

CLE FOR ALJS AND SHOS

Topic: Temporary Assistance/Food Stamps Employment Overview for ALJ's

Place: 14 Boerum Place. 16A Waiting Room

Date: November 16, 2007

Time: 10:00am – 12:00 pm (one 10 minute break)

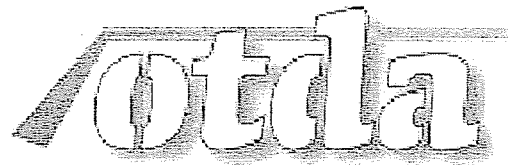
This course will be eligible for 2 hours of non-transitional credits in Areas of Professional Practice

Attendance: All ALJs and SHOs stationed at our Boerum Place office are expected to attend unless excused by their supervisor.

TA/FS Employment Overview

for
Administrative Law Judges

Continuing Legal Education



 PROFESSIONAL DEVELOPMENT PROGRAM
ROCKEFELLER COLLEGE UNIVERSITY AT ALBANY, STATE UNIVERSITY OF NEW YORK

PDP

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This document was designed and produced under a contractual agreement
between the:

New York State Office of Temporary and Disability Assistance

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Rockefeller College, University at Albany

State University of New York

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About the Training Program

Program Description

Temporary Assistance/Food Stamps Employment Overview is a two hour training designed to increase New York City Hearing Officers' knowledge of Temporary Assistance and Food Stamp employment rules.

Purpose

The purpose of this program is to provide an overview and basic understanding of the Temporary Assistance and Food Stamp employment requirements and policies.

Training Goals

The training goal for the program is to enhance the Hearing Officer's knowledge and skills so that s/he may more effectively determine the appropriateness of the Agency's (HRA) action.

Audience Profile

This training program is designed for New York City Hearing Officers.

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Course Objectives

By the end of this training the participants will be able to:

- Describe the employment process
 - Describe the screening and assessment process
 - Describe TA and FS work requirements
 - Describe New York City training and job programs
 - Identify TA and FS work exemptions
 - Describe an employment sanction
-

About the Training and Development Staff

Professional Development Program, Rockefeller College University at Albany, Harlem Training Center

Sheila Ryan has a Masters in Public Administration from New York University's Wagner School of Public Service. She joined the Professional Development Program in 2005 as a Senior Education Specialist and has been involved in developing and delivering training for Temporary Assistance, Food Stamps and Fair Hearings. Before joining PDP, Sheila worked in a variety of non-profit organizations as a curriculum developer and trainer.

Donald Shortslef holds a Bachelor of Science degree in Elementary Education from Atlantic Union College in South Lancaster, Massachusetts. He joined PDP in 2005 as a Senior Education Specialist and has been involved in the development and delivery of training programs in the areas of Temporary Assistance, Food Stamps and Fair Hearings. Prior to coming to PDP, Donald served as a Trainer for the Center for Development of Human Services for 15 years conducting audits and trainings in the New York City metro area.

Peter Wilson earned a Master of Arts degree in Public Administration from Queens College. He earned his Bachelor of Science degree from York College. He joined PDP in 2005 as a Senior Education Specialist. He has experience in curriculum development and Temporary Assistance/Food Stamp policy training. He previously worked for the Office of Training Operations (OTO) in the New York City Human Resources Administration (HRA) for seven years where he taught Welfare Management System (WMS) Inquiry, Automated Child Care Information System (ACCIS) and the Paperless Office System (POS).

Kristin McElroy received her Bachelor of Arts degree in Political Science from SUNY Albany's Rockefeller College in 2005. She joined PDP in July 2005 as an Education Specialist, working to research and to develop new training in Albany. Kristin was a trainer for the Mental Health Awareness project, the Welfare Fraud Investigator Training, the Food Stamp Worker Training Institute, and Domestic Violence iLinc. Kristin became a member of the Harlem team in early 2007.

Overview of the Temporary Assistance to Needy Families (TANF) Work Rules, Continued

Deficit Reduction Act Effect on TANF Programs

The Deficit Reduction Act led to several changes to TANF including:

- Countable work activities are defined by the federal government, not the states. The new law significantly restricts the types of programs that will be accepted as work activities under TANF.
- When the federal government determines the minimum participation rate the state must achieve in order to continue receiving its full TANF grant:
 - States no longer get credit for the major reduction in welfare caseloads since 1995
 - Now states must use 2005 as the base year for caseload percentage reductions for participation rate credits.

Participation Rate

The participation rate that all New York State districts must achieve for families receiving TA are:

- Combined TANF/Safety Net (SN) MOE: 50%
- Safety Net non-MOE: 50%

Note: To preserve the amount of federal TANF funding available to New York State, two-parent families have been separately funded. This change removes the need to achieve the federal 90% Two-Parent work participation rate requirement.

Two-parent families remain subject to the same work participation requirements and should be engaged in work activities to the extent deemed appropriate by the social services district consistent with the requirements of Title 9-B of Social Services Law.

New York State TA Work Requirements

- Introduction** The purpose of requiring clients to participate in work activities is to:
- Assist the districts to achieve federal and state participation rate requirements
 - Help clients move from Welfare to work
 - Reduce the clients' dependency on public assistance and gain greater self-sufficiency
-

State Guidelines for Level of Participation NYS believes its TA clients want to work toward employment and self-sufficiency.

When assigning individuals to work activities, local districts should:

- Take an individual's preferences, consistent with the individuals' assessment, into consideration to the extent possible and
- Consider its need to meet federal and state participation rates when assigning individuals to work activities. The employment plan must record the reasons why an individual's preferences cannot be accommodated.

In addition:

- Local district staff determine the length and level of client engagement in work activities within Federal and State requirements and definitions of approved work activities. However, at least 20 hours of those work activities must be core activities.
- Non-exempt clients may be assigned to one or more work activities for up to 40 hours per week maximum.

Note: The number of hours that an individual may be assigned to work experience is limited based on the family's TA grant plus food stamp benefits, if any, divided by the higher of the federal or State minimum wage.

New York City HRA's Employment Plan Process

- Introduction** All applicants for and recipients of TA must participate in work activities.
- HRA's Family Independence Administration (FIA) promotes finding and sustaining gainful employment as the foundation of self-sufficiency. As a result, at application, non exempt individuals are notified that they must agree to engage in job search and work-related activities with the goal of becoming self-sufficient, unless otherwise determined exempt from work activities.
-
- Employability Plan** Federal and state rules require that an Employment Plan (EP) be completed on all individuals who are age 18 and older (including 16 and 17 year old individuals who are not attending secondary school and have not completed high school or an equivalency program).
- FIA uses the EP to track an individual's progress toward self-sufficiency. The EP captures all of the information pertinent to an individual's achievement of sustained employment, assessing employability at a given point in time
-
- Steps in the Employment Plan Process** The EP is :
- Initiated by the Job Opportunity Specialist (JOS) during the orientation/screening phase using the New York City Work Accountability and You (NYCWAY) database.
 - The EP is annotated and completed by the Back to Work (BTW) Out-Stationed Workers (OSWs) and contracted vendors once the assessment has been completed.
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New York City's HRA Employment Plan Process, Continued

New York City Work Accountability and You (NYCWAY)

NYCWAY is a database, specific to NYC, that stores all information gathered through the EP process. Employment-related action codes are entered into NYCWAY by the JOS, BTW-OSW and vendors at the beginning and the end of the EP process. Some of the more frequent codes include:

- 105E: Referred For Employment Appt-Employable
- 193: Referred To Substance Abuse Center
- 434A: Failed To Keep Mandatory Appointment
- 155G: Referral To Parks/Grant Diversion
- 119U: EP Barrier: Exempt

Note: See appendix for full listing of frequently encountered codes.

Orientation and Screening

Introduction The JOS performs the orientation and screening process at initial contact with the applicant /participant. Once this process has been completed, the JOS will initiate the EP plan.

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Orientation and Screening, Continued

Orientation and Screening

The JOS conducts an orientation and screening interview prior to doing an EP. During this process the JOS:

- Works with the applicant/participant to complete the Statewide Common Application (LDSS-2921) or the Recertification for Public Assistance, Medical Assistance, Food Stamps (LDSS-3174) and all other appropriate application/recertification forms, as applicable
- Discusses time limits: 60 month lifetime cash assistance limit for Family Assistance (FA) participants, 24 months for Safety Net Assistance (SNA) participants
- Emphasizes the importance of paid employment
- Informs applicants of their rights and responsibilities as stated in the booklet, "What You Should Know About Your Rights and Responsibilities When Applying For or Receiving Social Services" (LDSS-4148A) and reviews the Important Information about Child Care (LDSS-4647) with applicants/participants who have children under 13 years of age
- Informs applicants of activities and supportive services that are available while the individual participates in work and work-related activities, such as:
 - Child care services
 - Transportation assistance
- Screens for possible barriers to employment using the Domestic Violence Screening Form (LDSS-4583) and the Alcohol and Drug Abuse Screening and Referral Form (LDSS-4571)
- Determines if there are other personal issues that may affect employability of applicants/participants who are not otherwise exempt (e.g., language, literacy, or child care issues)
- Screens for possible exemptions to employment

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Orientation and Screening, Continued

- EP Referrals** The JOS uses the EP to record any employment skills, education, employment preferences, and any potential barriers to employment. This section records the declared and/or suspected barriers to employment.
- If declared and/or suspected barriers are found, the JOS will make a referral to a specialized unit. This unit will assess the impact of the stated barrier on the applicant's/participant's ability to be engaged.
 - If a barrier is identified, the individual may be exempt from assignment to work activities, but may be required to:
 - Provide additional medical documentation
 - Participate in an independent evaluation
 - If the individual is determined potentially employable:
 - May be required to participate in reasonable medical care, vocational rehabilitation or treatment that a medical professional has judged necessary to improve the individual's ability to work.
 - If no barriers are found a referral will be made to BTW for an employment assessment.
-

Barriers to Employment and Referrals

Introduction During the EP screening and assessment process the JOS or BTW worker may identify a possible barrier that could limit the applicant's/participant's ability to participate in an employment or training assignment.

Employment Barriers The Assessment-Primary Questionnaire screen in the EP is used to identify potential barriers to employment. This screen records the declared and /or suspected existence of possible barriers to employment including:

- Special Assessment Issue (Domestic Violence)
- Alcohol/Drug Issue
- Medical/Mental Health Issue
- Needed at Home Claimed
- Other Personal Issues
- Felony Convictions

Note: There are other barriers to employment that can be identified through the EP. They are as follows:

- Language
 - Literacy
 - Childcare
-

Special Assessment Issue If an applicant/participant makes a domestic violence claim, a referral will be made to a Domestic Violence Liaison (DVL) for an assessment and possible services. The DVL will then make the assessment whether a temporary employment waiver will be granted.

Note: A DVL referral can only be made with the consent of the applicant/participant. Furthermore, a temporary employment waiver due to a domestic violence situation can only be made by the DVL.

Barriers to Employment and Referrals, Continued

Alcohol/Drug Issue If an applicant states that they have an alcohol or drug problem, or the alcohol or substance abuse screening completed by the district indicates that further assessment is appropriate, a referral can be made to a Credentialed Alcohol and Substance Abuse Counselor (CASAC) for assessment.

Medical/Mental Health Issue If the applicant/participant claims to have a health or mental health condition that prevents him/her from participating in any work activities, a referral will be made to Wellness, Comprehensive Assessment, Rehabilitation and Employment (WeCARE) for a medical assessment.

A referral to WeCARE can also be made if the JOS or BTW observes behavior by the applicant/participant that may warrant a referral, e.g. body rocking, slurred, rapid, and/or monotone speech, involuntary tongue movement. These behaviors may indicate the need for further assistance. (This will be discussed more fully during the WeCARE overview.)

However, if an applicant/recipient does not claim to have a mental health condition, the individual needs to demonstrate an inability to successfully participate in work activities before the district can mandate a mental health evaluation.

Disability Review Process If an applicant or a recipient claims they are unable to work due to a medical condition, or a disability, a referral is made to WeCARE.

Under WeCARE (Wellness, Comprehensive Assessment, Rehabilitation and Employment) a bio-psycho-social assessment is made by a physician to determine a person's functional capacity outcome – or their ability to work. Once this determination is made, the applicant/recipient is notified of the determination, and of their right to protest it. (See 18NYCRR 385.2 (c).)

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Barriers to Employment and Referrals, Continued

Disclosure Federal rules generally prohibit requiring an individual to disclose a disability and therefore, general screening for a disability, including learning disabilities and mental health disorders, must be voluntary. However, districts must inquire about an individual's health related limitations to determine appropriate work assignments.

If a client claims to be unable to work or limited in his/her ability work due to a disability or the individual demonstrates an inability to successfully participate in work activities and the district has reason to believe this is due to a disability, the district may require the individual to participate in a screening and evaluation to verify the alleged disability/work limitation and to identify appropriate services.

TA Work Rule Exemptions

Introduction

A work exemption can be discovered at any time, including the screening or assessment phases of the EP process.

The exempt/non-exempt determination is the district's determination of the extent to which a TA recipient can participate in work activities. The determination is based upon an evaluation of the individual's physical and mental health and other factors that may affect the ability to work.

Work Limited

The term "work limited" refers to an individual who may have a mental or physical impairment that limits their ability to participate in work activities. A work limitation *does not* qualify as an exemption, no matter the duration of the limitation.

