



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office for Civil Rights

Website - <http://www.hhs.gov/ocr/>

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September 26, 2002

Ms. Yvonne Gilchrist  
Director  
Baltimore City Department of Social Services  
P.O. Box 17259  
Baltimore, MD 21203-7259

Emelda P. Johnson, J.D.  
Secretary  
Department of Human Resources  
311 West Saratoga Street  
Baltimore, MD 21201

Our Reference: 03027001

Dear Ms. Gilchrist:  
Ms. Johnson:

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 reviews of the Maryland Department of Social Services (DSS) Family Investment Centers (FIC). The purpose of the reviews 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 reviews were conducted under Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. sections 12131-12134, and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. section 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."

*SCR/PC/9/24/02*

42 U.S.C. §12132. <sup>1</sup> 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.” <sup>2</sup>

The family investment centers which administer the TANF program are both public entities and recipients of Federal financial assistance and are 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 reviews. <sup>3</sup>

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)); <sup>4</sup> “[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)); <sup>5</sup> “...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)). <sup>6</sup> A public entity shall make reasonable

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<sup>1</sup> See also 28 C.F.R. § 35.130(a).

<sup>2</sup> See also 45 C.F.R. § 84.4(a).

<sup>3</sup> 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).

<sup>4</sup> See also 45 C.F.R. § 84.4(b)(1)(ii).

<sup>5</sup> See also 45 C.F.R. § 84.4(b)(1)(iii).

<sup>6</sup> See also 45 C.F.R. 84.4(b)(4).

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 on-site reviews of two family investment centers (FIC) in Baltimore City, within the Department of Social Services (DSS), on June 6, 7, and 29, 2000. The issue addressed in the reviews was whether the DSS implements appropriate policies, practices and procedures to ensure that disabled TANF clients are provided equal opportunities to participate in, and/or, benefit from, employment training, referral, and placement programs and activities and otherwise provided reasonable accommodations/auxiliary aids (including but not limited to modification of policies), as required under section 504 and the ADA.

Maryland’s TANF program, referred to as Temporary Cash Assistance (TCA) is administered by the Family Investment Program (FIP), within the DSS offices. It includes both cash assistance and welfare-to-work programs that have the explicit goal of moving families from welfare to work. All TCA adult and minor parent heads of household must participate in a work activity as soon as their availability for such activities is approved. Customers have a lifetime limit of 60 months on federal cash assistance.

To ensure that every possible advantage is given to the customer to make the most out of the programs offered, established benchmarks provide an opportunity for a thorough reassessment and evaluation of the customer’s course in moving from welfare to work. The benchmarks are defined in terms of months receiving cash assistance: 1-24 months customers, 25-41 months customers, 42-54 months customers, 55-60 months customers, and 60+ (Hardship Exceptions ) months customers.

The FIP case manager, in collaboration with the customer, completes a Customer Independence Plan at the initial assessment of each customer. The plan identifies the customer’s employment goals and tasks needed to move the customer toward employment.

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. The physician indicates on the form whether the individual is impaired and the duration of the impairment. Based upon the completed medical evaluation, the client may be deemed temporarily exempt from job search or work requirements for the period of time indicated by the physician; however, this period cannot exceed one year. At the end of the time period, the customer is required to obtain another medical evaluation.

Disabled TCA customers may be referred to the Disability Entitlement Advocacy Program (DEAP). This program is designed to provide state-funded cash assistance to TCA adults and children with a disability lasting 12 or more months, while assisting them with the Supplemental Security Income (SSI) and/or the Social Security Disability Insurance (SSDI) application process. A customer whose

medical report shows less than a 12-month disability may volunteer for DEAP. Customers whose consecutive medical reports equal 12 or more months are considered mandatory DEAP/TCA cases. If a customer is denied SSI or SSDI and has exhausted all appeals to the Social Security Administration, the customer's case is considered federal TCA and becomes subject to work requirements and time limits.

A sanction may be imposed when a TCA adult does not comply with work requirements without good cause; the entire family is ineligible for cash assistance due to a full-family sanction. These customers may return to reapply for TCA benefits once the sanction is in effect. TCA benefits cannot be paid for sanctioned customers until they comply with the work requirements.

Maryland's Welfare Innovation Act of 2000 provides for certified addictions specialist, hired by local health departments or local government addiction agencies, to be placed in local FICs. All adult and minor parent applicants and certain recipients of TANF are screened, assessed, and referred (if necessary) to substance abuse treatment services. Customers who screen positive for substance abuse are required to enroll in appropriate and available treatment. If they do, they continue to receive a full TCA benefit until they have completed the treatment program. Individuals identified as positive who refuse to enroll or maintain participation in appropriate and available treatment lose their portion of the TCA benefit.

