

FISCAL POLICY INSTITUTE

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July 7, 2001

Ronald Speier
Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, NY 12243

RE: TDA-21-01-00004-P
Proposed amendment of section 369.4(d)(7) of Title 18 NYCRR

Dear Mr. Speier,

The Fiscal Policy Institute, Inc. (FPI), on whose behalf these comments on TDA-21-01-00004-P (the proposed amendment of section 369.4(d)(7) of Title 18 NYCRR) are submitted, is a nonprofit, nonpartisan research and education organization that focuses on state budget and policy issues that affect low income and other vulnerable populations.

The Fiscal Policy Institute appreciates the opportunity that the Office of Temporary and Disability Assistance (OTDA) has provided to the public to comment on its proposed amendment of section 369.4(d)(7) of Title 18 NYCRR.

These comments are broken down into three parts (corresponding to the three categories of changes that the proposed amendments would make in section 369.4(d)(7) of Title 18 NYCRR) as follows:

I. The first set of changes, as represented by the proposed clauses (i) and (ii), add minimum time requirements (six and three months, respectively) to the definition of the kinds of physical or mental impairments on the basis of which local social services districts are required to exempt families from the application of the 60-month time limit on Family Assistance (and, as clarified by this proposed amendment, on federally participating Safety Net Assistance, as well).

II. The second set of changes, as represented by the proposed clauses (iii) and (iv), provide additional detail on the standards to be used by social services districts in determining if an independently verified physical or mental impairment on the part of another household member is such that it makes the adult family member unable to work.

III. The third set of changes, as represented by the proposed clause (v), provides that districts shall exempt families from the application of the 60-month time limit when the adult family member qualifies for and is awaiting receipt of supplemental security income payments under title XVI of the Federal Social Security Act or additional state payments under section 209 of the Social Services Law.

It appears from the analysis presented in the "Costs" section of the Regulatory Impact Statement for this proposed rule (New York State Register, May 23, 2001, page 24) that the Office of Temporary and Disability Assistance has determined that the proposed amendment of section 369.4(d)(7) of Title 18 NYCRR would increase the number of cases that will be exempted from the 60-month time limit over the course of the next several years. This would result in cost

avoidance on the part of the State and its local social services districts since, as stated in this analysis, “the cases that are exempt from the 60-month time limit will continue to receive the federal share of the costs” while the cost of cases that are not exempted from the time limits will be shared equally by the State and the social services districts with no federal participation. It appears, on its face, that the changes represented by the proposed clauses (i) and (ii) will reduce the number of cases that will be exempted from the 60-month time limit and that the change represented by the proposed clause (v) will modestly increase the number of cases that will be exempted from this limit. Given the overall conclusion of this analysis (cumulative cost avoidance of \$6.5 million each for the State and its local social services districts in SFY 2001-2002, \$22.9 million each for SFY 2002-2003, and \$28.1 million each for SFY 2003-2004), it appears that the clarifications represented by the proposed clauses (iii) and (iv) are projected to increase the number of cases that will be exempted from the 60-month time limit. While the summary of this cost analysis, as published in the May 23, 2001 edition of the State Register, does not provide sufficient information on the assumptions and methodology utilized for me to comment on the reasonableness of the Offices’ cost savings estimates, the idea of amending section 369.4(d)(7) of Title 18 NYCRR to achieve such savings is laudable. The comments and suggestions presented below would both clarify and standardize the language of the proposed amendments of section 369.4(d)(7) of Title 18 NYCRR and increase the cost savings that would be realized by the State and its local social services districts.

I. Providing exemptions from the 60-month time limit only for independently verified physical or mental impairments of at least three or six months in duration.

Section 369.4(d)(7) of Title 18 NYCRR, as it currently stands, provides, in relevant part, that “The district shall exempt a family from the application of the 60-month time limit ... on the basis of hardship when the adult family member is unable to work because of an independently verified physical or mental impairment, including those which result from domestic violence ...” By providing that this exemption shall maintain “... when the adult family member is unable to work because of an independently verified physical or mental impairment...,” it seems clear that the exemption shall only be available for the duration of the impairment. While the proposed amendment of this section maintains this language, it would also add two conditioning clauses, (i) and (ii), that would provide that a family would not be exempted from the 60-month time limit if the impairment involved was anticipated to last for less than three months (if it were the result of domestic violence) or less than six months (if it were not the result of domestic violence).

No explanation is presented anywhere in the rule making as to the need for (or as to the advantages and disadvantages of) adding such minimum “duration of impairment” requirements. The result is that, under the proposed rule, a family whose adult family member suffers an injury that incapacitates him or her for two months would not be exempt from the 60-month time limit for that two month period, while under the current rule it would be. In addition, under the proposed rule, a family whose adult family member suffers an injury that incapacitates him or her for four months would be exempt from the 60-month time limit for that four month period if the injury was the result of domestic violence, but it would not be exempt from the 60-month time limit for that four month period if the injury was the result of anything other than domestic violence. Unless some good reason exists for imposing these various levels of seemingly arbitrary distinctions, it appears that it would simplify local administration and increase State and local cost savings by not adding the proposed “duration of impairment” requirements.

The proposed amendment would also add a parenthetical clause “(including those caused by alcohol or substance abuse)” to the current rule. For purposes of emphasis, this change appears

useful particularly if OTDA has received questions from local social services districts as to whether or not an independently verified physical or mental impairment caused by alcohol or substance abuse is included. In addition to making this change, OTDA should also consider making clear in its general advisory correspondence that the all independently verified physical and mental impairments, without any stated or unstated exceptions are covered by both the current and the proposed rules. This would be important since it would not be feasible to list all of the conceivable types of events, from automobile accidents to sexual assaults, that might cause an independently verified physical or mental impairment to exist.