Individuals who are determined to be work limited may be assigned to a work activity consistent with the verified medical limitation and/or treatment plan.

TA Work Exemptions

A TA applicant or recipient is exempt from participation in job search and work activities if s/he is determined to be:

- Ill or injured to the extent the s/he is unable to engage in work activities for up to three months, as verified by medical evidence
 - 60 years of age or older
 - Under the age of 16 or under the age of 19 and attending a full time secondary, vocational or technical school
 - Disabled or incapacitated, according to State regulations
 - Needed in the home because another member of the household requires his/her full presence due to a verified mental or physical impairment and no other member of the household is appropriate to provide such care.
-

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TA Work Rule Exemptions, Continued

TA Exemptions, continued

- Pregnant, beginning 30 days prior to the medically verified date of delivery of the child
- The parent or other caretaker relative in a one-parent household of a child under 12 months of age who is personally providing care for such child.
 - This exemption must last no longer than 12 months for any parent or caretaker relatives' life.
 - The exemption shall last no longer than three months for any one child unless a determination is made to extend the exemption for the child up to the total 12-month maximum for the life of such parent or caretaker relative
- Exempt from work activities due to substance abuse, as verified by a Credentialed Alcohol and Substance Abuse Counselor (CASAC), or if granted a full employment waiver by the Office for the Prevention of Domestic Violence (OPDV)

Note: HRA has implemented a policy to allow 19 year old individuals who have not completed high school to satisfy their work requirement by attending full-time a secondary, vocational or technical school or a GED program.

Assessment

Introduction The BTW OSWs and vendors conduct an employment assessment during a scheduled appointment with the applicant/ participant. The BTW OSW and contracted vendors make the appropriate additions or updates to the EP.

**Assessment
- BTW Out
stationed
Worker**

An HRA/FIA worker is out-stationed at selected Back to Work (BTW) vendor sites and available to all individuals assigned to BTW. The FIA OSW has a key role in ensuring that individuals are tracked for compliance with employment requirements. In addition, the BTW OSW:

- Ensures childcare is in place and discusses back-up childcare plans
- Ensures that non citizen applicants/participants have an employment authorization document (EAD) and a Social Security number (SSN) valid for working
- Reviews the Open Case list of individuals whose PA cases have been accepted and calls them in to:
 - Confirm the completeness and validity of information entered into the individual's most recent EP
 - Discuss the employment and educational/training preferences as recorded in the EP
- Ensures that the individual understands that his/her preferences for a particular type of work or job goal will be taken into consideration in determining assignments appropriate to his/her employment plan to the extent possible, but may not be able to accommodate the individual's preferences if such activities are not consistent with the individual's assessment or the district's need to achieve participation rates
- Makes referrals for specialized assessments when the BTW vendor suspects or identifies other barriers that may affect work participation

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Assessment, Continued

- Assessment - Vendor** HRA contracts with community-based employment and training organizations (CBOs) to provide job readiness training, placement services and vocational training to public assistance applicants/participants under the BTW employment program. These CBOs:
- Provide orientation on-site at the Job/Model Centers or off-site, when applicable, for applicants/participants referred to BTW
 - Conduct in-depth interviewing, skills testing, employability assessments and assist applicants/participants in identifying job goals
 - Update and/or complete the EP initiated by the JOS/Worker. This includes entering assessment outcomes and the steps for reaching the employment goal in the EP.
 - Provide carfare for job search/training until it is issued on the case
 - Ensure compliance with mandatory attendance in accordance with welfare reform requirements
 - If appropriate, work collaboratively with treatment providers;
 - Help applicants/participants become job ready and assist them to conduct a job search as well as place applicants/participants in paid, unsubsidized employment
 - Make linkages with community-based organizations that provide services/support that will assist individuals in keeping their jobs
 - Assist with securing any transitional benefits the applicant/participant may be eligible for once unsubsidized employment is secured
 - Help applicants/participants retain the jobs they obtain and plan for career growth
 - Career counseling
 - Complete a post EP once the individual has gained employment
-

Employment and Training Programs

Introduction The JOS refers the applicant/recipient for an educational, training or work assignment based on the responses given during the EP interview.

BTW and the Training Assessment Group (TAG) assess the applicant's/recipient's educational background, work history, requests for training and job preference in the EP. Then, the applicant/recipient is placed in the appropriate program or work assignment.

If there are barriers to employment, and applicant/recipient is determined to be work limited, he/she is assigned to an appropriate activity and provided with reasonable accommodations.

Work Assignments

The Back to Work program (BTW) integrates the job search, short term training, job readiness and job placement services.

- Non-exempt individuals with no barriers report to BTW for an orientation the same or next business day
 - Non-exempt individuals with barriers are referred for in-depth assessment (WeCARE) and/or work activities once barriers to employment, if any, have been addressed and child care, if needed, is in place.
-

Training Assessment Group

In accordance with state law, all non-exempt single parents or caretaker relatives of dependent children receiving public assistance have the opportunity to meet their work requirements through a wide range of work activities including work experience, job search, work study, internships, and education and training.

The Training Assessment Group (TAG), established as a result of the Davila lawsuit, ensures that education /training programs requested by referred applicants/ participants are consistent with the EP. The TAG assessment also includes eliciting preferences for a type of work activity that meets the work requirement.

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Employment and Training Programs, Continued

**Work
Experience
Program**

The Work Experience Program (WEP) is a program that is designed to give work experience to individuals in receipt of TA. Work opportunities are generally divided into three categories: office services, maintenance services, and human /community services. Work experience assignments are limited to public or not for profit entities.

**Grant
Diversion/
Wage
Subsidy**

Grant Diversion/Wage Subsidy is a government program designed to encourage and promote the employment of public assistance participants by providing funding to public, nonprofit or private sector employers to offset the cost of hiring new employees. The program enrollment is limited to six months.

**Example of
Grant
Diversion/
Wage
Subsidy**

The Parks Opportunity Program (POP) is the main Grant Diversion/Wage Subsidy program.

POP employs over 4000 participants in New York City's parks, playgrounds and recreation centers. POP participants learn transferable skills in various fields, including maintenance, security, horticulture, and customer service. They also receive employment services and career counseling in preparation for careers in the private sector.

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Employment and Training Programs, Continued

Begin Employment Gain Independence Now Programs

Begin Employment Gain Independence Now (BEGIN) Managed Programs offer short-term no cost employment skills training and education to individuals with language and literacy barriers to employment.

BEGIN offers five types of programs:

- BEGIN Work Study (BWS)
 - BEGIN Language Work Student (BLWS)
 - BEGIN Internship (BI)
 - BEGIN Vocational Work Study (VoWS)
 - BEGIN Employment Plus (BEGIN E+)
-

BEGIN Work Study

BEGIN Work Study (BWS)/General Education Diploma (GED) offers two tracks of educational instruction:

- GED preparation classes for those who test at the ninth grade reading level or above and
 - Basic education classes for those who test below a ninth grade reading level. This option allows an opportunity to work toward gaining a general education diploma.
-

BEGIN Language Work Study

BEGIN Language Work Study (BLWS) is appropriate for those individuals who speak English as a second language.

The program is designed to improve English language skills and employability chances by combining two days of work readiness and language training/support with three days of work experience.

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Employment and Training Programs, Continued

**BEGIN
Internship**

BEGIN Internship (BI) is designed for those who have a GED/high school diploma and, possibly, additional educational experience, but still face barriers to successful employment, such as the need for additional computer skills.

**BEGIN
Vocation
Work Study**

BEGIN Vocational Work Study (VoWS) is a full-time, five-day/35 hour per week assignment.

- Two days are spent in classroom training and
- Three days the participant reports to a work site, where s/he receives practical hands-on work experience.

In depth training is offered in a variety of fields including health care, computer applications, custodial services, security, customer service, Web site design and office administration. At the conclusion of the training program, the participants receive job placement assistance.

**BEGIN
Employment
Plus**

BEGIN Employment Plus (BEGIN E+) offers extended hours of adult basic education, English as a Second Language (ESL) classes and GED preparation to assist individuals who may require intensive skills enhancement. BEGIN E+ also offers an after-school program for individuals with children between five and 12 years of age, to assist them with their child care needs while they are engaged.

Food Stamp Work Rule Requirements

Introduction

All FS participants deemed employable must participate in food stamp employment activities as assigned by HRA. These activities must be in accordance with the Food Stamp Employment and Training (FSET) federal requirements.

FSET

FSET is a federal requirement that mandates all able-bodied adults between the ages of 16 and 60 to:

- Register for work
 - Take part in an employment training program designated by FIA and
 - Accept or continue in suitable employment activities as a condition of FS eligibility
-

Work Registration Requirement

All FS household members who do not qualify for an exemption must be work registered.

Work registration is the responsibility of the Agency, not the applicant/recipient. It is completed by:

- Determining the work registration status of each FS household member
- Selecting the appropriate employment code
- Entering that code into WMS.

Note: This is an Agency requirement. A client cannot fail to work register.

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Food Stamp Work Rule Requirements, Continued

**Require-
ments for
Work
Registrants**

FS household/case members who are work registered must:

- Accept suitable employment when referred or offered
 - Respond to requests from the local district regarding employment status and work availability
 - Participate in work activities through New York's Food Stamp Employment and Training (FSET) program, if required
-

FS Work Rule Exemptions

Introduction The Agency determines the work registration status (exempt or non-exempt) for each individual who applies for food stamps.

An individual who claims to be exempt from work registration, but does not cooperate with the work registration process (e.g., failure to submit requested documentation) becomes a work registrant.

FS Exemptions

A FS applicant/participant is exempt from work activities if s/he is:

- Younger than 16
- 60 years or older
- Physically or mentally unfit for employment
- A parent or household member responsible for the physical care of a dependent child under the age of six or of an incapacitated person
 - If the parent or household member is also in receipt of TANF and required to participate in WEP, he/she is not exempt
- Receiving unemployment compensation. An applicant for unemployment compensation is exempt if s/he was required to register for work as part of the unemployment compensation application process
- A regular participant in a drug or alcohol treatment and rehabilitation program, determined unable to work and participating in required treatment to an extent that assignment to work activities is impractical
- Employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings at least equal to the federal minimum wage, multiplied by 30 hours

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FS Work Rule Exemptions, Continued

FS Exemptions, continued

- An applicant for SSI and FS, under the joint processing provisions until an SSI determination is made
 - A person age 16 or 17 who is not the head of household or who is attending school or an employment training program on at least a half-time basis.
 - A student, 18 years of age or older but under the age of 50 and physically and mentally fit, enrolled at least half time in any recognized school, training program or institution of higher education, and meets at least one of the following criteria:
 - Is employed for a minimum of 20 hours per week and is paid for such employment or, if self-employed, is employed for a minimum of 20 hours per week and receives weekly earnings at least equal to the Federal minimum wage, multiplied by 20 hours
 - Receives benefits from the TANF program
 - Is responsible for the physical care of one or more dependent household members under the age of six
 - Is a single parent with responsibility for the physical care of a dependent child under the age of 12 (regardless of the availability of adequate childcare)
 - Is responsible for the care of a dependent child above the age of five and under the age of 12 for whom adequate childcare is not available to enable the individual to attend classes and work 20 hours per week or participate in a State or federally financed work study program
 - Attend school under one of the following programs: the Food Stamp Employment and Training Program (FSET), TANF work program, Workforce Investment Act (WIA), Department of Labor program under Section 236 of the 1974 Trade Act
-

FSET Participation Rate

Level of Participation BTW and vendors determine the length and level of client participation in FSET activities according to state and FIA policy.

State policy provides the following participation guidelines:

- NPA work registrants:
 - May be assigned to one or a combination of work/FSET activities up to a maximum of 30 hours per week or 120 hours per month
 - May be assigned to work experience and be required to participate up to a level consistent with the value of the FS benefit divided by the federal or state minimum wage (\$7.15 per hour), whichever is higher, up to a maximum of 30 hours per week or 120 hours per month
 - TA/FS work registrants:
 - May be assigned to one or a combination of work activities for up to 40 hours per week, which may satisfy TA and FS work requirements
 - May be assigned to work experience and required to participate up to a level consistent with the value of their TA grant plus FS benefit, divided by the federal or state minimum wage (\$7.15 per hour), whichever is higher, up to a maximum of 40 hours per week
-

Able Bodied Adults Without Dependents (ABAWDs)

Introduction Able Bodied Adults Without Dependents (ABAWDs) are individuals who are subject to FS work registration requirements and meet certain additional criteria.

