



DEPARTMENT OF HEALTH & HUMAN SERVICES

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OFFICE OF THE SECRETARY

Office for Civil Rights, Region III
150 S. Independence Mall West
Public Ledger Building, Suite 372
Philadelphia, PA 19106-9111

Our Reference: 02-00316

SEP 16 2004

Ms. Jane Conlin
Director
Department of Social Services
1510 Williamson Road, NE
Roanoke, Virginia 24012

Dear Ms. Conlin:

This letter is a followup to my September 24, 2003 letter to Ms. Vickie Price advising that the Office for Civil Rights (OCR) of the Department of Health and Human Services (DHHS) had completed its review of the Roanoke Department of Social Services (DSS). The purpose of the review was to ensure that no disabled person is excluded from participation, denied benefits, or otherwise subjected to discrimination in the implementation of the Temporary Assistance to Needy Families (TANF) program because he or she is disabled.

In that letter we offered a number of recommendations to ensure that the Roanoke Department of Social Services was operating its TANF program in a manner consistent with the provisions of Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 2131-12134, and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and their respective implementing regulations found at 28 C.F.R. pt. 35 (2000) and 45 C.F.R. pt. 84 (2000). The ADA and Section 504 prohibit discrimination on the basis of disability by public entities and by recipients of Federal financial assistance, respectively.

Since that time we have received documentation from your agency which demonstrates that DSS has taken a number of steps consistent with our recommendations. These include:

- issuance of a policy addressing the provision of services to disabled customers, including sign language interpreter services for deaf, hard of hearing, or speech impaired customers and blind/visually impaired customers;
- training for staff was conducted on April 22, 2004, regarding DSS's obligations to persons with disabilities;
- training for staff on the use of interpreters for the deaf and adaptive equipment was provided on July 22, 2004, by the Department for the Deaf and Hard of Hearing;
- training for staff was conducted on August 26, 2004, by the Department of Blind and Visually Impaired on providing services for the visually impaired;

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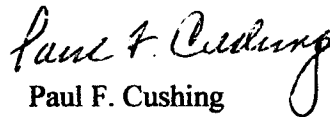
- posting of public notice for all clients regarding their rights to services under section 504 and Title II of the ADA;
- the use of the Uniform Assessment Instrument for an initial assessment of persons with learning disabilities or behavioral health disabilities.

Based on these voluntary corrective steps we find the Roanoke Department of Social Services to be in compliance with the applicable provisions of section 504 and Title II of the ADA. We wish to advise you that this determination is not intended and should not be construed to cover any other issues regarding compliance of section 504 of the Rehabilitation Act or Title II of the Americans with Disabilities Act that may exist but were not specifically addressed during our review.

Also, we wish to advise you that under the Freedom of Information Act, it may be necessary to release this document and related correspondence in response to an inquiry. In the event that we receive such a request, we will make every effort to protect information that identified individuals or that, if released, would constitute an unwarranted invasion of privacy.

Thank you for your cooperation throughout the review process. If you should have any questions, please do not hesitate to contact Ms. Carla Graham, Investigator, at (202) 619-1136(voice) or (215) 861-4440 (TDD).

Sincerely,



Paul F. Cushing
Regional Manager

cc: Maurice Jones, Commissioner
Lisa Pearson, Administration for Children and Families

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

SEP 24 2003

Our Reference: 02-00316

Ms. Vickie Price
Acting Director
Department of Social Services
215 West Church Avenue, Room 307
Roanoke, Virginia 24011

Dear Ms. Price,

This letter is to advise you that the Office for Civil Rights (OCR) of the Department of Health and Human Services (DHHS) has completed its review of the Roanoke Department of Social Services (DSS). The purpose of the review was to ensure that no disabled person is excluded from participation, denied benefits, or otherwise subjected to discrimination in the implementation of the Temporary Assistance to Needy Families (TANF) program because he or she is disabled.

Legal Authority

The review was conducted under Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 2131-12134, and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and their respective implementing regulations found at 28 C.F.R. pt. 35 (2000) and 45 C.F.R. pt. 84 (2000). The ADA and Section 504 prohibit discrimination on the basis of disability by public entities and by recipients of Federal financial assistance, respectively.

