



DEPARTMENT OF HEALTH & HUMAN SERVICES

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OFFICE OF THE SECRETARY

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Philadelphia, PA 19106-9111

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

SEP 24 2003

Our Reference: 03-11233

Mr. Walter Credle
Director
Hampton Department of Social Services
1320 LaSalle Avenue
Hampton, Virginia 23669

Dear Mr. Credle:

The Office for Civil Rights (OCR) of the Department of Health and Human Services (DHHS) has completed its review of the Hampton Department of Social Services (HDSS). The purpose of the review was to ensure that persons with disabilities are not excluded from participation, denied benefits, or otherwise subjected to discrimination because they are disabled in the Virginia Independence Program (VIP), Virginia's Temporary Assistance to Needy Families [TANF] Program.

Legal Authority

Our review was conducted under the authorities of Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and their respective implementing regulations, 28 C.F.R. Part 35 and 45 C.F.R. Part 84. 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

¹See also 25 C.F.R. § 35.130(a).

subjected to discrimination under any program or activity receiving Federal financial assistance.”²

The HDSS 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 Hampton Department of Social Services on July 18 and

² See also 45 C.F.R. § 84.4(a).

³The 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).

⁴See also 45 C.F.R. § 84.4(b)(1)(ii).

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

⁶ See also 45 C.F.R. 84.4(b)(4).

19, 2002. The Hampton Department of Social Services is responsible for the administration of public assistance and employment services programs, including its TANF program, the Virginia Independence Program. The issue addressed in the review was whether the HDSS implemented 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.

The central elements of HDSS's VIP program are to provide assistance to needy families with (or expecting) children and to provide parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient. The data gathered consists of information obtained by interviewing staff, advocates and vendors. Staff interviewed included the Director of HDSS, supervisors, senior case managers, self-sufficiency administrators, customer service specialists, and associate case managers. We also examined data submitted by HDSS regarding its policies and procedures for the participation of persons with disabilities in the TANF program, and the policies and procedures for the Virginia Initiative for Employment not Welfare (VIEW) program. The VIEW Program is a program of employment opportunities to assist individuals in attaining the goals of self-sufficiency.

HDSS's service center uses an automated eligibility system, ADAPT, for customer registration, application entry, eligibility determination, benefit calculation, benefit issuance and establishment of exempt or non-exempt work program eligibility.

The TANF application determination process begins when the HDSS caseworker accepts an application for assistance. A face-to-face interview is required for TANF applicants. However, if an applicant is disabled and unable to report to the office, the interview is conducted by telephone or a home visit. A caseworker conducts an initial screening assessment within 30-days of the individual assignment to the queue⁷. HDSS uses an Information Sheet to assess a customer's vision, hearing, general health, doctor's visits per year, employment status, program aspirations, and personal information (name, address, telephone number, birthday, citizenship, marital status, voter registration). Caseworkers inform TANF customers, during the initial screening assessment, that they are expected to sign a written Agreement of Personal Responsibility (APR) requiring them to participate in work activities and education or training programs. The APRs are developed collaboratively by the customers and their respective caseworker, and are based upon the individual's current employment experience, education level and family needs. Customers report to their caseworker when they have completed steps in their APRs or experience changes in their employment and/or family status.

According to procedures, during the interview with the applicant, the caseworker completes the application and inputs the data into the ADAPT system. Disabled applicants are identified in the ADAPT system with a code. If auxiliary aids (telecommunication devise for the deaf (TDD),

⁷A code in the ADAPT system indicates that the customer is registered for participation in the VIEW program.

readers, sign-language interpreters) or accommodations (accessible location for customers who are mobility impaired) are required, the agency will obtain the item prior to the TANF application interview.

TANF customers who are in VIEW are allowed to receive 24 months of cash benefits, plus a year of transitional benefits. After that, customers must wait a year before they can again qualify for TANF benefits. Customers cannot receive TANF benefits longer than 60 months in a lifetime.