## **Findings**

OCR's reviews included interviewing a total of 36 employees in two FICs, analyzing data provided, reviewing the DSS and DHR policies and procedures for identifying TANF recipients with disabilities and addressing their needs. Our findings revealed the following:

The majority of the caseworkers interviewed indicated that an individual is exempt from the work program if she/he has a disability. Caseworkers relied primarily on medical evidence for disability determinations and referred customers directly to its DEAP program with little or no additional assessment or referrals that would provide persons with disabilities opportunities for job training in work-related programs.

There were no specialized assessment or screening tools to ascertain whether clients have mental or cognitive disabilities. These unidentified disabilities may pose a barrier to clients in meeting their self-sufficiency goals.

Most of the caseworkers stated that they did not refer disabled individuals to a vendor, or to the Department of Rehabilitative Services (DORS). Subsequent to the on-site reviews, contact with several vendors found that they did not received any referrals of disabled individuals from the Orangeville or Dunbar offices.

Entrances to both facilities were functionally accessible to persons with wheelchairs and accessible parking spaces were available. The Dunbar facility is located in a one-story building and since our

on-site review was conducted, the Orangeville facility has relocated to a newer, one-story building which provides greater accessibility for disabled persons. In the event that a case worker's office would not be readily accessible to a disabled customer, the majority of caseworkers indicated that they would locate a private office area which would be accessible to disabled customers in order to conduct their meeting.

Most caseworkers were aware of agency procedures for obtaining sign-language interpreter services; however, some caseworkers indicated that they would not know how to communicate with a hearing-impaired person or how to secure sign-language interpreter services. Caseworkers indicated that it takes anywhere from five to ten days to set up an appointment for a sign language interpreter. In addition, two caseworkers interviewed stated that the building security guard would act as a sign-language interpreter for deaf clients when he was available.

A TDD (telecommunication device for the deaf) was not available in the two offices under review; however, most caseworkers in both offices indicated that they were aware of the relay system.

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

During our reviews, we discussed with a community advocate organization issues concerning the assessment process in Baltimore City and the availability of adequately trained caseworkers to conduct meaningful assessments. We also discussed issues of physical accessibility and accommodation for disabled clients.

## **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. Provisions of that guidance which are pertinent to this review are as follows:

Compliance with Section 504 and Title II of the ADA in the administration of the TANF program will ensure (1) individualized treatment and (2) effective and meaningful opportunity for disabled persons. Individualized treatment requires that individuals with disabilities be treated on a case-by-case basis consistent with facts and objective evidence. Also, individuals with disabilities must be afforded meaningful access to TANF Programs. Specifically, they must be afforded an opportunity to benefit from TANF programs that is as effective as the opportunity the TANF agency affords to individuals who do not have disabilities.

TANF beneficiaries with disabilities must be provided with services that are appropriate, and that give these beneficiaries an equal opportunity to benefit from the agency's job placement, education, skills training, employment and other TANF activities. Applicants should be told that although disclosure of a disability is not required, individuals can alert the agency to a disability.

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.

TANF agencies must make reasonable modifications to policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the agency can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

In addition, the "methods of administration" or operating methods of a TANF agency must not have a discriminatory effect. Specifically, a public entity may not directly or through contract or other arrangement utilize criteria or methods of administration that, among other things, have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability, or that 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.

#### Recipient Activities

OCR's review raised a number of concerns as to whether the Baltimore City TANF program is being implemented consistent with the requirements of Section 504 and the ADA. In light of these concerns, the DHR and DSS agreed to work with OCR to resolve these matters. During the course of our review, DHR and DSS has addressed issues raised by taking the following actions:

On May 30, 2002, DHR issued a revised Information Memo to all Family Investment directors, supervisors and eligibility staff working with TANF clients. The memo addresses Section 504 and Title II of the ADA requirements, provides updated policy guidance and serves as a guide on how to recognize potential civil rights issues.

In order to address the problem of identifying specific barriers to employment, DSS developed a Job Readiness Screening and Assessment Form which is completed in the initial assessment of the customer at the first application interview. The screening and assessment is completed in order to determine the employability of customers with disabilities and provide more comprehensive supportive services. It identifies the customer's strengths and weaknesses and the services and supports that will be provided by the agency, vendors and/or outside community resources.

In addition to the assessment form, a Job Readiness Screening and Reassessment Form was developed. This form is completed at the end of work activity time lines of any program or the end of a service referral time line. A reassessment may also occur at any time in response to a Status Change Report from the vendor. It is required at critical intervals such as the 24<sup>th</sup>, 42<sup>nd</sup>, 55<sup>th</sup> and 60<sup>th</sup> months of receipt of TCA. A follow-up Independence Plan is completed or updated as a result of the reassessment. DSS staff began using the assessment and reassessment forms discussed above in May 2002.