Title II of the ADA provides that “[n]o 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. §12132.¹ Section 504 provides that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²

¹ See also 28 C.F.R. § 35.130(a).

² See also 45 C.F.R. § 84.4(a).

The DSS which administers the TANF program is both a public entity and recipient of Federal financial assistance and is therefore covered by the above laws and regulations. While the ADA and Section 504 state the general prohibition against discrimination based on disability, the regulations set forth a number of specific requirements with which public entities and recipients must comply. The following ADA regulatory provisions are particularly relevant to our review.³

Public entities may not: “[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others” (28 C.F.R. §35.130(b)(1)(ii));⁴ “[p]rovide a qualified individual with a disability with an aid, benefit or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others” (28 C.F.R. § 35.130(b)(1)(iii));⁵ “...impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program or activity, unless such criteria can be shown to be necessary for the provision of the service, program or activity being offered” (28 C.F.R. § 35.130(b)(8)); or “utilize criteria or methods of administration . . . [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability . . . [or] [t]hat 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” (28 C.F.R. § 35.130(b)(3)).⁶ A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity” (28 C.F.R. § 35.130(b)(7).

Background

OCR conducted an on-site review of the Department of Social Services in Roanoke, Virginia on October 16 and 17, 2002. The issue addressed in the review was whether the DSS implements appropriate policies, practices and procedures to ensure that disabled TANF customers are provided equal opportunities to participate in, and/or, benefit from, employment training, referral, and placement programs and activities and are otherwise provided reasonable accommodations/

³ The Section 504 regulations generally parallel the ADA regulations. We will cite the Section 504 companion provision, where one exists, for each ADA regulatory provision we discuss. The ADA regulatory standards “are generally the same as those required under Section 504....The inclusion of specific language in [the ADA regulations] ...should not be interpreted as an indication that a requirement is not included under a regulation implementing Section 504.” 28 C.F.R. Part 35, Appendix A, p. 438 (2000)

⁴ See also 45 C.F.R. § 84.4(b)(1)(ii).

⁵ See also 45 C.F.R. § 84.4(b)(1)(iii).

⁶ See also 45 C.F.R. 84.4(b)(4).

auxiliary aids (including but not limited to modification of policies), as required under Section 504 and the ADA.

DSS is responsible for the administration of the TANF program. All applicants and recipients of TANF benefits who are determined to be able bodied are required to participate in the Virginia Initiative for Employment not Welfare (VIEW) program. This program provides employment opportunities to assist individuals in attaining the goals of self-sufficiency.

Customers complete an Agreement of Personal Responsibility (APR) upon their initial assessment requiring them to participate in work activities and education or training programs. The APRs are developed collaboratively by the participant and their respective caseworker and are based on the individual's current employment experience, education level and family needs. Customers report to their caseworker when they have completed steps in their APRs and experience changes in employment and family status. There is a two-year time limitation for receipt of TANF benefits which begins the first of the month after the date the APR is signed. A participant can apply for a hardship exception during the 60-day period prior to the end of the two-year time limit period. Participants eligible for a hardship exception will have their TANF benefits extended.

The VIEW program conducts weekly orientation sessions for new customers. An employment service worker assists customers in obtaining job seeking and keeping skills training, work experience and other programs to advance job searches.

Applicants complete a six-page assessment form which includes employment history, education, work orientation (which addresses a list of areas in which a customer feels he may need assistance, e.g., understanding/ following directions, reading/writing), background information, medical information (including substance abuse) and service needs. In addition, applicants are tested to determine their functional literacy level using the University of Texas "Information Sheet" test which is a list of questions adapted from the University's Extension Teaching and Field Service Bureau. Prior test scores, such as the Test of Adult Basic Education (TABE), which establish an approximate educational/basic literacy level, can be used in place of the "Information Sheet" test.

