



**DEPARTMENT OF HEALTH & HUMAN SERVICES**

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**OFFICE OF THE SECRETARY**

**Office for Civil Rights, Region III**  
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Philadelphia, PA 19106-9111

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

SEP 24 2003

Our Reference: 03-11232

Mr. Michael A. Evans  
Director  
Richmond City Department of Social Services  
P. O. Box 10129  
Richmond, Virginia 23240

Dear Mr. Evans:

The Office for Civil Rights (OCR) of the Department of Health and Human Services (DHHS) has completed its review of the Richmond City Department of Social Services (RCDSS). 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 C.F.R. § 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.<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

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<sup>1</sup>See also 25 C.F.R. § 35.130(a).

subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>2</sup>

The RCDSS 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.<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 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**

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<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).

OCR conducted an on-site review of the Richmond City Department of Social Services on September 25-27, 2002. The Richmond City 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 RCDSS 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 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 RCDSS'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 supervisors, senior case managers, self-sufficiency administrators, customer service specialists, and associate case managers. We also examined data submitted by RCDSS 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 RCDSS has several satellite offices. Based upon the location of the TANF staff and number of TANF applications processed, we randomly selected for review a sample of staff from 4 sites - Richmond Department of Social Services at 900 East Marshall Street; North of the River Staff at 900 East Marshall Street and 436 Calhoun Street; and Southside Community Services Center at 4100 Hull Street.

RCDSS's service centers use 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 RCDSS 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. The worker conducts an initial screening assessment within 30-days of the individual's assignment to the queue.<sup>7</sup> RCDSS uses the Initial Assessment Service Outline form to assess a customer's physical health, mental health (including substance abuse issues), employment history, education/training, functional capacity (money management, parenting skills), support systems, and finances. The form includes a service plan to be completed by the caseworker.

While conducting the initial screening assessment, the caseworker informs TANF customers that they are expected to sign a written Agreement of Personal Responsibility (APR) requiring them to

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<sup>7</sup>A code in the ADAPT system indicates that the customer is registered for participation in the VIEW program

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 and changes in employment and family status.

During the interview, the caseworker completes the application and inputs the data into the ADAPT system, which contains codes to identify the disabled applicant. In addition, the Application for Benefits, Question 13, requires customers to identify their disability status. Any necessary auxiliary aid (telecommunication device for the deaf [TDD]), readers, sign-language interpreters) or accommodation (wheelchair, accessible site for mobility impaired customer) for a disabled customer is usually obtained prior to the TANF application interview.

TANF customers who are in VIEW may 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. All TANF customers are screened during the application process to determine whether they must be referred for participation in the VIEW program. A customer can make his/her disability and the limitations of his/her work capabilities known by completing the section of the TANF application that refers to disabilities or by discussing it with 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 evaluation (Form 032-03-378/2), from a physician, specifying that he/she is incapacitated, the nature and scope of the incapacity, and the duration of the incapacity. The customer's incapacity exemption is reevaluated every 60 days. Individuals who volunteer for the VIEW program are required to meet the same requirements as non-exempt individuals.

A customer with a temporary disability 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 will restart 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 Security Income (SSI) benefits and the case is transferred to an 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 that they have applied for social security benefits. A customer approved for SSI must repay the general relief funds; however, a customer approved for SSDI benefits is not required to repay the general relief funds.

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. Customers are referred to a VIEW worker at case approval 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.

The caseworker uses View Assessments I and II to assess a customer's work readiness. 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. In addition, 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 or the Test of Adult Basic Education (TABE). All customers are 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. TANF customers who fail to acquire work, conduct a job search or comply with other requirements of the program are subject to a 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 barriers exist that prevent a customer from complying with the program requirements, he/she 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.