Identifying ABAWDs ABAWDs are work registrants who are *not*:

- Under 18 or 50 years of age or older
- Any adult (including a parent) residing in a food stamp household where a household member is under 18 years of age
- A pregnant woman (from the month in which the required medical verification is provided)
- Unable to work in competitive employment for at least 80 hours per month due to a physical or mental limitation

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Able Bodied Adults Without Dependents (ABAWDs), Continued

ABAWD Require- ments

In order for an ABAWD to remain eligible for food stamps for more than three months in any 36-month period, the individual must meet the ABAWD requirement through one of the following methods. The ABAWD must:

- Work (including “in-kind” work and volunteer work) for a total of at least 80 hours per month. There is no hourly wage requirement, but the work performed must not violate any state or federal law or regulation. All work hours must be verified by the district

or

- Participate in work programs, including programs under title I of the Workforce Investment Act of 1998 or Section 236 of the Federal Trade Act of 1974, for a total of at least 80 hours per month. Work programs may contain job search and job search training as a subsidiary component as long as the number of hours of participation in job search or job search training is less than one-half of the total monthly hours. For example, if an individual is required to participate in a work program for 30 hours per week, the district may assign job search or job search training for up to 14 of the 30 hours

or

- Participate in work experience for the number of hours equal to their FS and/or PA grant divided by the minimum wage. A food stamp only, public assistance only or a combination program assignment qualifies as meeting the ABAWD requirement
-

Non Compliance with TA Work Rule Requirements

Introduction An employment sanction can occur when an applicant/participant refuses or fails, willfully and without good cause, to comply with an employment requirement.

During a TA employment sanction, the household's TA grant is reduced pro-rata, generally for a specific period of time, and until the sanctioned individual demonstrates compliance with TA work requirements.

The durational sanction period differs depending on the number of TA sanctions previously imposed and whether or not the household includes a dependent child.

An individual must serve at least the minimum sanction before the budget can be restored.

TA Pro-Rata Sanction

A pro-rata sanction is used to sanction an individual for non compliance with employment requirements. A pro-rata sanction reduces the household's grant by the sanctioned individual's proportionate share of the household's deficit (i.e. the pro-rata reduction cannot occur until the deficit level of the budget has been calculated).

Sanctions for Households with Dependent Children

An individual residing in a household with dependent children who willfully and without good cause, refuses or fails to comply with employment requirements is subject to the following sanctions:

- The first instance
 - Until the individual is willing to comply.
 - The second instance
 - Three months and thereafter until willing to comply.
 - The third and all subsequent instances
 - Six months and thereafter until willing to comply.
-

Continued on next page

Non Compliance with TA Work Rule Requirements, Continued

Sanctions for Households without Dependent Children

Sanctions for an individual who willfully and without good cause refuses to comply with employment requirements, and is a member of a household without dependent children applying for or in receipt of SNA are:

- For the first instance
 - A period of 90 days and thereafter until willing to comply.
- For the second instance
 - A period of 150 days and thereafter until willing to comply.
- For the third instance
 - A period of 180 days and thereafter until willing to comply.

Other Employment Sanctions

Exempt, but potentially employable individuals who willfully and without good cause refuse or fail to comply with reasonable medical care, vocational rehabilitation or treatment may be subject to employment sanctions.

Specifically, such individuals would be ineligible for TA until compliance with the requirement to participate in reasonable medical care, vocational rehabilitation or treatment.

Continued on next page

Non Compliance with FS Work Rule Requirements

FS Employment Sanction

An individual who has failed to comply, willfully and without good cause, with FS employment programs will be considered ineligible for FS for a specific period of time. However, the individual's income and resources will be considered available to the rest of the household.

Sanction Duration

The duration of an employment sanction for an individual who is a member of a FS household and fails to comply willfully and without good cause is as follows:

- For the first instance, on or after September 22, 1996
 - A period of *two months* and thereafter until the individual complies.
- For the second instance of failure to comply willfully and without good cause.
 - A period of *four months* and thereafter until the individual complies.
- For the third instance of failure to comply willfully and without good cause
 - A period of *six months* and thereafter until the individual complies.
- For all subsequent instances of failure to comply willfully and without good cause.
 - A period of *six months* and thereafter until the individual complies.

Note: A sanctioned individual may become eligible for food stamps before the end of the sanction period if he or she becomes exempt from work requirements. For example, an individual who becomes unable to work or participate in work activities may be exempt from food stamp work requirements.

Employment Case Studies

Directions Please answer the questions for each case using the information in the training manual.

Case 1 Jane Russell has an active TA and FS case. Ms. Russell is currently attending an FIA approved training program. Her son Wayne is a 17 year old high school graduate who is currently unemployed.

1. Is Wayne exempt from the TA work rules?
2. Why?
3. Is Wayne exempt from the FS work rules?
4. Why?

Continued on next page

Employment Case Studies, Continued

Case 2

John Deary fell off a ladder at work and broke his leg. He has a letter from his doctor that states that he will be out from work for two months. He is applying for TA and FS benefits for himself and his two children ages 12 and 14.

1. Is Mr. Deary exempt from TA work rules?
2. Why?
3. Is Mr. Deary exempt from FS work rules?
4. Why?

Continued on next page

Employment Case Studies, Continued

Case 3

Billy Brooks is applying for TA/FS. He states that he was previously in a drug rehab program that he voluntarily enrolled in. However, he states that he is back to using drugs and that his addiction prevents him from working.

1. Is Mr. Brooks exempt from TA work rules?
2. Why?
3. Is Mr. Brooks exempt from FS work rules?
4. Why?

Continued on next page

Employment Case Studies, Continued

Case 4

Laura Stanton is applying for herself and her two children ages 5 and 14. She states that she cannot work because she has to take care of her children.

1. Is Ms. Stanton exempt from TA work rules?
2. Why?
3. Is Ms. Stanton exempt from FS work rules?
4. Why?

Appendix



Employment Case Studies

Case 1

Jane Russell has an active TA and FS case. Ms. Russell is currently attending an FIA approved training program. Her son Wayne is a 17 year old high school graduate who is currently unemployed.

1. Is Wayne exempt from the TA work rules?

Answer: No

2. Why?

Answer: Wayne is 17 years of age, a high school graduate who is not attending school or an employment program. An Employment Plan must be initiated and he must be assigned to a work activity.

3. Is Wayne exempt from the FS work rules?

Answer: Yes

4. Why?

Answer: Wayne is 17 years old and is not a head of the household.

Continued on next page

Employment Case Studies, Continued

Case 2

John Deary work fell off a ladder at work and broke his leg. He has a letter from his doctor that states that he will be out from work for two months. He is applying for TA and FS benefits for himself and his two children, ages 12 and 14.

1. Is Mr. Deary exempt from PA work rules?

Answer: Maybe. A determination cannot be made until Mr. Deary is referred to WeCARE.

2. Why?

Answer: A referral must be made to WeCARE. If it is determined that he cannot be engaged in a work participation program, he may be exempt for up to three months.

3. Is Mr. Deary exempt from FS work rules?

Answer: Maybe.

4. Why?

Answer: He may be exempt if it is determined by medical documentation that he is physically unfit for employment.

Continued on next page

Employment Case Studies, Continued

Case 3

Billy Brooks is applying for TA/FS. He states that he was previously in a drug rehab program that he voluntarily enrolled in. However, he states that he is back to using drugs and that his addiction prevents him from working.

1. Is Mr. Brooks exempt from TA work rules?

Answer: Maybe.

2. Why?

Answer: A referral must be made for Mr. Brooks to a CASAC. At that point a determination will be made on the employability status of Mr. Brooks.

3. Is Mr. Brooks exempt from FS work rules?

Answer: No

4. Why?

Answer: Mr. Brooks must be a regular participant in a drug or alcohol treatment and rehabilitation program, with "regular participant" being defined as an individual determined unable to work and participating in required treatment to an extent that assignment to work activities is impractical.

Continued on next page

Employment Case Studies, Continued

Case 4

Laura Stanton is applying for TA/FS for herself and her two children ages 5 and 14. She states that she cannot work because she has to take care of her children.

1. Is Ms. Stanton exempt from TA work rules?

Answer: No

2. Why?

Answer: Ms Stanton would not be exempt from TA work requirements because based on the information provided she does not meet any of the TA work exemptions.

3. Is Ms. Stanton exempt from FS work rules?

Answer: Yes

4. Why?

Answer: Ms. Stanton is a parent who is responsible for the physical care of a dependent child under the age of six.

Additions

MOE – Maintenance of Effort (pg. 16)

The federally mandated level of spending that each state (in NYS a combined state/local requirement) is required to continue to provide in order to qualify, in return, for the receipt of TANF funds. The requirement is that spending must equal at least 80% of their base year expenditures (FFY 1994).

Core Activities (Pg. 17)

Core Work Activities Core work activities count for all hours of participation, except where noted, and include:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience
- On-the-job training
- Job search
- Job readiness training
- Community service
- Vocational education
- Childcare provider for community service participant

Non-Core Work Activities Non-core work activities only count for hours of participation once the individual has achieved the 20 hours per week in a core work activity. Non-core work activities include:

- Job skills training directly related to employment
 - Education directly related to employment
 - Satisfactory attendance in secondary school
-

Training Assessment Group (TAG)

TAG Responsibilities

TAG ensures:

- Education/training programs requested by the applicant are consistent with the EP
 - Training programs are on HRA's approved master list
 - Training programs not on HRA's master list, but requested by an applicant, are referred to Resource Development for evaluation
 - All assessed individuals are engaged in appropriate activities for up to 40 hours a week
 - Each applicant is given the preference of choosing an education/training activity
 - Applicants who want to be enrolled in an education/training program but do not have a high school diploma will be referred to Begin Employment Gain Independence (BEGIN), and not TAG
-

Conciliation

- Conciliation** Conciliation is:
- A required process of determining good cause for a willful failure or refusal to comply with TA work requirements
 - The participant's opportunity to discuss and present evidence regarding the infraction
 - The Agency's opportunity to discuss work requirements
-

- Conciliation Process** If a participant fails to report or comply with any part of the employment process or requirements, the participant has infringed. Participants who infract are sent a conciliation notice.
- The conciliation notice has both an appointment date and an expiration date. If the participant cannot make the appointment date, s/he has until the expiration date to attend conciliation.
 - If the participant attends conciliation, and good cause is established, the Agency will reverse any adverse actions taken.
 - If the participant attends conciliation, and the conciliation worker determines the infraction willful and without good cause, the decision is explained to the participant, and a Notice of Intent (NOI) is sent.
 - If the participant fails to attend conciliation, an NOI is sent after the date of expiration of the Conciliation Notice.
 - Once an NOI is sent, the participant has the opportunity for an NOI conference.

Willfulness

Willfulness The determination of when non-compliance is willful and without good cause may include, but is not necessarily limited to:

- Identifying a pattern of the recipient's failure to take reasonable steps to address issues within the recipient's control that may prevent the recipient from complying with employment requirements

Determinations should be made on a case-by-case basis.

The steps that the recipient took to address issues within the recipient's control which prevented him or her from complying with the employment requirement needed to be explored in each instance of non-compliance.

Note: NYS OTDA issued GIS 05 TA/DC032, "Non-Compliance with Employment Requirements," discusses information about willful and without good cause.

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TO: Commissioners, Employment Coordinators, TA Directors, FS Directors, WMS
Coordinators, BICS Coordinators

FROM: Russell Sykes, Deputy Commissioner, Division of Employment & Transitional
Supports

SUBJECT: Non-Compliance With Employment Requirements

EFFECTIVE DATE: Immediately

CONTACT PERSON: John James at (518) 473-3123 or by e-mail at
JohnH.James@otda.state.ny.us

The purpose of this notice is to advise districts that as a result of decisions issued by the New York State Appellate Divisions (Earl v. Turner, Dost v. Wing), districts are required to determine that a recipient of temporary assistance willfully and without good cause failed or refused to comply with employment requirements before imposing an employment pro-rata sanction.

Required Action

Districts must revise their conciliation and sanction procedures so that, in most cases, a sanction is only imposed for noncompliance with employment requirements when the refusal or failure to comply was both willful and without good cause. The determination of when such conduct is willful and without good cause may include, but is not necessarily limited to, identifying a pattern of the recipient's failure to take reasonable steps to address issues within the recipient's control that may prevent the recipient from complying with employment requirements. Such a determination must be made on a case-by-case basis, and the steps that the recipient took to address issues within the recipient's control which prevented him or her from complying with the employment requirement need to be explored in each instance of non-compliance.

As an example of the case-by-case analysis required, a recipient who appeared at the worksite after the scheduled time because of a transportation delay would generally not be considered to have willfully failed to comply in the first instance of tardiness, but should be advised of the reasonable steps that should be taken to get to the assignment on time. The recipient might be counseled to, for example, take an earlier bus or train or arrange for an alternate means of transportation to arrive at the worksite at the appointed time. Subsequent instances of tardiness or non-compliance would need to be evaluated to determine whether or not the recipient's non-compliance rose to the level of being willful and without good cause. On the other hand, a recipient who fails to report to an employment assignment and does not respond to the conciliation notice within the required time frame or otherwise provide documentation to establish good cause may be considered to have willfully and without good cause failed to comply with the assignment in the first instance.

The information used to make the determination of whether a recipient's failure to comply is willful and without good cause must be documented in the recipient's record. The willful standard does not apply for failure to comply with applicant assessment and applicant job search

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requirements which results in case denial. In addition, the willful standard does not apply in instances of non-compliance with food stamp work requirements, but districts still need to consider whether the food stamp work registrant had good cause for not complying with the food stamp work assignment.

The Office is revising the applicable employment-related notices to include the willful standard (the Conciliation Notice (LDSS-4230), the Notice of Intent to Change Public Assistance Grant and/or Food Stamp Benefits for Non-Compliance with Employment Related Requirements (Timely and Adequate and Notice of Effect on Medicaid Benefits (LDSS-4004), and the language on the Client Notices System and the Welfare-To-Work Caseload Management System). The WTWCMS generated conciliation notice has been revised and migrated for district use as of September 12, 2005.