A customer who indicates at the time of application that he/she has a disability is given a medical form for completion by their physician. If a physician indicates on the form that the applicant is able to participate in employment or training, but is limited in the types of activities that can be performed, the applicant must be referred for participation in VIEW. If the applicant is unable to participate because of a temporary medical condition that prevents entry into employment or training, the eligibility worker reevaluates the applicant's condition at the time prescribed by the medical statement or every sixty days, whichever comes first. Applicants determined to have a permanent incapacity are referred to vocational rehabilitation.

A sanction may be imposed on participants who fail to participate in the VIEW program. The VIEW worker must advise the eligibility worker of the decision to sanction and the eligibility worker sanctions the participant unless otherwise advised by the VIEW worker. For the first sanction the grant will be suspended for a minimum of one month or until failure to participate

ceases, whichever is longer; for the second sanction, suspension will be for a minimum of three consecutive months; for the third and subsequent sanctions, the grant will be suspended for six consecutive months. If the participant provides verification of full-time employment (at least 30 hours per week) prior to the effective date of the proposed sanction, a sanction will not be imposed. The time clock for VIEW participants continues during the sanction.

DSS has procedures in place for appealing sanctions which include a pre-hearing conference and an appeal hearing. If the appeal is filed timely and benefits continue pending the hearing decision, the sanction is imposed when the decision sustains agency action.

Findings

OCR's review included interviewing a sample of employees in the Roanoke office, analyzing data provided, and reviewing DSS's policies and procedures for identifying TANF recipients with disabilities and addressing their needs. Our findings are as follows:

Persons with disabilities are identified by information included in their applications.

There are no written policies or procedures in place for customers who are hard of hearing/deaf or visually impaired. Most caseworkers interviewed indicated that when dealing with a customer who is hard of hearing/deaf customer, they would recommend that the customer bring an interpreter. Some of the caseworkers were not aware of interpreter services, a TDD (telecommunication device for the deaf), or the relay system. However, one caseworker stated that there is a TDD in the personnel office at DSS.

Receptionists interviewed stated that two clerical staff attended a sign-language class and have basic skills "enough to communicate," but are not certified. Two of the eligibility workers were aware of the staff members who signed and indicated that they would contact them if needed.

Caseworkers stated that if they had a customer who is blind/visually impaired, they would read the questions on the application and complete it for him/her. Most of the caseworkers stated that they would ask the customer to bring someone with them. They were not aware of any auxiliary aids available. One VIEW caseworker pointed out that customers who are visually impaired would probably be exempt from the VIEW program.

Most caseworkers stated that home visits were conducted for individuals who were unable to visit the office due to a disability.

Entrance to the facility was functionally accessible to persons with mobility impairments and accessible parking spaces were available. Persons who use wheelchairs can meet with DSS staff on the first floor, however, one caseworker indicated that they have not had any problems with customers who are mobility impaired, accessing caseworkers' offices using the elevators.

Goodwill Industries reported that they receive referrals from the Roanoke DSS office on a continuing basis. They operate under a grant from DSS, which ended on June 30, 2003. Subsequently, they will operate on a "fee for service" basis. Their main function is to serve persons with disabilities and assist customers in overcoming any barriers. A representative from Goodwill attends the weekly orientation for TANF customers entering the VIEW program. Once they receive a referral they contact the customer, making up to three telephone calls, sending two letters and conducting a home visit, if necessary, to make initial contact. Customers are assisted in completing a large intake packet which includes completion of an assessment form developed by Goodwill which is used to screen for disabilities.

The Virginia Department of Rehabilitative Services (DRS) indicated that they have a successful working relationship with Roanoke City DSS. They receive referrals from DSS and determine a customer's eligibility and what type of services he/she may need. TANF customers are provided access to DRS's employment resources center. The agency also provides counseling, job search assistance and conducts on-the-job training. DRS indicates that, in their experience, outside employers are willing to provide accommodation to persons with disabilities. The DRS frequently provides technical assistance to employers, advising and assisting them in providing reasonable accommodations to customers with disabilities.