This could be accomplished by amending the first unnumbered and unlettered clause of the current paragraph (7) as follows:

The district shall exempt a family from the application of the 60-month time limit on FA *and federally participating Safety Net Assistance* on the basis of hardship when the adult family member is unable to work because of an independently verified physical or mental impairment, including those which result from domestic violence *and those caused by alcohol or substance abuse*

If some good reason exists for imposing the proposed “duration of impairment” requirements and if OTDA decides to impose different “duration of impairment” requirements depending on the cause of the impairment, the proposed clauses (i) and (ii) should still be revised to use consistent language. As currently written, the two proposed clauses describe their “duration of impairment requirements in different ways:

(i) causes incapacity for a period of more than six months (including those caused by alcohol and substance abuse);

(ii) is the result of domestic violence and is anticipated to last three months or more;

Clause (ii) uses “forward looking” language (“... is anticipated to last three months or more;”) while clause (i) uses a different approach (“... incapacity for a period of more than six months...;”). If this use of different phrasing is intentional, OTDA should explain what the differences between the two approaches is intended to mean and why such a distinction is worth implementing. If this use of different phrasing is not intentional, then consistent phrasing should be used for the two clauses.

II. Clarifying the standards to be used in determining when independently verified physical or mental impairments on the part of another household member make the adult family member unable to work.

Section 369.4(d)(7) of Title 18 NYCRR, as it currently stands, does not distinguish between an adult family member’s own independently verified physical or mental impairment and that of another family member in requiring local social services districts to exempt families from the 60-month time limit if the adult family member is unable to work because of such an impairment. The current rule provides simply that “The district shall exempt a family from the application of the 60-month time limit ... on the basis of hardship when the adult family member is unable to work because of an independently verified physical or mental impairment, including those which result from domestic violence” without distinguishing between (a) impairments to another family member that make the adult family member unable to work (usually because the adult family

member must care for the other family member with the impairment) and (b) impairments to the adult family member himself or herself.

The proposed amendment to section 369.4(d)(7) of Title 18 NYCRR attempts to deal specifically with other family member’s impairments by providing that “***A hardship exists when the adult family member is unable to work because of an independently verified physical or mental impairment that:***

.....

(iii) has happened to a child as the result of domestic violence and the adult family member is needed in the home to care for the child;

(iv) has happened to another household member and is so severe that the adult family member is needed in the home to provide full-time care; or

.....

The wording of these two clauses results in distinctions being drawn on three bases:

1. whether or not the adult family member is a child,
2. whether or not the impairment is the result of domestic violence, and
3. whether the adult family member is needed in the home (a) to care for the child or (b) is needed in the home to provide full-time care.

As the following matrix demonstrates, these clauses as currently written would draw a number of

	Impairment is a result of Domestic Violence	Impairment is not a result of Domestic Violence
Impaired family member is a child.	Exemption is available if adult family member is needed in the home to care for the child.	Exemption is available if adult family member is needed in home to provide full-time care .
Impaired family member is not a child.	Exemption is available if adult family member is needed in home to provide full-time care .	Exemption is available if adult family member is needed in home to provide full-time care .

Important distinctions on bases other than the severity of a child’s impairment. For example, if a child’s impairment is the result of domestic violence, his or her family would be exempt from the 60-month time limit if “the adult family member is needed in the home to care for the child.” But, if another child’s impairment is more severe but not the result of domestic violence, this latter child’s family would not be exempt from the 60-month time limit if the adult family member is needed in the home to provide close to full-time care. There are probably many ways in which these two clauses could be rewritten to treat people in similar circumstances similarly, but here is one suggestion that would accomplish this objective and increase State and local cost savings: “***A hardship exists when the adult family member is unable to work because of an independently verified physical or mental impairment that:***

.....

(iii) has happened to a child and the adult family member is needed in the home to care for the child;

(iv) has happened to another household member and is so severe that the adult family member is needed in the home to provide care to such household member on a virtually full-time basis, recognizing, however, the need for occasional respite care to relieve such caregiver; or

.....

III. Clarifying the exemption from the 60-month time limit for families in which the adult family member qualifies for supplemental security income and is awaiting receipt of such assistance.

Section 369.4(d)(7) of Title 18 NYCRR, as it currently stands, exempts a family from the application of the 60-month time limit “when the adult family member is in receipt of supplemental security income payments under title XVI of the Federal Social Security Act or additional State payments under section 209 of the Social Services.” The proposed amendment to section 369.4(d)(7) expands this portion of the exemption to include families in which the adult family member qualifies for such supplemental security income and “is awaiting receipt of” such assistance. This change makes sense. However, because of the way in which the sentence structure of section 369.4(d)(7) would be changed by the proposed amendment, receipt of SSI by the adult family member would no longer be a “stand alone” basis for exemption of the family from the 60-month time limit. Instead, it appears that this criteria would be linked to the other requirement of the current section, that “the adult family member is unable to work because of an independently verified physical or mental impairment.” This may be a distinction without a difference. But, if it is a change that would effect what appears to be the current rule’s clear “bright line” test, the clarity of the current rule could be restored within the structure of the proposed rule by ending the second sentence of the proposed rule after clause (iv) and making the proposed clause (v) into a separate sentence as follows: “***A hardship also exists when the adult family member qualifies for, and such member is awaiting receipt of or is in receipt of, supplemental security income payments under title XVI of the Federal Social Security Act or additional state payments under section 209 of the Social Services Law.***”

Sincerely,

Frank J. Mauro