Districts that are using local equivalent forms in lieu of the State forms noted above will need to revise the local form to be consistent with the language on the respective State form and submit the revised form to your WTW Technical Advisor for approval.

A separate policy directive will be released to provide additional guidance and further case examples on this matter.

Section 385.0 Scope.

This Part sets forth the provisions and requirements of public assistance and food stamp employment programs, including the administration of local employment plans. It also contains work requirements for public assistance and food stamp applicants and recipients and sanctions for those who fail to comply without good cause with these requirements.

Section 385.2 Participation and exemptions for applicants and for recipients of public assistance.

- (a) General participation requirements. All applicants for and recipients of public assistance must participate in public assistance work activities assigned by the social services official in accordance with the requirements of this Part. Such applicants and recipients who fail to comply without good cause with the requirements of this Part shall be subject to the provisions of section 385.12 of this Part.
- (b) Exemptions from the requirement to participate in work activities. An applicant for or recipient of public assistance is exempt from participation in public assistance work activities pursuant to the requirements of this Part if he/she is determined by the social services official to be:
 - (1) ill or injured to the extent that he/she is unable to engage in work activities for up to three months, as verified by medical evidence;
 - (2) 60 years of age or older;
 - (3) under the age of 16 or under the age of 19 and attending full-time a secondary, vocational or technical school;
 - (4) disabled or incapacitated in accordance with the provisions of subdivision (d) of this section;
 - (5) needed in the home because another member of the household requires his/her presence due to a verified mental or physical impairment, and the social services official has determined that no other member of the household is appropriate to provide such care. For the purposes of this paragraph, the term "verified" shall mean that a licensed physician or certified psychologist has made the determination that such an impairment exists and that the household member is in need of care;
 - (6) pregnant, beginning 30 days prior to the medically verified date of the delivery of the child;
 - (7) the parent or other caretaker relative in a one parent household of a child under 12 months of age who is personally providing care for such a child.

This exemption must last for no longer than 12 months for any parent or caretaker relative's life.

- (i) The exemption shall last no longer than three months for any one child unless the social services official makes a determination to extend the exemption for the child for up to the total 12 month maximum for the life of such parent or caretaker relative.
- (ii) To the extent that the total of 12 months of exemption have not been exhausted by such parent or caretaker, the social services official shall apply the exemption to the parent or caretaker in the case of a child under three months of age, but shall determine whether to apply such exemption in the case of a child more than three months of age.

(c) Documentation of exemption.

- (1) If an applicant for or recipient of public assistance claims that he/she should be exempt from work activities pursuant to subdivision (b) of this section for reasons other than a medical limitation on his/her ability to work, the social services official shall notify the individual verbally or in writing of the opportunity to provide to the social services official, within 10 calendar days of such notification, such evidence as the social services official deems necessary in order for the social services official to determine whether the applicant or recipient should be exempt from work activities. An applicant or recipient who claims that he/she should be exempt from work activities for reasons other than a medical limitation and who fails to provide documentation that he/she should be exempt will be deemed to have failed to meet the eligibility requirements for assistance pursuant to Part 351 of this Title. Failure of such documentation to substantiate the claimed exemption shall not itself cause the individual to be ineligible for public assistance.
- (2) A recipient of public assistance who previously has been determined to be exempt from work activities pursuant to subdivision (b) of this section for reason(s) other than a medical limitation on his/her ability to work, and who claims that he/she should remain exempt, must provide such evidence as the social services official deems necessary in order for the social services official to determine whether the recipient should continue to be exempt from work activities. A recipient who fails to provide such evidence shall be deemed to have failed to meet the requirements for continued eligibility pursuant to Part 351 of this Title. A recipient may not be required to repeatedly produce a document already in the social services district's files regarding a condition which the social services official determine is not subject to change.

(d) Disability and work limitation provisions.

- (1) A social services official must, at application and recertification, or whenever he/she has reason to believe that an applicant for or recipient of public assistance might have a physical or mental impairment, inquire whether such individual has any medical condition which would limit his/her ability to participate in work activities.
- (2) Should the applicant or recipient declare that he/she has a mental or physical impairment, the social services official:
 - (i) shall notify the individual verbally or in writing of the opportunity to present to the social services official, within 10 calendar days of such notification, any medical documentation, including but not limited to, drug prescriptions and reports of the individual's treating health care practitioner (hereinafter referred to as the individual's practitioner). Such documentation must contain a specific diagnosis resulting from any medically appropriate tests and specify any work limitation of the individual; and/or
 - (ii) may refer the individual to a health care practitioner certified by the New York State Office of Disability Determinations (hereinafter referred to as the district's practitioner) for a determination of the individual's medical condition.
 - (a) If the social services official refers an individual to the district's practitioner prior to such individual submitting documentation from the individual's practitioner, the individual shall make his/her best efforts to bring the documentation to the examination by the district's practitioner, so that it may be reviewed as a part of the examination.
 - (b) In such instances, any documentation available from the individual's practitioner must be submitted to the district's practitioner no later than four days after the examination, provided that in no instance shall such time period exceed 10 calendar days from the notification set forth in subparagraph (i) of this paragraph, or the district's practitioner will not be required to consider it as a part of the evidence used to determine the individual's medical condition.
- (3) In evaluating an individual's claim of a physical or mental impairment, the social services official shall have sole discretion in determining whether any documentation provided by the individual or the individual's practitioner is sufficient evidence of the claimed or declared impairment.

- (4) In evaluating the initial claim of a mental or physical impairment made by an applicant, or the continuing claim of a medical impairment made by a recipient who has been previously determined exempt from participation in work activities, the social services official may require the individual to cooperate with measures to verify such claim and/or to submit documentation as described in subparagraph (2)(i) of this subdivision as a condition of eligibility for public assistance and food stamps in accordance with the requirements of Parts 351 and 387 of this Title. Failure of such documentation to substantiate the claimed impairment shall not itself cause the individual to be ineligible for public assistance.
- (5) In evaluating the ongoing claim of a mental or physical impairment made by an individual who has been determined by the social services official not to be exempt after a determination made in accordance with the requirements of this section, the social services official may require the individual to provide additional documentation from the individual's practitioner. Such individual remains non-exempt until and unless a different determination is made by the social services official.
- (6)
 - (i) In the absence of any claim of mental or physical impairment on the part of the individual, if the social services official suspects that such individual has a mental or physical impairment, the social services official shall refer the individual to the social services district's health care practitioner for an examination and determination of his/her medical condition.
 - (ii) The social services official shall notify the individual of an opportunity to present any medical documentation available from the individual's practitioner at the time of the examination, or in any event no later than four days from the date of that examination if the individual wishes such documentation to be considered by the district's practitioner in the determination of the individual's medical condition.
- (7) At the time that the social services official or the district's practitioner makes a determination of an individual's medical condition, the social services official shall notify the applicant or recipient in writing of such determination and of the right to request a fair hearing to contest such determination within 10 days of such notification.
 - (i) If the individual requests a fair hearing within the 10-day period, the social services official shall not assign the individual to work activities pending the fair hearing determination, except that the social services official may, during the pendency of a determination pursuant to this section assign an individual, with the agreement of such individual, to a limited work assignment

which would be consistent with any limitations associated with the mental or physical impairments alleged by the individual.

- (ii) Notwithstanding any requirement of Part 358 of this Title, an individual shall not have the right to a fair hearing to contest such determination if he/she requests a fair hearing after the 10-day period specified in subparagraph (i) of this paragraph.
- (8) (i) At any time after an applicant or recipient alleges that he/she has a mental or physical impairment which would limit his/her assignment to work activities, or render him/her exempt from assignment to work activities and the social services official has reason to believe that the individual misrepresented that he/she suffered from such an impairment, the social services official shall notify the individual in writing of a potential sanction, the duration of which is consistent with the provisions of paragraph (2) of subdivision (d) of section 385.12 of this Part.
- (ii) The social services official shall effect such sanction if:
 - (a) he/she determines, based upon clear medical evidence, that there is no medical basis for the individual's claim that he/she is unable to participate in work activities based upon a physical or medical impairment; and
 - (b) he/she determines that the individual intentionally misrepresented his/her medical condition.
- (9) If the social services official refers an applicant or recipient to the social services district's practitioner for an examination as a result of a mental or physical impairment claim by the applicant or recipient, in accordance with the provisions of this section, the examiner shall:
- (i) review and consider all records or information timely provided by the individual or his/her treating health care practitioner that are pertinent to the claimed medical condition;
 - (ii) provide to the social services official in writing a specific diagnosis as evidenced by medically appropriate tests or evaluations in determination of the individual's claimed condition;
 - (iii) indicate to the social services official and the individual in writing, a medical opinion which specifies whether the medical condition alleged by the individual is present or absent; the social services official shall be responsible for ensuring that the applicant or recipient does receive such written medical opinion;

- (iv) report to the social services official the presence of any condition other than that which was alleged by the individual, but which was discovered in the course of the examination, which may interfere with the individual's ability to fully engage in work activities;
 - (v) determine whether the individual is:
 - (a) disabled and exempt from participation from work activities assigned in accordance with the provisions of this Part; provided, however, that such determination shall specify the duration of time for which the disability shall prevent the social services official from making an assignment to work activities;
 - (b) work limited, having specific identified limitations affecting the type of work activity to which the individual may be assigned; provided, however, that such determination shall specify the duration of time for which such work limitations shall apply to such individual;
 - (c) neither disabled nor work limited.
- (10) The social services official shall not assign to work activities any individual for whom a medical determination is pending, either as the result of a request by an applicant or recipient or direction of the social services official, until such a determination is rendered pursuant to the requirements of this section unless the individual agrees to a limited work assignment consistent with the individual's alleged medical condition.
- (11) Notwithstanding any other requirement of this section, an individual who is eligible to receive comprehensive health services through a special needs plan as set forth in paragraph (m) or (n) of subdivision one of section 364-j of the Social Services Law and the regulations promulgated thereunder, regardless of whether such a plan is operating in the social services district in which the individual resides, shall be considered to be either disabled or work limited, as determined by the social services official.
- (12) Notwithstanding paragraphs (1) through (11) of this subdivision, an individual whom the social services official suspects as having, or who indicates that he/she has an impairment that is due to alcohol or substance abuse, shall be subject to the requirements of subdivision (i) of section 351.2 of this Title.
- (13) (i) An individual shall be deemed to be work limited if the social services official determines that, in accordance with the provisions of this section for determining disabilities, such individual has mental or physical impairments which would limit his/her ability

to engage in work activities in accordance to the requirements of this Part.

(ii) In the case of an individual who is work limited, the social services official shall assign such individual to work activities only if the assignment:

- (a) is consistent with the individual's treatment plan when such plan is prescribed by the individual's practitioner and/or the social services district's practitioner;
- (b) where no treatment plan exists, that the assignment is consistent with the individual's mental and physical limitations; and
- (c) is determined to be appropriate by the social services official who is satisfied that such individual is able to perform the work assigned and that such assignment will assist the individual's transition to self-sufficiency.

(14) The social services official shall, when assigning a recipient who is work limited to work activities pursuant to section 385.9 of this Part, inform in writing the individual responsible for supervising such activities of any limitations of the recipient.

(e) Restoration to self-sufficiency. An individual who has been determined to be exempt from participation in work activities in accordance with the requirements of this Part due to being disabled pursuant to this section, who in the judgment of the social services official has the potential to be restored to self-sufficiency through rehabilitation, may be required, when determined appropriate by the social services official, to:

- (1) provide information from the individual's practitioner or submit to an examination by the social services district's practitioner in order to determine whether or not the individual can recover from a mental or physical impairment;
- (2) accept medical care provided by the social services official or made available through other agencies to assist the individual in recovering from a mental or physical impairment and in restoring the individual to self-sufficiency;
- (3) accept referral to and enrollment in a program of vocational rehabilitation, training and other essential rehabilitation designed to restore an individual to self-sufficiency;

- (4) give evidence, as requested by the social services official, that he/she is participating in a program assigned by the social services official in accordance with the provisions of this subdivision.
- (f) Engaged-in-work requirement.
- (1) For the purposes of this subdivision, the term "engaged-in-work" shall be defined by the social services official. Such definition shall be included in the social services district's local plan prepared pursuant to the requirements of section 385.10 of this Part.
 - (2) The social services official shall ensure that each parent or caretaker of a dependent child, when such parent or caretaker is receiving public assistance funded through the Federal Temporary Assistance to Needy Families Program, is engaged-in-work as soon as practicable, but no later than 24 months (whether or not consecutive) from initial receipt of assistance. For the purposes of this paragraph, the initial receipt of assistance for individuals who were receiving such assistance on or before December 2, 1996 shall be December 2, 1996.
 - (3) The social services official shall ensure that each parent or caretaker of a dependent child, when such parent or caretaker is receiving public assistance which is not funded through the Federal temporary assistance to needy families program, and each adult member of a household without dependent children who is receiving public assistance, is engaged-in-work as soon as is practicable. Individuals exempt pursuant to subdivision (d) of this section should not be considered by the social services official when complying with the requirements of this paragraph.

Section 385.3. Work registration, registration exemptions, and certain eligibility requirements for food stamp applicants and recipients.