TANF customers are screened during the application process to determine whether they must be referred for participation in VIEW. A customer can complete the section on the TANF application to make his/her disability and the limitations of his/her work capabilities known to the caseworker. Customers who cannot meet the job search requirements due to a disability may be deemed "exempt" from the requirements by submitting a Medical Report for General Relief and Medicaid from a physician, stating the limitations and duration of his/her disability. A customer's incapacity exemption is reevaluated every 60 days. Individuals who volunteer for the VIEW program are required to meet the same requirement as non-exempt individuals. Customers with temporary disabilities may receive an exemption from the VIEW program. The customer's disability must be certified by a medical evaluation from a physician. The temporary exemption will stop the clock on the 60 month lifetime eligibility for TANF benefits. The clock resumes when the customer reenters the VIEW program.

Individuals certified by a physician as having a permanent disability are referred to the Social Security Administration to apply for Social Security Disability Insurance (SSDI) or Supplemental Social Security Income (SSI) benefits and the case is transferred to a benefit service worker. General relief benefits are provided to individuals who cannot work due to a disability until social security benefits are approved. The customer is required to provide a receipt verifying his/her application for social security benefits. Nonexempt customers must be employed or participate in a work activity (employment, community work experience program, or training) within 90 days of receipt of TANF benefits. Eligible customers are referred to a VIEW worker and assessed for participation in the VIEW program within 30 days of referral. Those engaged in 30 hours of combined work and allowable education activities meet program requirements. Reasonable accommodations such as customized work weeks and customized work hours are provided to disabled customers who are employed in the VIEW program.

The VIEW Assessment Forms I and II are used by HDSS to focus on the skills a customer possesses that would allow him/her to obtain immediate employment. The forms evaluate the customer's educational background, employment history, volunteer work/hobbies/abilities, target group status, barriers to finding and/or keeping a job, job interests/employment goals, employment planning, child care arrangements, supportive services, language skills, immediate employment skills, illness or disability; disability as diagnosed by a doctor; family abuse and substance abuse issues; and illness or disability that would prevent them from accepting employment.

HDSS conducts job readiness classes for VIEW customers. Those customers who have not obtained a GED, Associate Degree or a Bachelor's Degree are tested to determine their

functional literacy level using the Texas Information Sheet, the Test of Adult Basic Education (TABE) or the Wide Range Achievement Test. A customer must be tested within 90 days of the referral from the caseworker.

VIEW customers may be sanctioned if they fail to participate in work activities or to comply with the terms and conditions of their personal responsibility agreements. If a customer is sanctioned, his/her TANF benefit amount is reduced by 100 percent for a fixed period of time, or until the customer complies with the terms of the sanction. For the first offense, TANF benefits are suspended for one-month or until compliance, whichever is longer. For the second offense, TANF benefits are suspended for three-months or until compliance, whichever is longer. For subsequent offenses, TANF benefits are suspended for six-months or until compliance, whichever is longer.

If customers are unable to comply with the program requirements, they may request a hardship exception. Customers may be granted a hardship exception if they have performed satisfactorily in the program and received no more than one sanction within the two year period. HDSS stated that customers are rarely sanctioned. The agency provides assistance to customers so they may comply with the requirements of the program.

Findings

Our review indicated the following:

- HDSS uses assessment tools to evaluate the skills disabled customers possess that would allow them to participate in the VIEW program. We compared the HDSS assessment tools to those used in other states and found that the tools do not comprehensively screen for learning disabilities or mental health issues such as depression or anxiety disorders.
- HDSS has procedures in place for providing services to the deaf/hard of hearing/speech-impaired person. If the customer must be contacted by telephone, the staff uses the Virginia Relay Center's Hotline for the Hearing Impaired (1-800-828-1120). In addition, to the relay service, HDSS has paid sign language contractors and community sign language interpreters available to assist the disabled customer. A telecommunication device for the deaf is located in the receptionist area. Staff are also prepared to communicate with customers by writing notes. Customers requiring the aid of a sign language interpreter are identified by the intake worker or receptionist at the time of arrival and informed that an interpreter is available at no cost. However, occasionally a customer will request that a family member or friend assist them. Staff provided OCR with a list of outside paid sign language interpreters. Staff indicated that they were unaware of the agency's written policy on providing services to the deaf/hard off hearing/speech-impaired customer.
- When a customer who is blind/visually impaired arrives at the service center, staff are prepared to read the information. Interviews with case managers revealed that they have had visually impaired customers and they have provided assistance in this manner. HDSS

caseworkers indicated that the most frequently used method is to utilize a family member or an authorized representative to read the information and act for the customer. Staff stated that they are unaware of a written policy on providing services to the blind/visually impaired customer.