### **Findings**

Our review indicated the following:

- RCDSS employees identify disabled customers through the application process, visual observation, and self-identification.
- RCDSS uses assessment tools to identify barriers that would prevent TANF customers from fully participating in employment opportunities. We compared the assessment tools used by RCDSS to those used in other states. The RCDSS instruments do not provide a comprehensive screening for learning disabilities or mental health issues.
- Caseworkers indicate that they have not encountered a significant number of customers with visual impairments. Several workers indicated that they have never had a customer who was blind/visually impaired. However, when a customer who is visually impaired arrives at the service center, staff are prepared to read the information. Customers generally rely on relatives, friends, or authorized representatives to assist them in understanding the information. Caseworkers indicated that written notifications sent to blind/visually impaired customers are not in formats that they can understand. The

Virginia Department for the Blind and Vision Impaired provides services to the blind/visually impaired customer by reading and completing the TANF application form.

- OCR found no physical barriers to access for persons with mobility disabilities. Each office had a ground level entrance to facilitate wheelchair access. There are cubicles designed to accommodate a wheelchair. In addition, tables are available to conduct face-to-face interviews with the customer and the authorized representative. Signage was in place, bathrooms and other areas used by the public were accessible. In some sites, the caseworker's cubicle was unable to accommodate a wheelchair customer. In this instance, the caseworker would move to a private cubicle more accessible to the customer to continue the meeting.
- Caseworkers indicated that the agency does not have a written policy stipulating how it provides services to the deaf/hard of hearing/speech impaired customer. However, RCDSS has procedures in place for providing services to the deaf/hard of hearing/speech-impaired customer. If the customer is contacted by telephone, the staff uses the relay service. In addition, caseworkers are prepared to communicate with customers by writing notes or talking slow so customers can understand the information. Caseworkers indicated that some customers' preferred communicating by reading lips. Customers requiring the aid of a sign language interpreter are identified by the customer services representative at the time of arrival. RCDSS will use staff sign language interpreters or contract interpreters to communicate with customers.
- RCDSS procedures to obtain auxiliary aids are not clearly defined or understood by staff. Responses from caseworkers varied from reporting that auxiliary aids are not provided to customers to referring customers to a service worker or community organization (readers and sign language interpreters) to obtain the aid. However, RCDSS provides outside and staff sign language interpreters, readers, note takers, and access to a 1-800 relay service.
- The staff provided two resource guides for community services - the United Way Directory of Community Services and a Guide to Services in the Richmond/Henrico/Hanover/Chesterfield areas. The United Way Director of Community Services is used by staff to refer customers to services and programs in the community. The pocket guide to Services in the Richmond/Henrico/Hanover/Chesterfield areas is provided to customers as a resource document to direct them to social service programs, homeless shelters, emergency and general medical treatment, mental health and substance abuse treatment, food pantries, and housing counseling.
- Goodwill Industries stated that RCDSS refers approximately eight customers bi-weekly for services. The agency received a grant from RCDSS to provide job readiness programs for disabled and VIEW customers. Disabled customers acquire work experience through the Work Adjustment and Extended Employment Services Programs. Goodwill Industries also provides supported employment and training services that identify appropriate jobs for severely disabled customers. Goodwill Industries will provide day support services for mentally retarded customers. Services for customers include prevocational training and

specialized supervision to prepare customers for paid or unpaid employment.

- The Department of Rehabilitative Services (DRS) informed OCR that it supports RCDSS disabled customers by providing employment and vocational services. Through contracts with local Employment Services Organizations customers receive pre-employment training, job seeking skills, job coaching training services and supported employment. The services are designed to address employment readiness and support for job maintenance and retention of employment.
- The Richmond Behavioral Health Authority (RBHA) provides mental health, mental retardation, and substance abuse services to customers. Customers are assessed and referred for services such as: counseling or therapy services; job readiness training to substance abuse customers; life skills training such as interviewing techniques; how to search for jobs on the internet; transportation assistance; child care; and what attire to wear for a job interview. RBHA reported that their relationship with RCDSS is fostered by a collaboration between the agencies called TANF link. The project is funded with a grant from the state mental health agency and provides services to approximately 72 RCDSS customers. RBHA receives approximately 1 to 2 referrals weekly from RCDSS.

### **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. Specifically, individuals with disabilities must be afforded an opportunity to benefit from TANF programs in the same manner the TANF agency affords such opportunity 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.