Blue Ridge Behavioral Healthcare (BRBH), established as a Community Services Board (CSB), is responsible for providing a system of comprehensive quality services in mental health, mental retardation and substance abuse. BRBH employs a staff person who works closely with the Roanoke DSS's VIEW program. She attends weekly DSS orientation sessions for VIEW customers and presents an overview of BRBH services. She receives approximately three to seven TANF referrals per month. Services provided by BRBH include, but are not limited to the following:

- (1) Project Link which offers treatment for women with substance abuse problems who are pregnant, have newborn babies, or who are at risk. The Center offers parenting skills training, substance abuse counseling and treatment and life skills/job readiness classes.
- (2) Services for the Deaf and Hard of Hearing which provides training and consultation to staff of CSBs as well as direct mental health, mental retardation, and substance abuse services to persons who are deaf, deafblind, or hard of hearing.
- (3) Blue Ridge Counseling Services which provides individual and group counseling for adults admitted for outpatient drug, alcohol, and/or mental health services. Psychiatric consultation, psychological evaluation, and medication management is available.

(4) Other programs which provide services which provide training and support activities to enable individuals to achieve and maintain independence.

The Center for Employment and Training (CET), a component of Total Action Against Poverty works with the VIEW program under DSS. CET receives approximately 10 to 12 referrals per month through the VIEW program; of these, possibly 3 to 4 may be disabled customers, usually learning disabilities or mental health issues. Upon receipt of the referrals, individuals are forwarded information about CET. Any TANF eligible individual is eligible for a grant from CET. They have a contract with DSS to provide job seeking/job keeping skills training to customers who enroll in the program. Their services also include GED preparedness instruction. They provide one-on-one instruction as necessary for learning disabled customers and do not reject customers because of a disability. Their support counselors will obtain appropriate services for disabled customers, e.g., referrals to DRS for diagnostic services.

Discussion

OCR issued policy guidance clarifying the obligations Title II of the ADA and Section 504 impose on State and local government entities conducting TANF activities. In summary, OCR views a TANF program in compliance with Section 504 and Title II of the ADA when it ensures individualized treatment and affords effective and meaningful opportunity for disabled persons. Specifically, individuals with disabilities must be afforded an opportunity to benefit from TANF programs in the same manner the TANF agency affords such opportunities to individuals who do not have disabilities. This can be accomplished through the use of individualized assessments, provision of appropriate job placement, education, skills training, employment and other TANF services.

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.

The recipient has demonstrated its ability and commitment to serve individuals with disabilities through established working relationships with Goodwill Industries, the Blue Ridge Behavioral Health Care Center and the local office of the Virginia Department of Rehabilitative Services. Each agency conducts further assessments of customers referred from DSS to determine which services will best meet a customer's needs. However, our review found that there is not a consistent procedure in providing services to persons who are hearing or visually impaired. While individual case workers may make efforts to afford such persons accommodations, they are generally unaware of any policy or procedure to procure such aids. Although OCR did not identify any individual with a sensory impairment who was denied services, failure to have such policies and procedures in place could result in differential treatment for individuals with sensory impairments.

The Roanoke VIEW program utilizes a six-page assessment form described above which can assist in identifying those disabling conditions which could present a barrier(s) to employment. In addition, the office uses the a test developed by the University of Texas Extension Teaching and Field Service Bureau to determine functional literacy. We reviewed the assessment form in light of formats used in other states which the OCR has found to be comprehensive in identifying a wide range of disabilities that would present barriers to employment. Compared to these instruments, the assessment form utilized by the DSS does not specifically screen for learning disabilities or mental health issues such as depression or anxiety disorders. These disabilities often go undetected yet can be the root cause for an individual's difficulties in achieving and maintaining self sufficiency.

Requested Actions

Based on our review of the information submitted, we have determined that the Roanoke City DSS does not exclude the participation of, deny benefits to, or otherwise discriminate against persons with disabilities. However, before we make a final determination of compliance we request the following actions be taken with regard to the issues addressed in this review:

Evaluate the VIEW assessment form to ensure that a wide range of disabilities that may result in barriers to employment are identified. The Virginia DSS has encouraged local agencies to utilize the Washington State Screening Tool. We are available to identify other instruments which may be of assistance to you in this regard.