- Interviews with caseworkers indicated that they have served customers who are physically disabled. HDSS is prepared to accommodate the physically disabled customer by conducting home visits and telephone interviews; providing extended workstations to accommodate a person using a wheelchair.
- The services center was inspected to ensure that mobility impaired persons have access to the facility. The facility accommodates physically disabled customers with accessible ramps, a first floor service center, and an elevator with access to the second floor. The building's entrance is accessible and bathrooms and other areas used by the public are accessible.
- The Virginia Department of Rehabilitative Services (DRS) stated that HDSS refers approximately one customer a week for work preparation or retention services. Customers are eligible for DRS services if they have a physical or mental disability that is a barrier to obtaining or keeping a job and who can reasonably be expected to meet an employment outcome. HDSS in collaboration with DRS develops a service plan for disabled customers that requires employment/job readiness training. The plan includes assessment of the customer's need for support services such as transportation assistance, clothing vouchers, child care, and training in job search techniques. HDSS customers are referred to specialized DRS programs for employment readiness training, support for job maintenance and retention of employment such as: classes for deaf and hard of hearing, substance abuse counseling, school-to-work transition training, and long-term mental illness counseling and treatment. HDSS maintains its role with the customer referred for services by retaining control over the customer's case file, reviewing all job contacts made by the customer, and by contacting the agency once a month to review the customer's progress. Customers completing the program are referred for employment. If a customer is not seeking employment, DRS will provide services such as long-term rehabilitation case management, cognitive rehabilitation, and personal assistance services. DRS has a case manager who works with HDSS' severely disabled customers.
- Insight Enterprises, Inc., Peninsula Center for Independent Living is a private non-profit agency that provides services to persons with disabilities. The agency provides services to medically eligible disabled customers referred by HDSS. HDSS and Insight were unable to provide OCR with the number of customers referred for service. HDSS customers are referred to programs such as: Consumer Directed Personal Assistance Services providing independent living skills training (decision making, assertiveness, money management, dressing for employment, interviewing skills and tenant responsibilities); Developmentally Disabilities Waiver Program (housing services); Advocacy Assistance Program (providing special equipment to accommodate a customer's disability in employment); and Visually Impaired Peer Counseling. The Center also provides independent living counseling to

customers. An independent living counselor with a disability is available to assist customers in establishing goals for independence, providing guidance for self-exploration and adjustment, and referring to community resources. The Center aids customers in obtaining financial resources for services such as adaptive equipment and home modification. In addition, Insight provides sign language interpreters for the hearing impaired customer.

- The Community Services Board (CSB) receives a Welfare-to-Work grant from the state to offer programs that include mental health, mental retardation, and substance abuse counseling and treatment to HDSS customers. CSB receives approximately three customers a month from HDSS for services. Customers can participate in six core services: emergency; local inpatient; outpatient and case management; day support; residential; and prevention and early intervention programs. Services are provided at a CSB site, a community based site or wherever the customer is located i.e., residence, hospital, inpatient treatment center. CSB provides a substance abuse counselor who is located at the agency. HDSS referrals go through an assessment and evaluation process to determine what services would meet their needs.

CSB refers customers seeking job support to the Virginia Employment Commission. The Commission assists HDSS customers by providing services in developing resumes, searching for jobs on the internet, employment leads, and completing employment applications. HDSS and the Commission were unable to provide the number of disabled customers referred for services.

Discussion

On August 27, 1999, 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 to participate in programs and services. Specifically, individuals with disabilities must be afforded an opportunity to benefit from TANF programs in the same manner as 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.

HDSS uses VIEW Assessments I and II, as described above, to assist in identifying disabilities that could limit a customer's participation in employment. To evaluate the functional literacy level of TANF customers the agency uses the Texas Information Sheet, the Test of Adult Basic Education (TABE), and the Wide Range Achievement Test. We reviewed the VIEW assessment

form in light of formats used in other states which OCR has found to be comprehensive in identifying a wide range of disabilities. Compared to these instruments, the assessment form utilized by the HDSS does not screen for learning disabilities or mental health issues such as depression or anxiety disorders in a comprehensive manner. These disabilities often go undetected yet can be the root cause of an individual's difficulties in achieving and maintaining self sufficiency.