- (a) Exemptions from food stamp work registration.
- (1) Each individual, including migrant/seasonal laborers, is required to register for employment at the time of application for food stamp benefits unless the individual is:
 - (i) younger than 16 years of age, or is 60 years of age or older;
 - (ii) physically or mentally unfit for employment;
 - (iii) subject to and complying with any work requirement under title IV of the Social Security Act (SSA); provided, however, that an individual participating in a work experience program in accordance with the provisions of title IV-A of the SSA and of this Part may also be required to participate in work experience for the number of hours represented by the dollar value of the individual's

food stamp benefit divided by the Federal or State minimum wage, whichever is higher.

- (iv) a parent or household member who is responsible for the physical care of a dependent child under the age of six or of an incapacitated person; provided, however, that an individual participating in a work experience program in accordance with the provisions of title IV-A of the SSA and of this Part may also be required to participate in work experience for the number of hours represented by the dollar value of the individual's food stamp benefit divided by the Federal or State minimum wage, whichever is higher.
- (v) a recipient of unemployment compensation. An applicant for unemployment compensation is exempt if he/she was required to register for work as part of the unemployment compensation application process;
- (vi) a regular participant in a drug or alcohol treatment and rehabilitation program; for the purposes of this subparagraph, a "regular participant" shall be defined as an individual who is determined unable to work and participating in treatment in accordance with the requirements of section 351.2(i) of this Title or otherwise engaged in drug or alcohol treatment to an extent that assignment to work activities is impractical;
- (vii) employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings at least equal to the Federal minimum wage multiplied by 30 hours. This provision includes migrant and seasonal farm workers who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days;
- (viii) a student enrolled at least half-time in any recognized school, training program or institution of higher education. A student enrolled at least half-time in an institution of higher education must have met the student eligibility criteria in section 387.1 of this Title. A student remains exempt during normal periods of attendance, vacation, and recess, unless there is a break in the student's enrollment status due to graduation, suspension, expulsion, or intent not to return to school;
- (ix) an applicant for SSI and food stamps under the joint processing provisions until such time as the individual is:
 - (a) determined to be eligible for SSI and, thereby, exempt from work registration; or

- (b) determined to be ineligible for SSI and a subsequent redetermination of his/her work registration status is made;
or
 - (x) a person age 16 or 17 who is attending school or an employment training program on at least a half-time basis.
- (2)
 - (i) An individual who loses exempt status due to any change in circumstance subject to the reporting requirements of section 387.17(e) of this Title must be registered for work when the change is reported.
 - (ii) An individual who loses exempt status due to a change in circumstances not subject to the reporting requirements of section 387.17(e) of this Title must register for work at his/her household's next recertification.
- (3) Work registrants must be provided with a written statement of their rights and responsibilities and of the consequences of failure to comply. This statement must be provided at each registration and at recertification.
- (4) Each individual or household has a right to a fair hearing to appeal a denial, reduction or termination of benefits due to the social services official's determination of nonexempt status, or determination of failure to comply with work registration or with work requirements specified in this Part.
- (b) Strikers who are eligible for food stamps under the criteria set forth in section 387.16 of this Title are subject to the employment requirements of this Part unless they are exempt under subdivision (a) of this section at the time of application.
- (c) Work registrant requirements. Work registrants are required to:
 - (1) participate in food stamp employment programs assigned in accordance with the provisions of this Part if so required by the local social services district. Such programs must be established pursuant to a State food stamp employment and training plan; and
 - (2) respond to a request from the social services official or his/her designee for supplemental information regarding employment status or availability for work.
- (d) Food stamp eligibility requirements for able-bodied adults without dependents (ABAWDS).
 - (1) No individual may participate in the food stamp program if, for at least three months within the most recent 36-month period, he/she participated in such program and did not:

- (i) work for at least 80 hours per month provided, however, that work means:
 - (a) work in exchange for money;
 - (b) work in exchange for goods and services ("in-kind" work) or unpaid work (volunteer). For purposes of this subdivision there is no hourly wage requirement, but, the work performed may not violate any state or federal law or regulation; or
 - (ii) participate in, for at least 80 hours per month, and comply with the requirements of a work program assigned to such individual by the social services official in accordance with the requirement of this Part, or programs operated under title I of the Workforce Investment Act of 1998 or section 236 of the Federal Trade Act of 1974. Such programs may contain job search or job search training as a subsidiary component if hourly participation in job search or job search training comprises less than one-half of the total hours of participation in any month; or
 - (iii) work and participate in work programs described in subparagraph (i) or (ii) of this paragraph for a combined total of at least 80 hours per month; or
 - (iv) participate in and comply with the requirements of a program established by the commissioner in accordance with the provisions of section 20 of the Food Stamp Act of 1977 or a comparable program established by the commissioner in accordance with the requirements of this Part.
- (2) Countable months. For purposes of determining the months during which an individual received food stamp benefits without meeting the requirements of paragraph (1) of this subdivision, the following calendar months shall not be considered:
- (i) a calendar month during which the individual did not receive food stamp benefits for the full month;
 - (ii) a calendar month during which the individual is exempt from the ABAWD requirement in accordance with paragraph (5) of this subdivision for all or any part of the calendar month; and
 - (iii) a calendar month during which the individual received food stamp benefits from or resided in an area of the state covered by a waiver of the ABAWD requirement in accordance with section 6(o) of the Food Stamp Act.

- (3) Good cause. If an individual would have worked 80 hours per month but failed to complete some or all of the hours of work, the individual shall be considered to have met the work requirement if the absence from work is with good cause, is temporary, and the individual retains his or her job. The social services official must consider the facts and circumstances of the absence from work in determining good cause. Good cause includes circumstances beyond the individual's control, such as, but not limited to, illness of the individual, illness of a household member that required the presence of the individual, or a household emergency.
- (4) Verification of work hours.
 - (i) An individual subject to the food stamp time limit established by paragraph (1) of this subdivision is required to verify work hours at certification and recertification if he or she is meeting the work requirement by working, combining work and work program participation, or by participating in a program that is not operated by the social services district.
 - (ii) An individual subject to the food stamp time limit established by paragraph (1) of this subdivision must report changes in work/work program hours that result in the individual working less than 80 hours per month.
- (5) The provisions of paragraph (1) of this subdivision do not apply to an individual who:
 - (i) is exempt from work registration in accordance with subdivision (a) of this section. However, an individual is exempt due to being physically or mentally unfit for employment if the individual:
 - (a) provides verification of receipt of temporary or permanent disability benefits issued by governmental or private sources; or
 - (b) is determined by the social services official to be unfit for employment. Where unfitness is not evident, the social services official may require documentation from medical personnel that the social services district determines appropriate. The social services official shall have sole discretion in determining whether any documentation provided by the individual or by medical personnel is sufficient evidence of the claimed impairment; or
 - (ii) is not exempt from work registration but who is:
 - (a) under 18 years or 50 years of age or older; or

- (b) pregnant; or
 - (c) a parent (birth, adoptive or step) or other adult residing in a household where a household member is under age 18.
- (6) (i) An individual who is ineligible for food stamps because of the provisions of this section may establish eligibility, if otherwise eligible in accordance with the provisions of this Part, by working or participating in programs described in paragraph (1) of this subdivision within any consecutive 30 day period; provided, however, that work or participation in work programs must be performed for at least 80 hours in the 30 day period.
- (ii) For purposes of establishing eligibility in accordance with this paragraph, districts may allow applicant ABAWDs to reestablish eligibility by participating in a 30-day period of job search followed by a work experience placement if no job is obtained.
 - (iii) For purposes of establishing eligibility in accordance with this paragraph, an individual may be determined eligible for benefits if he or she can verify to the satisfaction of the social services district that he or she will meet the requirements of subparagraph (i) or (ii) within the 30 days subsequent to application.
 - (iv) Individuals regaining eligibility by working, participating in a work program, or combining hours worked and hours participating in a work program shall have benefits issued back to the date of application.
 - (v) If an individual who has reestablished eligibility under this paragraph either loses a job or ceases to participate in a work program he/she will be eligible for food stamps for up to one additional three consecutive month period in the 36 month period set forth in paragraph (1) of this subdivision, without working or participating in a work program starting on the date the individual first notifies the social services district that he/she is no longer fulfilling the work requirement; or, if meeting the work requirement by participating in a work or work experience program administered by the social services district, the date the district notifies the individual he/she is no longer meeting the work requirement.
- (7) Benefits received in error. Benefits received by an individual in error shall count as a month of benefits received for purposes of determining compliance with this subdivision unless they are repaid in full in accordance with section 387.19 of this Title.

Section 385.4 Supportive services.

- (a) Public assistance.
- (1) To the extent Federal and State resources are available and consistent with a local plan submitted pursuant to this Part, the social services official must provide to applicants and recipients transportation, work related expenses, child care for children up to age 13, case management and medical assistance in a manner which is consistent with the social services district's local plan prepared in accordance with the requirements of section 385.10 of this Part.
 - (i) To the extent local resources permit, case management shall be provided for pregnant adolescents, adolescent parents and at risk youth under 18 years of age, persons with limited English proficiency and individuals whose employability plans indicate the need for two or more concurrent work activities.
 - (ii) Child care shall be guaranteed to individuals who need such care to participate in activities assigned in accordance with the provisions of this Part and Part 415 of this Title.
 - (2) The social services official may provide supportive services for up to 90 days to individuals who have lost eligibility for public assistance due to employment.
 - (3) The social services official may provide any other supportive services which he/she deems necessary to allow individuals to participate in work activities, assist individuals at risk of needing public assistance to improve their opportunities for employment or to maintain their employment, or to assist employed public assistance recipients to improve their opportunities for employment which will move them to self-sufficiency.
 - (4) The social services official shall make diligent efforts to assist a person who needs transportation to get to and from a work activity site assigned in accordance with section 385.9 of this Part to obtain such transportation. Where lack of transportation is a direct barrier to participation in an assigned work activity the social services official shall make a reasonable effort to assign the individual to an appropriate work activity at a site in closest proximity to such individual's residence.
- (b) Food stamps. The social services official shall provide, as appropriate, transportation, or reimburse the costs of transportation and provide for dependent care, or reimburse the costs of dependent care expenses for individuals participating in food stamp employment and training programs identified in local plans developed pursuant to section 385.10 of this Part.
- (1) Reimbursement for transportation costs shall not exceed a total of \$25 per month per individual.

- (2) Reimbursement for dependent care shall not exceed the actual cost of care or the market rate for such care as established by section 415.9(j) of this Title. Individuals cannot be required to participate in food stamp employment and training programs if the cost of dependent care exceeds the allowable amounts, provided, however, that food stamp applicants and recipients participating in combined food stamp and public assistance employment and training activities for which the requirements of subdivision (a) of this section apply shall be required to participate if dependent care costs in excess of the maximum allowed by this paragraph are made available if appropriate and in accordance with the provisions of such subdivision.

Section 385.5 Orientation requirements.

- (a) The social services official shall, at the time of application or redetermination for public assistance and food stamps, inform applicants and recipients of activities and supportive services provided under this Part for which they are eligible, including:
 - (1) education, employment and training opportunities, including those which are available at no cost to the individual, which are available under the local plan prepared in accordance with the provisions of section 385.10 of this Part;
 - (2) responsibilities associated with the repayment of student financial aid;
 - (3) supportive services available through the social services district, and the obligation of the social services district to provide such services pursuant to section 385.4 of this Part;
 - (4) work activities available through the social services district and the social services districts' obligation, if any, regarding those activities;
 - (5) child care available in accordance with the provisions of Part 415 of this Title, for individuals whose public assistance has terminated;
 - (6) in accordance with the provisions of Part 415 of this Title and of this Part:
 - (i) the types and settings of child care services which may be reasonably accessible to individuals assigned to work activities and how such services shall be provided and financed;
 - (ii) the assistance available upon request to help individuals assigned to work activities select appropriate child care services; and
 - (iii) the assistance available upon request to help individuals assigned to work activities obtain child care services.

- (b) The social services official shall inform applicants and recipients of public assistance of their responsibility in establishing paternity and enforcing child support obligations.
- (c) Within one month of orientation, the social services official shall notify the applicant or recipient in writing of the opportunity to participate in the social services district's work activities.
 - (1) Such notification shall provide a clear description of how an individual may enter and participate in work activities.
 - (2) Nothing herein shall preclude the social services official from incorporating such notification into the district's orientation.
- (d) The social services official may inform applicants and recipients of public assistance of their obligations under law and regulations, any applicable time limits on public assistance, and any other information deemed pertinent by such official.

Section 385.6 Assessments and employability plans for households with dependent children.

- (a) Assessments.
 - (1) The social services official shall ensure that an employability assessment is provided for each public assistance recipient who is a member of a household with dependent children and is:
 - (i) 18 years or older; or
 - (ii) is 16 or 17 years of age and not attending secondary school and has not completed high school or an equivalency program.
 - (2) Such assessment shall include, but not be limited, to a review of the individual's:
 - (i) education level, including literacy and English language proficiency;
 - (ii) basic skills proficiency;
 - (iii) child care and other supportive services needs;
 - (iv) skills and prior work experience;
 - (v) training and vocational interests;
 - (vi) family circumstances, including the special needs of a child.