Conduct training which addresses DSS's obligations to disabled persons under Section 504 and Title II of the ADA for all current staff and at orientation for new employees. OCR staff is available to provide assistance in this effort.

Develop a written policy which addresses the provision of auxiliary aids to customers with disabilities, including the use of readers or alternative media for persons who are blind or visually impaired, sign language interpreters and other communication services for persons who are deaf, hard of hearing, or customers who are speech impaired.

DSS should immediately inform staff of its policy to provide auxiliary aids to customers with disabilities customers and provide its written procedures for obtaining auxiliary aids, i.e., TDD service, readers, sign-language interpreters.

Provide written notice to all customers at the time of application of his/her rights under Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. We have enclosed an "ADA/Section 504 Notice" from the State of Georgia which provides helpful language for your agency to consider in developing ths notice.

Display posters offering free sign language assistance to all customers who are hearing/speech impaired.

Inform caseworkers on how to utilize relay services for communication with customers who are hearing/speech-impaired. Provide notice to customers indicating the availability of such services and a telephone number at which the service may be accessed.

Monitoring

To insure that DSS is taking steps to afford equal access to services by individuals with disabilities, we request that you provide a written report to OCR within 90 days from the date of this letter that DSS has provided training to staff, implemented and posted written policies and procedures as recommended and provide copies of such documents to OCR. This should include:

A copy of the policy which addresses provision of services to disabled customers, including sign language interpreter services for deaf, hard of hearing, or speech impaired customers and blind/visually impaired customers.

Dates training was provided to staff regarding DSS's obligations to disabled persons under Section 504 and Title II of the ADA and a copy of the training material.

A copy of the notice provided to all persons regarding their rights under Section 504 and Title II of the ADA.

A copy of a poster posted regarding services for persons who are hearing impaired and notice regarding use of the relay service.

A description of any revisions to the assessment tools currently in use. Describe specifically those steps taken to address the needs of persons with learning disabilities and mental health issues.

Data Collection

As part of our monitoring efforts to assess DSS's effective implementation of the policies and processes described above, we ask that within 90 days the DSS collect and provide our office with the specific data listed below for the Roanoke DSS Office for the period from March 1, 2002 through September 30, 2002. In addition, by August 31, 2004, please provide this data for the period from January 1, 2004 through June 30, 2004.

1. Total number of TANF beneficiaries served⁷ in work transition programs⁸.

⁷The number of persons receiving assistance under TANF who are participating in work transition programs.

⁸Programs in which the goal is to move TANF beneficiaries from TANF rolls to permanent employment (e.g., welfare-to-work programs).

2. Total number of disabled TANF beneficiaries served in work transition programs.

Please notify Carla Graham, Investigator, at (202)-619-1136 as soon as possible with the name of the person responsible for submitting this data.

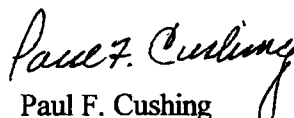
We are closing our review and will continue to monitor DSS through the data collection process. Once the material is submitted and analyzed, we will make a final determination regarding DSS's compliance with Section 504 and the ADA.

We wish to advise you that this determination is not intended and should not be construed to cover any other issues regarding compliance with Title II of the ADA and Section 504 that may exist but were not specifically addressed during our review.

Also, we wish to advise you that under the Freedom of Information Act, it may be necessary to release this document and related correspondence in response to an inquiry. In the event that we receive such a request, we will make every effort to protect information that identified individuals or that, if released, would constitute an unwarranted invasion of privacy.

Thank you for your cooperation throughout the review process. We appreciate your continued commitment to resolving the issues in this review. If you should have any questions or concerns, please do not hesitate to contact me at (215) 861-4441 or Ms. Graham at the number provided above or by email at carla.graham@hhs.gov.

Sincerely,


Paul F. Cushing
Regional Manager

Enclosure

cc: Maurice Jones, Commissioner
Lisa Pearson, Administration for Children and Families