DHR revised its FIP Work Activity Handbook to include a revised *Policies and Procedures Guide for Disabled TCA Adults and Children and TCA Adult Caregivers* dated May 2001. This guide includes program criteria for DEAP/TCA customers, addresses work requirements for TCA adults, reviews the procedures for processing DEAP/TCA interim assistance reimbursement payments; and reiterates the responsibility of local management to have procedures in place to ensure that DEAP/TCA referrals are appropriate and timely.

The City contracted with the University of Baltimore to provide training for all DSS staff. The sessions involved the Work Activity Handbook and included the use of the screening and assessment tool, the Independence Plan, the revised policies and procedures guide, the monitoring and reassessment phases of the process, and sanctioning and conciliation. OCR developed a PowerPoint presentation for use by the contractor which addressed the Department's obligations to disabled persons under section 504 and Title II of the ADA and presented the powerpoint presentation at the initial training session. The initial training concluded in May 2002. A follow-up training session is scheduled for October 2002.

DSS sent a letter dated January 3, 2002, to all vendors in Baltimore City from OCR which addressed section 504 and Title II of the ADA regulations. The vendors, which offer job readiness training, life skills, subsidized employment and certificate programs, were informed that, as contractors with DSS, they must comply with these regulations. The letter discussed two concepts central to section 504 and the ADA which are individualized treatment and effective and meaningful opportunity to participate. The vendors were provided with a copy of OCR's policy guidance on the prohibition of discrimination on the basis of disability in section 504 and Title II of the ADA in the administration of TANF programs. Further, the vendors were given an overview of the ADA and section 504 in a January 16, 2002 meeting conducted by DSS staff. The staff discussed reasonable accommodation issues and the vendors were informed that they should contact DSS contract staff if they are unsure of how to provide services to disabled customers. DORS also gave a presentation to the vendors regarding ways in which they could assist programs in accommodating customers' disabilities in order to participate in work programs.

In addition, DSS strengthened its relationship with the Department of Rehabilitative Services (DORS). As of May 9, 2002, a DORS representative started working in the Mount Clare center one day a week to assist staff in identifying resources for disabled customers. DORS was awarded a Systems Change grant (these grants are funded through Rehabilitation Services Administration in Education) which will enable it to establish and participate in One Stop Centers. The effort is designed to cut red tape for the client and tie together all the service needs in one center. DORS's scope is to provide employment services and supportive services related to employment. DSS staff is planning to meet with DORS staff in October 2002, to discuss phasing in DORS staff in all FICs through the Systems Change grant.

To address the issue of providing interpreter services to deaf, hard of hearing, or speech impaired customers, a Standard Operations Procedure (SOP) transmittal was issued by DSS with an effective date of April 2001. The SOP sets out procedures for obtaining sign language interpreter

services. In addition, the SOP indicates that a telecommunications device for the deaf (TDD) is maintained in DSS's Information and Referral Services (I & R) office and that I & R staff provide information and referral services by TDD.

### **Recommended Actions**

We recommend the following additional actions be taken in order to ensure compliance with section 504 and the ADA with regard to the issue addressed in this review:

Training which addresses DSS's Work Activity Handbook and its obligations to disabled persons under section 504 and Title II of the ADA should be conducted at orientation for new employees.

We note that specific operational procedures have been distributed on coordinating sign language interpreter services for deaf, hard of hearing, or speech impaired customers. To ensure notice is given to customers, each FIC should display posters offering free sign language assistance to all hearing/speech impaired customers.

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

### **Monitoring**

DSS has taken significant steps to improve its overall compliance status. To insure that DSS is providing services to its hearing/speech impaired customers, we request that you provide written notification to OCR by November 15, 2002, that DSS has implemented and posted written policies and procedures for the assistance of hearing/speech impaired customers and provide copies of such documents to OCR. Additionally, as part of our monitoring efforts to assess DSS's effective implementation of the policies and processes described above, we ask that the DSS collect and provide our office with the specific data listed below for the Orangeville and Dunbar Family Investment Centers for the period from March 1, 2002 through September 30, 2002. In addition, please provide this data for the period from October 1, 2002 through March 30, 2003, to be submitted on a quarterly basis.

1. Total number of TANF beneficiaries served<sup>7</sup> in work transition programs<sup>8</sup>.
2. Total number of disabled TANF beneficiaries served in work transition programs.

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

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



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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 until June 30, 2003. At that time, 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 want to particularly acknowledge the assistance of Ms. Shelly Mintz, Assistant Attorney General. We appreciate her 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 shown above.

Sincerely yours,

  
Paul F. Cushing  
Regional Manager

cc: Shelly E. Mintz, Esquire 