- (3) The assessment shall be completed within 90 days of the date such recipient is determined to be eligible for public assistance pursuant to Part 351 of this Title.
- (4) The social services official shall encourage and may require a recipient who has not attained a basic literacy level and who is not subject to the educational requirements of section 385.9 of this Part to enroll in a basic literacy program, high school equivalency program or other educational program in combination with other work activities. Any such assignment shall be consistent with the employability plan prepared pursuant to subdivision (b) of this section.
- (5) An applicant or recipient may be assigned to work activities in accordance with the provisions of this Part prior to the completion of an assessment.
- (6) Applicants and recipients are required to participate in an assessment as assigned by the social services official.
 - (i) An applicant who fails to comply with assessment requirements shall be ineligible for public assistance, provided, however, that the term applicant means the entire public assistance applicant household.
 - (ii) A recipient who fails to comply with assessment requirements shall be subject to the provisions of sections 385.11 and 385.12 of this Part.

(b) Employability plan.

- (1) (i) Based upon the assessment required pursuant to this section, an employability plan shall be developed in writing and in consultation with the recipient, which shall set forth:
 - (a) the services which the district will provide, including child care;
 - (b) the work activities to which the recipient will be assigned;
 - (c) the recipient's employment goal, which shall reflect, to the extent possible, the recipient's preferences to the extent they are consistent with the assessment;
- (ii) In developing the plan, the social services official shall take into account:
 - (a) the recipient's supportive services needs;
 - (b) the available program opportunities;

- (c) the local employment opportunities;
 - (d) if the recipient is assigned to an education program, the recipient's liability for student loans, grants and scholarship awards;
- (2) Notwithstanding the requirements of paragraph (1) of this subdivision, the social services official must consider the need of the social services district to meet Federal and State work activity participation rates before completing an individual's employability plan.
- (3) If a recipient's preferences cannot be accommodated in the employability plan, the plan shall record the reasons.
- (4) The plan shall be explained to the recipient.
- (5) Any change to the plan shall be discussed with the recipient and documented in writing.
- (c) The social services official shall use designated trained staff or providers with demonstrated effectiveness in assessment and employability development to prepare the assessments and plans required by this section.
- (d) Child care. Assignments to work activities made pursuant to an employability plan can be made to the extent that child care is available in accordance with the provisions of this Part and Part 415 of this Title. The social services official shall provide information to the applicant or recipient either orally or in writing, as appropriate, regarding child care and methods of payment for such care.
- (e) Social services officials may provide assessments which are more detailed and comprehensive than required by this section.

Section 385.7 Assessments and employability plans for households without dependent children.

- (a) Assessments.
 - (1) To the extent that resources are available, the social services official shall conduct an assessment of employability for applicants and recipients in households without dependent children who are not exempt from assignment to work activities in accordance with the provisions of section 385.2 of this Part.
 - (2) Such assessment shall be conducted within a reasonable period of time, but in any case shall be conducted within a year following a recipient's application for safety net assistance.

- (3) Such assessment shall include, but not be limited to, a review of the individual's:
 - (i) educational level, including literacy and English language proficiency;
 - (ii) basic skills proficiency;
 - (iii) supportive service needs;
 - (iv) skills and prior work experience;
 - (v) training and vocational interests; and
 - (vi) family circumstances.
 - (4) The social services official shall encourage and may require a recipient who has not attained a basic literacy level and who is not subject to the educational requirements of section 385.9 of this Part to enroll in a basic literacy program, high school equivalency program or other educational program in combination with other work activities. Any such assignment shall be consistent with the employability plan prepared pursuant to subdivision (b) of this section.
 - (5) An applicant or recipient may be assigned to work activities in accordance with the provisions of this Part prior to the completion of an assessment.
 - (6) Applicants and recipients are required to participate in an assessment as assigned by the social services official.
 - (i) An applicant who fails to comply with assessment requirements shall be ineligible for public assistance, provided, however, that the term applicant means the entire applicant household.
 - (ii) A recipient who fails to comply with assessment requirements shall be subject to the provisions of sections 385.11 and 385.12 of this Part.
- (b) Employability plan.
- (1) Based upon the assessment required pursuant to this section, an employability plan shall be developed in writing and in consultation with the recipient, which shall set forth:
 - (i) the services that will be provided, including supportive services;
 - (ii) the work activities to which the individual will be assigned; and
 - (iii) the individual's employment goal.

- (2) The plan shall take into account the individual's:
 - (i) supportive service needs;
 - (ii) available program resources;
 - (iii) local employment opportunities; and
 - (iv) liability for student loans, grants and scholarship awards if the recipient is assigned to an education program.
- (3) Notwithstanding the requirements of paragraph (2) of this subdivision, in developing an employability plan for an individual the social services official must consider the need of the social services district to meet State work activity participation rates before completing an individual's employability plan.
- (c) The social services official shall use designated trained staff or providers with demonstrated effectiveness in assessment and employability development to prepare the assessments and plans required by this section.
- (d) Social services officials may provide assessments which are more detailed and comprehensive than required by this section.

Section 385.8 Participation rate requirements.

- (a) Participation rates for all families with dependent children receiving Federal temporary assistance for needy families.
 - (1) The minimum number of families in each month for which at least one adult or minor child head of household must be engaged in work as defined in paragraph (2) of this subdivision must be as follows:
 - (i) for Federal fiscal year 1997: 25 percent of the number of cases;
 - (ii) for Federal fiscal year 1998: 30 percent of the number of cases;
 - (iii) for Federal fiscal year 1999: 35 percent of the number of cases;
 - (iv) for Federal fiscal year 2000: 40 percent of the number of cases;
 - (v) for Federal fiscal year 2001: 45 percent of the number of cases; and
 - (vi) for Federal fiscal year 2002 and thereafter: 50 percent of the cases.
 - (2) A member of a household shall be engaged in work if such member is participating in the work activities listed in paragraph (3) of this subdivision for at least the number of hours per week, averaged monthly,

as specified in subparagraphs (i) through (iii) of this paragraph, provided, however, that a recipient who is the only parent or caretaker relative in the family of a child who has not attained six years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.

- (i) for Federal fiscal years 1997 and 1998: 20 hours;
 - (ii) for Federal fiscal year 1999: 25 hours; and
 - (iii) for Federal fiscal years 2000 and thereafter, 30 hours.
- (3) An individual participating in the work activities identified in section 385.9(a)(1)-(8) and (12) of this Part for the first 20 hours per week, shall be deemed to be engaged in work as allowed by Federal law.
- (4) An individual participating in work activities identified in section 385.9(a)(1)-(12) of this Part shall be deemed to be engaged in work for the required hours above 20 hours.
- (5) A recipient who is married or a head of household and has not attained 20 years of age is deemed to be engaged in work for a month if the recipient:
- (i) maintains satisfactory attendance at secondary school or the equivalent during the month; or
 - (ii) participates for an average of at least 20 hours per week during the month in education directly related to employment as set forth in section 385.9(a)(10) of this Part.
- (6) Calculation of the rate.
- (i) Denominator. Each month the commissioner shall determine the number of cases receiving Federal temporary assistance to needy families.
 - (a) Such count shall exclude those cases deemed to be child-only cases in accordance with the provisions of this Title, and for which the social services official has determined an adult to be exempt in accordance with the provisions of section 385.2(b)(7)(i) of this Part regarding caretakers of children under 12 months of age;
 - (b) Such count shall also exclude for a period not to exceed three months in each 12 month period all cases in which the parent or caretaker has been sanctioned in accordance with the provisions of section 385.12(d)(1) of this Part.

- (ii) Numerator. The commissioner shall count monthly the number of cases in which at least one adult or minor child head of household has engaged in work as defined by this section. Such count shall be the numerator of the calculation.
 - (iii) The commissioner shall calculate the rate monthly by dividing the numerator by the denominator.
 - (7) Such calculation shall be consistent with Federal law and shall apply unless a different rate is imposed by the Federal government; in such instance the commissioner shall establish a rate based upon a methodology consistent with Federal law.
- (b) Participation rate for two parent families with dependent children receiving Federal temporary assistance for needy families.
- (1) The minimum number of families in each month for which the parent or parents must be engaged in work as defined in paragraph (2) of this subdivision must be as follows:
 - (i) for Federal fiscal years 1997 and 1998: 75 percent of the number of families;
 - (ii) for Federal fiscal year 1999 and thereafter: 90 percent of the number of families.
 - (2) For Federal fiscal year 1997 and thereafter, a parent or both parents in a two parent family shall be engaged in work if either or both parents are deemed to be participating in the work activities listed in this paragraph for at least the number of hours per week, averaged monthly, as specified in subparagraphs (i) and (ii) of this paragraph and as limited by Federal law:
 - (i) if no Federally funded child care is made available to the family, one or both parents for a total of 35 hours not fewer than 30 hours per week of which are attributable to an activity described in section 385.9(a)(1)-(8) or (12) of this Part;
 - (ii) if Federally funded child care is provided to the family, both parents for a total of 55 hours, not fewer than 50 hours per week of which are attributable to an activity described in section 385.9(a)(1)-(8) or (12) of this Part;
 - (iii) a parent or both parents participating in work activities identified in section 385.9(a)(1)-(12) of this Part shall be deemed to be engaged in work for the required hours above the 30 hours and 50 hours set forth in subparagraphs (i) and (ii) of this paragraph.

- (3) Calculation of the rate.
 - (i) Denominator. Each month the commissioner shall determine the number of two parent families in which such parents have a child in common (includes spousal relationship and non-legal union with child in common) receiving Federal temporary assistance to needy families.
 - (a) Such count shall exclude those cases in which one adult is disabled, ill or incapacitated in accordance with the provisions of section 385.2 of this Part.
 - (b) Such count shall exclude those active cases in which one or both adult members are sanctioned pursuant to section 385.12 of this Part; provided, however, that such exclusion shall not exceed three months in any 12 month period.
 - (ii) Numerator. The commissioner shall count monthly the number of cases in which a parent or both parents are engaged in work as defined by this section. Such count shall be the numerator of the calculation.
 - (iii) The commissioner shall calculate the rate monthly by dividing the numerator by the denominator.
- (c) Participation rate for all families without dependent children and all families with dependent children which are receiving safety net assistance excluding those receiving Federal temporary assistance for needy families benefits.
 - (1) For all families for each month in which at least one parent is not exempt in accordance with the provisions of section 385.2 of this Part, the percentage of families for which at least one adult or minor child head of household must be engaged in work as defined in paragraph (2) of this subdivision must be as follows:
 - (i) for Federal fiscal years 1997 and 1998: 75 percent of the number of families;
 - (ii) for Federal fiscal year 1999 and thereafter: 90 percent of the number of families.
 - (2) For Federal fiscal year 1997 and thereafter, the adults in a family without dependent children or one or both parents in a family with dependent children shall be deemed to be engaged in work if such members are participating in the work activities listed in paragraph (3) of this subdivision for a total of at least the number of hours per week, averaged monthly, as specified in subparagraphs (i) through (iii) of this paragraph,

or otherwise participating as defined by subparagraphs (iv) through (ix) of this paragraph.

- (i) In the case of one parent families with dependent children:
 - (a) for Federal fiscal years 1997 and 1998: 20 hours;
 - (b) for Federal fiscal year 1999: 25 hours; and
 - (c) for Federal fiscal years 2000 and thereafter, 30 hours.
- (ii) In the instance of two parent families where child care is provided, one or both adults or parents for a total of 55 hours.
- (iii) In the instance of adults in families without dependent children or parents in two parent families where child care is not provided or one parent is caring for a disabled child, one or both adults or parents for a total of 35 hours.
- (iv) The individual has been called in by the social services official for a referral or assignment to a work activity identified in paragraphs (3) through (8) of this subdivision, has failed to report, and to whom a conciliation notice has been sent.
- (v) The individual has been assigned to a work activity identified in paragraphs (3) through (8) of this subdivision; provided, however, that such individual shall be considered engaged in work only during the month in which such assignment is made.
- (vi) The individual has been referred to a work activity identified in paragraphs (3) through (8) of this subdivision for the purpose of an interview and possible assignment to such activity; provided, however, that the individual will be considered engaged in work only during the month in which such referral is made.
- (vii) The individual has been sent a conciliation notice for failure to participate in a work activity identified in paragraphs (3) through (8) of this subdivision and such participation would have met the hourly requirements identified in this subdivision for being engaged in work.
- (viii) The individual has been sent a timely and adequate notice of intent to discontinue public assistance for the failure to comply with the requirements of this Part and such notice has yet to take effect.
- (ix) The individual has requested a fair hearing in accordance with the requirements of this Part and Part 358 of this Title, the results of which have not been provided to the social services official.