- RCDSS 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 or the Test of Adult Basic Education (TABE). The evaluation of the VIEW assessment forms indicated that the agency does not address in-depth the mental health or the needs of learning disabled customers.
- We reviewed the VIEW 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 RCDSS 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.

- RCDSS has established a relationship with contractors and vendors that provide employment, job readiness training and vocational services to its disabled customers. In collaboration with Goodwill Industries, the Department of Rehabilitative Services, and the Richmond Behavioral Health Authority, RCDSS has formed partnerships that provide assessments and follow-up services for disabled customers.
- In addressing the issue of communicating with the blind/visually impaired customer, the review revealed that the agency's primary source of providing services is through relatives, friends or an authorized representative. Other than staff reading to the blind/visually impaired customer, no other form of auxiliary aids is provided.
- There are no consistent procedures and policies in place to provide services to the deaf/hard of hearing/speech impaired customer. Although staff are able to obtain the auxiliary aid, a lack of a written policy and procedures could result in a delay of providing services to customers with sensory impairments.

In summary, the recipient has demonstrated its ability and commitment to serve individuals with disabilities through established working relationships with Goodwill Industries, the Richmond Behavioral Health Authority and the local office of the Virginia Department of Rehabilitative Services. Each agency conducts further assessments of customers referred from RCDSS to determine which services will best meet the customers' 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.

### **Requested Actions**

We have determined that the Richmond City DSS does not exclude the participation of, deny benefits to, or otherwise discriminate against persons with disabilities. However, we recommend the following actions be taken to ensure compliance with Section 504 and the ADA with regard to the issue:

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



job placement.<sup>9</sup> The Virginia Department of Social Services will encourage local agencies to make use of 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 RCDSS'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 should also address 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 RCDSS 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 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 RCDSS can respond to their needs. We are enclosing a notice from the State of Georgia which provides helpful language for your agency to consider in developing this notice.
- To ensure notice is given to customers, the RCDSS office should display posters offering free sign language assistance to all hearing/speech impaired customers.
- 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.
- RCDSS should immediately inform staff of its policy to provide auxiliary aids to disabled customers and provide its written procedures for obtaining auxiliary aids, i.e., TDD (telecommunications device for the deaf) service, readers, sign-language interpreters.
- Ensure that caseworkers are informed of how to utilize relay services for communication with hearing/speech-impaired customers. Provide notice to customers indicating the

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<sup>9</sup>For 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, 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.

availability of such services and a telephone number at which the service may be accessed.

### **Monitoring**

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

- An update on 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.
- The dates training was provided to staff regarding RCDSS'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 the poster posted regarding services for persons who are hearing impaired and notice regarding use of the relay service.
- A copy of RCDSS' written policy which addresses provision of services to disabled customers.

### **Data Collection**

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

- 1 Total number of TANF beneficiaries served<sup>10</sup> in work transition programs.<sup>11</sup>
- 2 Total number of disabled TANF beneficiaries served in work transition programs.

Please notify Jessie Washington, at (202) 619-0204 as soon as possible of the name of the person

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<sup>10</sup>The number of persons receiving assistance under TANF who are participating in work transition programs.

<sup>11</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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responsible for submitting this data.

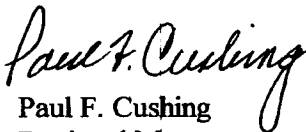
We are closing our review and will continue to monitor RCDSS until June 30, 2004. At that time, we will make a final determination regarding RCDSS's compliance with Section 504 and the ADA.

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 if released, would constitute an unwarranted invasion of privacy.

We want to express our appreciation to you and your staff for the cooperation we received during the review. If you should have any questions, please do not hesitate to contact me at 215.861.4441 or Ms. Washington, Investigator, at the number provided above or via email at [jessie.washington@hhs.gov](mailto:jessie.washington@hhs.gov)

Sincerely,

  
Paul F. Cushing  
Regional Manager

Enclosures

cc: Maurice Jones, Commissioner VADSS  
Lisa Pearson, ACF