients who are engaged in job training, job search, and even paid employment, lose their child care and other work supports, making continued attendance at jobs, job interviews, and training programs nearly impossible. Disqualification for lengthy periods of time runs counter to the goal of assisting clients in enhancing their work skills and maintaining or moving expeditiously into private, full-time 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.

In addition to these individual costs, sanctions impose a real cost on society.[6] Costs due to increased evictions amount to $62-$188 per night or $1,860-$5,640 per month. Every night, approximately 1,400 individuals (over 16%) in shelters are either in the sanction process or have been sanctioned. Costs for hospitalization and emergency room visits also increase due to health consequences of sanctions. The average cost of emergency room visit is $150 per day (Medicaid) and $400 per day (non-Medicaid). The average cost of inpatient hospitalization is $1,820 per day.

Finally, once a client has endured the minimum period of sanction, HRA has imposed policies that make it more likely that the client's whole family will have their case closed rather than assist them come out of sanction status. These families are often still in need and end up either (a) reapplying, which poses high administrative costs for the City and personal costs to the clients who suffer an unnecessary interruption of benefits, or (b) even worse, suffering without any subsistence benefits and facing deepening poverty.

THE PROBLEM WITH CONCILIATION APPOINTMENTS

As it currently stands, a conciliation appointment is automatically generated without any investigation by the agency into whether the alleged non-compliance was "willful" - an investigation required by State law.[7] Although a client may resolve the infraction by

[6] Sanctions can also make it harder for the state to meet the federally mandated participation rates. The participation rate is calculated by dividing a numerator consisting of families engaged in federally recognized work requirements by a denominator consisting of the total number of families receiving TANF or state funded cash assistance that counts toward "Maintenance of Effort" requirements. See generally 42 U.S.C. § 607(b)(1)(B); see 42 U.S.C. § 609(a)(7)(B); 45 C.F.R. § 263.1 (explaining what qualifies as a "maintenance of effort" expenditure). If a household has been subject to sanction for longer than three months (whether or not consecutive) within the preceding 12 months, the household is included in the denominator. 42 U.S.C. § 607(b)(1)(B)(ii)(II). Only if the household has been subject to sanction for less than three months, it is excluded from the denominator. Accordingly, since the more often people are sanctioned, the more likely they are to be sanctioned for a minimum of six months, the high sanction rate means more sanctioned households are included in the participation rate denominator. Since they are not able to participate while sanctioned, these sanctioned households make it harder for the State to meet the participation rate. Indeed, the fact that such sanctioned households get included in the denominator creates an incentive to close their cases. When their cases are closed they get taken out of the denominator.

[7] Soc. Serv. L. § 341.

demonstrating "good cause" at the conciliation, many clients do not attend the conciliation appointment. The current HRA conciliation notice suggests that the appointment is not mandatory. Some disabled clients cannot get to the conciliation appointment for the same reasons they could not get to the original appointment. And, it is always a possibility that the original appointment notice and the conciliation notice were sent to the wrong address. Whatever the reason, this system of "autoposting" is programmed to *automatically* determine that the client did not prove good cause if he or she does not show up to the conciliation. From that point, the only way to avoid the sanction is to request a fair hearing, or self-initiate a conference with the Job Center at which the client can try to persuade the agency that a mistake was made.

Because the system of autoposting has been programmed to automatically assume a client has not attended an appointment unless a worker corrects the system and ensures that attendance was recorded – all errors in this system run against the client rather than HRA. Indeed, many sanctions could be avoided if HRA exercised careful review of facts and circumstances prior to initiating a sanction, and if, consistent with federal and State law, offered individuals the opportunity to comply with program requirements before imposing public assistance sanctions.

HRA policies imposed during the last decade have also made it harder to get out of sanction status, which makes it even more important to avoid improperly imposed sanctions in the first place. Pursuant to Soc. Serv. L. § 342, sanctions endure for the minimum period plus any additional time it takes until the sanctioned individual "is willing to comply" for families with children, 342(2)(a)-(c), and "until the failure or refusal ceases," for individuals without children, 342(3)(a)-(c). HRA has chosen to send many sanctioned recipients to a special center it has devised called the "Intensive Case Services Center," also referred to as "Center 71."[8] Clients from all over the city are sent to Center 71, where they are subject to increased eligibility call-ins and a "demonstrated compliance" program which requires ten consecutive daily appointments for lecturing and make-work activities which clients must endure in order to have their public assistance benefits reinstated post sanction. Clients who miss a mandatory eligibility appointment have their cases closed. Clients who are assigned to demonstrated compliance who miss any of their appointments are required to start over, continuing the cycle of hardship and leading to more unnecessary appointments, all the while remaining under sanction.

The result of Center 71 system is that many clients referred there get their cases closed. These so called eligibility call-ins imposed on sanctioned clients at Center 71, were at one point resulting in the closing of nearly 1,000 cases each month. Mandatory eligibility appointments have also been implemented for clients who remain at regular Job Centers, putting them at risk of case closing as well.

PROPOSED LEGISLATION

The proposed legislation effectively addresses the high sanction rate and the negative effects of lengthy durational sanctions while promoting the re-engagement of individuals into

[8] Center 71 originated in conjunction with the State "Intensive Case Services Program" which has since ceased.

self-sufficiency and ensuring access to assistance to meet the basic needs of individuals and families with children for food, clothing and shelter.

The bill permits local social services districts to promote the re-engagement of willing public assistance recipients in employment-related activities to avoid the imposition of employment sanctions with concurrent loss of basic benefits and work supports, such as child care. Rather than focusing on the sanction process, social services districts would focus on facilitating the transition to activities that would enhance self-sufficiency. Providing individuals with an opportunity to "re-engage" in employment-related activities to avoid sanction, will reduce the rate of sanction and also allow individuals and families who desperately need assistance to maintain their safety net while they work to become independent.

The proposed legislation will also lower the sanction rate by reducing the number of sanctions imposed in error by the local social services districts. Prior to imposing a sanction, local districts must investigate the availability of child care, transportation, or accommodations for disability on the date of the alleged infraction for non-compliance with an employment-related appointment or assignment. Sanctions cannot be automatically imposed without such a review being conducted.

For these reasons, the Committee supports A.2669-B/S.4830 and urges its enactment into law.

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