- (3) An adult in a single parent family participating in the work activities identified in section 385.9(a)(1)-(8) and (12) of this Part for the first 20 hours per week, shall be deemed to be engaged in work.
- (4) An adult in a single parent family participating in work activities identified in section 385.9(a)(1)-(12) of this Part shall be deemed to be engaged in work for the required hours above 20 hours.
- (5) One or both parents in a two parent family participating in the work activities identified in section 385.9(a)(1)-(8) and (12) of this Part for the first 30 hours per week, shall be deemed to be engaged in work.
- (6) A parent or both parents in a two parent family participating in work activities identified in section 385.9(a)(1)-(12) of this Part shall be deemed to be engaged in work for the required hours above 30 hours.
- (7) All adults in a family without dependent children participating in the work activities identified in section 385.9 (a)(1)-(5) of this Part for the first 30 hours per week, shall be deemed to be engaged in work.
- (8) All adults in a family without dependent children in work activities identified in section 385.9(a)(1)-(12) of this Part shall be deemed to be engaged in work for the required hours above 30 hours.
- (9) Calculation of the rate.
 - (i) Denominator. Each month the commissioner shall determine the number of households receiving safety net assistance in which there is a nonexempt adult.
 - (ii) Numerator. The commissioner shall count monthly the number of adult individuals that are engaged in work as defined by this section. Such count shall be the numerator of the calculation.
 - (iii) The commissioner shall calculate the rate monthly by dividing the numerator by the denominator.
- (10) Notwithstanding the requirements of this subdivision, the commissioner may identify those individuals or families who are participating in work experience to the fullest extent possible based on the limitation to maximum hours required as set forth in section 385.9 of this Part and deem them to be engaged in work for the purpose of calculating the participation rate.
- (11) Notwithstanding the requirements of this subdivision, an individual who is work limited shall be deemed to be engaged in work and, therefore, count in the numerator if such individual is assigned to a work activity identified

in paragraph (7) of this subdivision for a number of hours determined by the social services official after taking into consideration such limitations.

- (12) For the purposes of this subdivision, an individual who is work limited due to an impairment related to alcohol or substance abuse shall not be deemed engaged in work solely by participating in an alcohol or substance abuse treatment program unless such individual is engaged in a work activity as a part of such treatment program.

Section 385.9 Work activities and work requirements.

- (a) Social services districts may provide, and require applicants for and recipients of public assistance to participate in a variety of activities, including but not limited to the following:
 - (1) unsubsidized employment;
 - (2) subsidized private sector employment;
 - (3) subsidized public sector employment;
 - (4) work experience in the public sector or non-profit sector, (including work associated with refurbishing publicly assisted housing) if sufficient private sector employment is not available as determined by the social services official. The maximum number of hours a recipient or applicant may be required to engage in this activity is limited to the number which equals the amount of assistance payable with respect to the public assistance household of such individual (inclusive of the value of food stamps received by the public assistance household of such individual, if any) divided by the higher of (i) the Federal minimum wage, or (ii) the State minimum wage. The limitation of the number of hours of work experience to which a participant may be assigned is a calculation of allowable hours in a work activity and does not mean that such participant is receiving a wage for the performance of such activities. The participant is not working off the grant, but is engaged in work activities as an element of his/her plan to become self-sufficient;
 - (5) on-the-job training;
 - (6) job search and job readiness assistance, as time limited by Federal law, provided that job search is an active and continuing effort to secure employment, configured by the social services official;
 - (7) community service programs provided, however, the number of hours a participant in community service activities authorized pursuant to this section may be required to work in such assignment shall not exceed a number which equals the amount of assistance payable with respect to the public assistance household of such individual (inclusive of the value of

food stamps received by the public assistance household of such individual, if any) divided by the higher of (i) the Federal minimum wage, or (ii) the State minimum wage. No participant shall be assigned to a community service activity that conflicts with his/her bona fide religious beliefs. The definition or parameters of this activity shall be set forth in the local plan submitted by the social services district, provided that an individual needed in the home because another member of the household requires his/her presence due to a verified mental or physical impairment shall be deemed to be engaged in community service to the extent such person is actually providing care for such member of the household. The limitation of the number of hours of community service to which a participant may be assigned is a calculation of allowable hours in a work activity and does not mean that such participant is receiving a wage for the performance of such activities. The participant is not working off the grant, but is engaged in work activities as an element of his or her plan to become self-sufficient. For purposes of calculating the participation rate, recipients who are acting as foster parents for children are deemed engaged in community service to the extent they are actually providing care for such children;

- (8) vocational educational training as time limited by Federal law and pursuant to subdivision (c) of this section;
 - (9) job skills training directly related to employment;
 - (10) education directly related to employment, in the case of a recipient who has not yet received a high school diploma or a certificate of high school equivalency;
 - (11) satisfactory attendance at secondary school or a course of study leading to a certificate of general equivalency in the case of a recipient who has not completed secondary school or received such certificate;
 - (12) provision of child care services to an individual who is participating in community service;
 - (13) job search and job readiness assistance once the individual has exceeded the six week limit set in Federal law;
 - (14) educational activities pursuant to subdivision (c) of this section; and
 - (15) other activities set forth in a local district plan.
- (b) Additional provisions:
- (1) No participant shall be required to provide child care services as a work activity described in this part unless the participant expressly requests in writing to provide such services.

- (2) Social services districts may enter into agreements with public and private employment agencies to assist recipients of public assistance to find jobs.
- (3) No participant shall in any case be required to engage in assigned activities for more than forty hours in any week.
- (4) A non-graduate degree student who is participating in a work-study, internship, externship, or other work placement that is part of the curriculum of a student approved for participation by the City University of New York (CUNY), the State University of New York (SUNY), another degree granting institution, or any other education, training or vocational rehabilitation agency approved by the state or social services district, shall not be unreasonably denied the ability to participate in such program as a work activity assignment made in accordance with the provisions of this Part. A social services district may deny such participation based upon consideration of factors including, but not limited to:
 - (i) the determination that the student voluntarily quit a job or reduced earnings to qualify for initial or increased public assistance as determined in accordance with section 385.13 of this Part;
 - (ii) that a job or on-the-job training position that is comparable to the work-study, internship, externship or other work placement cannot reasonably be expected to exist in the private, public, or not-for-profit sector;
 - (iii) that the student is not maintaining a cumulative C average (or its equivalent), which may be waived by the district for cases of undue hardship based on the death of a relative, the personal injury or illness of the student or other extenuating circumstances as determined appropriate by the district;
 - (iv) failure of the institution or student to monitor and report to the social services district monthly, or as otherwise reasonably required by the district, information regarding the student's attendance and performance related to the work placement. Failure of the institution to monitor and report student attendance and performance shall be cause for the district to reasonably deny approval of the student's participation in such programs as a work activity;
 - (v) failure of the student to progress toward the completion of a course of study without good cause as determined by the social services district; and,
 - (vi) that the student had previously enrolled in a work-study, internship, or other work placement and failed to complete the

work placement without good cause as determined by the social services district.

- (5) When a social services district assigns a non-graduate student participating in a social services district approved work-study, internship, externship or other work placement to work activities in accordance with the provisions of this Part, the district shall make reasonable efforts to assign the student to such activities during hours that do not conflict with his or her academic schedule.
 - (6) The hours of participation by an individual in a work-study, internship, externship or other work placement that is part of the student's curriculum and that has been approved by the social services district shall be included as a work activity within the definition of unsubsidized employment, subsidized private sector employment, subsidized public sector employment or on-the-job training pursuant to subdivision (a) of this section.
 - (7) In no event shall the programs and activities enumerated in this Part be deemed the sole activities that a social services district may provide and require applicants for and recipients of public assistance to engage in. Any program or activity that meets the goals of this part and is consistent with the requirements of the Labor Law and Social Services Law shall be allowed.
 - (8) Any social services district that establishes and provides a program or activity not herein enumerated shall set forth the requirements and structure of such program or activity in its local plan pursuant to the provisions of this Part.
 - (9) The social services district retains the right to determine, consistent with statute and regulations, the activity or activities to which an applicant or recipient is to be assigned.
 - (10) No particular assignment or opening for any activity need be created except on the determination and consent of the social services district.
- (c) Educational activities and vocational educational training.
- (1) A social services official shall make available vocational educational training and educational activities in accordance with an assessment conducted and the employability plan prepared pursuant to the requirements of sections 385.6 and 385.7 of this Part. Such activities may include, but need not be limited to:
 - (i) vocational educational training, which may include but not be limited to organized educational programs offering a sequence of courses which are directly related to the preparation of individuals

for current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs may include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence. Such term may also include applied technology education.

- (a) When a social services district contracts with a proprietary vocational school to provide vocational educational training to individuals assigned in accordance with the provisions of this section, not more than 25 percent of the duration of such program can be devoted to preparation for a high school equivalency or to English as a second language.
- (b) Instructors employed by proprietary schools to prepare individuals for a high school equivalency certificate shall meet experience requirements established in regulation by the commissioner of education.
- (c) Individuals in need of basic literacy programs shall be referred to basic and remedial education rather than to vocational proprietary schools.
 - (ii) high school education or education designed to prepare a participant for a high school equivalency certificate;
 - (iii) basic and remedial education;
 - (iv) education in English proficiency;
 - (v) no more than a total of two years of post secondary education (or the part-time equivalent, if full-time study would constitute an undue hardship).
 - (a) Such post-secondary education must be necessary to the attainment of the participant's employment goal, as set forth in the employability plan required pursuant to sections 385.6 and 385.7 of this Part. Such goal must relate directly to obtaining useful employment in a recognized occupation.
 - (b) Enrollment may be in the following types of educational institutions:
 - (1) community colleges and two-year colleges;

- (2) four-year colleges; provided, however, that the course of instruction for which an individual is enrolled is limited to a two-year degree granting program;
 - (3) licensed trade schools; or
 - (4) registered business schools.
- (2) Except as otherwise provided in this subdivision and as resources permit and pursuant to a local plan prepared in accordance with the requirements of section 385.10 of this Part, a social services official must assign to educational activities an individual who has not attained 20 years of age and who has not obtained a high school diploma or its equivalent.
- (3) Notwithstanding the requirements of this subdivision, an individual between the ages of 16 and 18 years of age may be excused from school attendance requirements if:
 - (i) the decision not to require school attendance is based upon an individual assessment which indicates that further attendance is unlikely to result in attainment of a high school diploma or its equivalent based upon consideration of the individual's aptitude and other factors such as grade completion; and
 - (ii) he/she participates in either another educational activity other than one which would lead to the attainment of a high school diploma or its equivalent or in job skills training appropriate to and designed for youths.
- (4) Notwithstanding the requirements of this subdivision, the social services official shall assign individuals 18 and 19 years of age to activities other than those described in this subdivision if such official makes a determination, based upon an assessment and employability plan that educational and vocational educational activities are not appropriate or if such individual has failed to make satisfactory progress in educational activities.
- (5) An individual who is assigned to educational activities consistent with the employment goals identified in the employability plan developed pursuant to sections 385.6 or 385.7 of this Part shall not be assigned to any other activity that might interfere with attendance at class; provided, however, that a social services official may periodically reevaluate an individual's employment plan and having given due consideration to the individual's progress in the current, and if applicable, prior program make assignments to other activities in order to meet participation rates established in accordance with the provisions of section 385.8 of this Part.

- (6) An adult member of a two-parent family may be required by a social services official to participate in education activities consistent with the employment goals contained in his/her employability plan.
 - (7) Nothing in this subdivision shall be construed to supersede the eligibility requirements of teen parents as set forth in this Title.
- (d) Work experience.
- (1) Work experience programs meeting State and Federal requirements may be established by social services districts.
 - (2) Work experience programs may include the performance of work for a Federal office or agency, county, city, village or town or for the State or in the operation of or in an activity of a non-profit agency or institution.
 - (3) A recipient may be assigned to participate in such work experience program only if:
 - (i) appropriate Federal and State standards of health, safety and other work conditions are maintained;
 - (ii) the number of hours an individual assigned to work experience activities authorized pursuant to this section may be required to participate in such assignment shall not exceed a number which equals the amount of assistance payable with respect to such individual's household (inclusive of the value of food stamps received by such household, if any) divided by the higher of (a) the Federal minimum wage or (b) the State minimum wage;
 - (iii) such recipients are provided appropriate workers' compensation or equivalent protection for on-the-job injuries and tort claims protection on the same basis, but not necessarily at the same benefit level, as they are provided to other persons in the same or similar positions, while participating in work experience activities under this section;
 - (iv) the project to which the participant is assigned serves a useful public purpose in fields such as health, social services, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, operation of public facilities, public safety and child day care;
 - (v) such assignment would not result in:
 - (a) the displacement of any currently employed worker or loss of position (including partial displacement such as reduction in the hours of non-overtime work, wages or

employment benefits) or result in the impairment of existing contracts for services or collective bargaining agreements;

- (b) the assignment of a participant or the filling of a position when any other person is on layoff from the same or any equivalent position or the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created with a participant assigned pursuant to this section;
 - (c) any infringement of the promotional opportunities of any current employed person;
 - (d) the performance, by such participant, of a substantial portion of the work ordinarily and actually performed by regular employees;
 - (e) the loss of a bargaining unit position as a result of work experience participants performing, in part or in whole, the work normally performed by the employee in such position; or
 - (f) such assignment is not at any work site at which the regular employees are on a legal strike against the employer or are being subjected to lock out by the employer.
- (4) Public employers participating in work experience programs (or the social services official, pursuant to an agreement established between any such employer and the social services official) shall publish on a monthly basis a report summarizing the employer's work experience program for the month.
- (i) Such monthly report shall include, at a minimum, summary information regarding the agencies or departments where participants are assigned, work locations, job duties and assignments, hours worked and period worked and shall be provided to the certified collective bargaining representative of public employees at such employer and may not be disclosed to any other party.
 - (ii) Such certified collective bargaining representative shall take reasonable steps to protect the confidentiality of such information and shall take reasonable steps to prevent disclosure of same to non-authorized persons.