The recipient has demonstrated its ability and commitment to serve individuals with disabilities through established working relationships with contractors and vendors to provide job readiness training, job placement assistance, vocational services, and substance abuse and mental health counseling to its disabled customers. The agency has partnerships with the Department of Rehabilitative Services, Insight Enterprises Inc., and the Community Services Board to provide these services to the customer with a disability.

In June 2003 HDSS developed an Auxiliary Aids Policy which was distributed to staff in July, 2003. This policy and notification to employees identifies the agency's obligations to comply with the provisions of Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. It outlines the agency's policy and procedures for providing reasonable accommodations, auxiliary aids and services to its customers who have disabilities.

Requested Actions

Based on our review of the information submitted, we have determined that the HDSS does not exclude the participation of, deny benefits to, or otherwise discriminate against persons with disabilities. However, we request the following actions be taken in order to ensure compliance with Section 504 and the ADA with regard to the issues addressed in this review.

- Evaluate the VIEW assessment form to ensure that a wide range of disabilities is that may result in barriers to employment are identified. We encourage HDSS to incorporate questions that will identify those hidden disabilities which may create barriers to successful job placement.⁸ 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.

⁸For example, the assessment instrument might ask customers questions relating to their ability to learn (memorize numbers and words, take notes, judge distance) special programs or help required in school, learning problems in grades six through eight, trouble in filling out forms, or learning problems in family members. The mental health evaluation might include questions relating to drug/alcohol issues, depression, and anxiety. For example customers might be asked if they worry excessively, feel like they are losing control, have anxiety/panic attacks, sleep too little or too much, and feel sad. The assessment inquires if customers feel they need a more in-depth depression screening and possible treatment.

- Conduct training which addresses HDSS's obligations to disabled persons under Section 504 and Title II of the ADA for all current staff and at orientation for new employees. Training should address methods of communicating with the deaf/hard of hearing/speech impaired customer and address the issue the availability of communication services to customers who are blind/visually impaired. Staff should not rely exclusively on family members or authorized representative to communicate with customers. Therefore, we ask that HDSS take the necessary steps to ensure that alternative materials and methods of communicating with blind/visually customers are made available. OCR can assist you in this training effort.
- 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. This notice should provide information regarding the services that are available to customers with disabilities and encourage them to self identify so that HDSS can respond to their needs. We are enclosing a notice from the State of Georgia which provides helpful language for you to consider in developing this notice.
- Display posters offering free sign language assistance to all hearing/speech impaired customers.

Monitoring

To insure that DSS is taking steps to afford equal access to services by individuals with disabilities, we request that you provide written report to OCR detailing the progress HDSS has made on these recommendations. This response should be submitted 90 days from the date of this letter and should include:

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, mental health issues and substance abuse.

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

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

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

Data Collection

As part of our monitoring efforts to assess HDSS's effective implementation of the policies and processes described above, we ask that within 90 days the HDSS collect and provide our office with the specific data listed below for the HDSS 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 served⁹ in work transition programs¹⁰.
2. Total number of disabled TANF beneficiaries served in work transition programs.

Please notify Jessie Washington, Investigator, at (202)-619-10204 as soon as possible with the name of the person responsible for submitting this data.

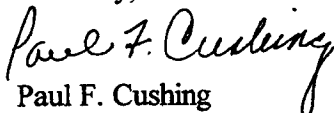
We are closing this phase of our review and will continue to monitor HDSS until June 30, 2004. At that time, we will make a final determination regarding DSS's compliance with Section 504 and the ADA.

We wish to advise you that this review is not intended and should not be construed to cover any other issues regarding compliance of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 that may exist but were not specifically addressed during our review.

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, which identifies 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. Washington at the number provided above or by email at jessie.washington@hhs.gov.

Sincerely,



Paul F. Cushing
Regional Manager

Enclosures

cc: Maurice Jones, Commissioner VADSS
Lisa Pearson, ACF

⁹The number of persons receiving assistance under TANF who are participating in work transition programs.

¹⁰Programs in which the goal is to move TANF beneficiaries from TANF rolls to permanent employment (e.g., welfare-to-work programs).