(iii) Reports provided pursuant to this section shall contain a warning against re-disclosure and asserting the confidentiality of the information therein provided.

(5) In assigning to work experience a recipient who is a non-graduate student attending CUNY, SUNY or other approved non-profit education, training or vocational rehabilitation agency, the social services district shall:

(i) after consultation with officials of CUNY, SUNY or other non-profit education, training or vocational rehabilitation agency, assign the student to a work experience site on campus where the recipient is enrolled, if a work experience assignment approved by the social services official is available. Where such work experience assignment is not available, the social services district shall, to the extent possible, assign the student to a work experience site within reasonable proximity to the campus where the recipient is enrolled. Provided, however, in order to qualify for a work experience assignment on-campus, or in close proximity to campus, a student must have a cumulative C average, or its equivalent. The social services district may waive the requirement that the student have a cumulative C average or its equivalent for undue hardship based on:

(a) the death of a relative of the student;

(b) the personal injury or illness of the student; or

(c) any other extenuating circumstances;

(ii) not unreasonably assign the student to participate in work experience during hours that conflict with the student's academic schedule.

(e) Job search activities.

(1) Each applicant for or recipient of public assistance shall, upon request of the social services official, demonstrate that he or she is engaged in an active and continuing effort to achieve self-sufficiency.

(2) Such effort shall include but not be limited to an active and continuing search for employment, or for persons otherwise exempt in accordance with sections 385.2 and 385.3 of this Part, and where deemed appropriate by the social services official, activities that foster preparation for employment.

- (3) Each such applicant or recipient shall have an affirmative duty to accept any offer of lawful employment in which he or she may engage.
 - (4) The failure of a social services district to assign applicants and recipients to activities pursuant to this Part shall not relieve such persons from the requirements of this subdivision.
 - (5)
 - (i) An applicant who fails to comply with the requirements of this subdivision shall be ineligible for public assistance; for purposes of this subparagraph, the term applicant shall mean the entire applicant household.
 - (ii) A recipient who fails to comply with the requirements of this subdivision shall be subject to sanction in accordance with the provisions of sections 385.11 and 385.12 of this Part.
 - (6) Supervised job search activities shall be described in the local plan.
- (f) Subsidized public sector employment programs.
- (1) A social services official may establish subsidized public sector employment programs for public assistance recipients including, but not limited to, grant diversion programs, which may be supported wholly or in part with public assistance funds. Such programs shall be established through agreements between social services districts and employers; provided, however, that, if appropriate, the Office may act on behalf of one or more social services districts in establishing such agreements.
 - (2) Programs may include, but need not be limited to, on-the-job training programs which reimburse employers in part or in whole for the cost of training public assistance recipients through wage subsidies.
 - (3) The social services official or the Office is authorized to transfer public assistance funds to employers through written agreements developed and executed in accordance with Office regulations.
 - (4) A recipient may be assigned to a subsidized public sector employment activity only if:
 - (i) the conditions of employment including such factors as the type of work, geographical region and proficiency of the participant are appropriate and reasonable;
 - (ii) the recipient is deemed an employee for purposes of the applicable collective bargaining and labor laws and receives the same benefits and protections as existing employees similarly situated (working a similar length of time and doing similar work) receive pursuant to the provisions of law and any applicable collective bargaining

agreement or otherwise as made available to such existing employees;

- (iii) The social services official shall ensure that any such program agreement contains adequate provisions for the prompt resolution of disputes concerning participation in the program and the obligations and benefits associated with it;
 - (iv) Nothing contained in this section shall be deemed to affect, modify or abridge a participant's right to a fair hearing pursuant to Part 358 of this Title or representation thereat by counsel or, if applicable, the participant's collective bargaining representative.
- (5) A participant employed by an employer subject to the Civil Service Law or subject to rules consistent with such law shall be appointed to an appropriate classified position. Notwithstanding any other provision of law, rule or regulation, such position shall be deemed to be in the non-competitive class of the classified service only while such participant is serving in the position.
- (6) No employee of the participating employer may be displaced by any recipient employed pursuant to this subdivision. For the purpose of this subdivision, the term displacement shall include partial displacement, such as a reduction in the customary hours of work (including overtime), wages, or employment benefits.
- (7) No participant shall be employed:
- (i) if any other employee of the employer is available for reinstatement, recall or reemployment following a leave of absence, furlough, layoff or suspension from the same or any substantially equivalent job;
 - (ii) when the employer has terminated the employment of any regular employee or otherwise reduced its work force with the intention of filling the vacancy or vacancies so created by hiring a participant whose wages are subsidized under this program; or
 - (iii) when the employee organization representing employees of the employer is engaged in a strike against the employer or such employees have been locked-out by the employer; or
 - (iv) where such employment results in the loss of a bargaining unit position as a result of assigned individuals performing, in part or in whole, the work normally performed by the employee in such position.

- (8) No position may be created that will infringe in any way upon the promotional opportunities of currently employed individuals or individuals currently engaged in an approved apprenticeship training program.
 - (9) No participant shall remain in a position if another employee is eligible for promotion from an eligible list to that position. An employer shall, at least 10 days prior to filling a position with a participant, notify any employee organization that represents employees of the employer who are engaged in similar work or training in the same or substantially equivalent job as that in which the placement is to be made, that it intends to make a placement pursuant to the terms of this subdivision.
 - (10) Where an employee organization represents employees of the employer who are engaged in similar work in the same or substantially equivalent job as that proposed to be funded under this program, an opportunity shall be provided for such organization to comment on the proposed placement of the participant or the administration of the program and the social services official shall respond to such comments within 10 days of receipt of such comments.
 - (11) Employers are prohibited from using public assistance funds to encourage or discourage membership in, or participation in the activities of, any employee organization, and each employer shall provide to the social services district assurances that no such funds will be used for such purposes.
 - (12) Nothing herein shall be construed to affect, modify, or otherwise abridge any provision of the Civil Service Law.
- (g) Subsidized private sector and not-for-profit employment programs.
- (1) A social services district may establish subsidized private sector employment programs for public assistance recipients including, but not limited to, grant diversion programs, which may be supported wholly or in part with public assistance funds. Such programs shall be established through agreements between social services districts and employers, including not-for-profit employers; provided, however, that, if appropriate, the Office may act on behalf of one or more social services districts in establishing such agreements.
 - (2) Programs may include, but need not be limited to, on-the-job training programs which reimburse employers in part or in whole for the cost of training public assistance recipients through wage subsidies.
 - (3) The social services official or the Office is authorized to transfer public assistance funds to employers through written agreements developed and executed in accordance with Office regulations.

- (4) A recipient may be placed in a subsidized private sector or not-for-profit employment activity only if:
- (i) the conditions of employment including such factors as the type of work to be performed, the geographic location of the job, and the qualifications of the participant are appropriate and reasonable;
 - (ii) the recipient is deemed an employee for purposes of the applicable collective bargaining and labor laws and receives the same benefits and protections as an employee similarly situated (working a similar length of time and doing similar work) receives pursuant to the provisions of law, an applicable collective bargaining agreement or otherwise as made available to the employees of the employer;
 - (iii) no employee of the participating employer is displaced by any recipient hired pursuant to this subdivision. For the purpose of this subdivision, the term displacement shall include partial displacement, such as a reduction in the customary hours of work (including overtime), wages, or employment benefits;
 - (iv) no participant is hired:
 - (a) if any other employee of the employer is available for reinstatement, recall or reemployment following a leave of absence, furlough, layoff or suspension from the same or any substantially equivalent job; or
 - (b) when the employer has terminated the employment of any regular employee or otherwise reduced its work force with the intention of filling the vacancy or vacancies so created by hiring a participant whose wages are subsidized under this program; or
 - (c) when the employee organization representing employees of the employer is engaged in a strike against the employer or such employees have been locked-out by the employer; or
 - (d) when such hiring will result in the loss of a bargaining unit position as a result of assigned individuals performing, in part or in whole, the work normally performed by the employee in such position;
 - (v) no job is created that will infringe in any way upon the promotional opportunities of current employees or individuals currently engaged in an approved apprenticeship training program;

- (vi) no participant shall remain in a job if another employee is eligible for promotion to that job. An employer shall, at least 10 days prior to filling a position with a participant, notify any employee organization that represents employees who are engaged in similar work or training in the same or substantially equivalent jobs as those on which the placement is to be made, that it intends to make a placement pursuant to the terms of this section.
 - (vii) where an employee organization represents employees of the employer who are engaged in similar work in the same or substantially equivalent jobs as those proposed to be funded under this program, an opportunity is provided for such organization to comment on the proposed placement of participants or the administration of the program and the social services official or his/her designee shall respond to such comments within 10 days of receipt of such comments;
 - (viii) employers are prohibited from using public assistance funds to encourage or discourage membership in, or participation in the activities of, any employee organization and each employer shall provide to the social services district assurances that no such funds will be used for such purposes.
- (5) The social services official shall require every private or not-for-profit employer that intends to hire one or more assigned individuals to certify to the social services district that such employer has not, in the past five years, been convicted of a felony or a misdemeanor the underlying basis of which involved workplace safety and health or labor standards. Such employer shall also certify as to all violations issued by the State Department of Labor within the past five years. The social services official in the social services district in which the participant is placed shall determine whether there is a pattern of violations sufficient to render the potential employer ineligible. Employers who submit false information under this section shall be subject to criminal prosecution for filing a false instrument.

Section 385.10 Local district employment plans.

- (a) General requirements. The social services official shall submit a biennial plan to the Office which includes all of the elements specified in this section. The commissioner shall establish a beginning and ending date which shall constitute the effective dates for which such plan is in force.
 - (1) The plan shall describe the provision of education, work training and the supportive services which are related to the operation of work activity programs for public assistance and food stamp programs by the local district.

- (2) The plan shall be developed in cooperation and coordination with:
 - (i) public and private education institutions;
 - (ii) child care providers;
 - (iii) child care resource and referral agencies if available in the district;
 - (iv) labor unions;
 - (v) libraries;
 - (vi) public and private employers;
 - (vii) employment and training agencies and organizations; and
 - (viii) private industry councils.
- (3) The plan shall be available for review and comment by the public at the offices of the social services district for a period not less than 30 days prior to the date that the plan must be submitted to the commissioner.
- (4) No later than 90 days prior to the date on which the biennial plan must be submitted to the Office (or 60 days if the date of submission of the plan to the Office and for public comment are the same), the commissioner shall transmit planning instructions to each social services official which shall include, but not be limited to:
 - (i) the date of plan submission to the Office;
 - (ii) instructions for completing the plan and for submitting amendments thereto.
- (5) The plan shall include, but not be limited to:
 - (i) estimates of the number of participants to be served;
 - (ii) a description of the supportive services which the social services district will provide individuals assigned to work activities;
 - (iii) a description of the work activities which will be available in the social services district;
 - (iv) a description of the social services district's plan to meet Federal and State participation rate requirements;
 - (v) a description of the process to be used by the social services district in meeting the requirements of the disability program described in section 385.2 of this Part;

- (vi) a list of the education and training and other work activity providers with which the social services district expects to enter into agreements or contracts, along with a description of the contracts;
 - (vii) a description of orientation provided in accordance with the requirements of section 385.5 of this Part;
 - (viii) a description of the assessment tools, qualification requirements for employees providing assessments, the social services district's administrative unit responsible for assessments or the entity contracted by the social services district to provide assessments and employability plans;
 - (ix) a description of conciliation procedures established in accordance with the requirements of section 385.11 of this Part;
 - (x) a description of the approval of training policy.
- (6) The plan shall also include any additional information which the commissioner deems necessary to comply with Federal and State reporting requirements or for Office planning and program analysis.
 - (7) The plan shall be amendable upon notice and comment as directed by the commissioner.

Section 385.11 Conciliation.

- (a) Conciliation for refusal or failure to comply with employment requirements.
 - (1) The social services official shall issue a conciliation notice to any nonexempt applicant for or recipient of public assistance who has failed to comply with the requirements of this Part. However, no notice of conciliation shall be issued to: an applicant deemed ineligible for public assistance pursuant to section 385.2(c)(1) of this Part; an applicant who is ineligible for public assistance pursuant to section 385.6(a)(6)(i) of this Part; an applicant who is ineligible for public assistance pursuant to section 385.7(a)(6)(i) of this Part; or an applicant who is ineligible for public assistance pursuant to section 385.9(e)(5)(i) of this Part.
 - (2) Such notice shall:
 - (i) indicate that a failure or refusal to participate has occurred;
 - (ii) indicate that the individual has a right to provide reasons for such failure or refusal to participate;

- (iii) indicate that, in the case of an applicant for or recipient of family assistance, the individual shall have 10 days to request a conciliation, and in the case of an applicant for or recipient of safety net assistance, seven days to request conciliation.
 - (3) If the individual does not contact the social services official within the periods set forth in paragraph (2) of this subdivision, the social services official shall issue a notice of denial or a 10-day notice of intent to discontinue or reduce public assistance. Such notice shall:
 - (i) be designed by the Office; provided, however, that the social services official may submit for approval a local equivalent which meets the requirements of this paragraph;
 - (ii) indicate the employment requirement for which the individual failed or refused to comply;
 - (iii) include a statement approved by the commissioner and in accordance with the provisions of Part 358 of this Title indicating that the individual has the right to a fair hearing related to such denial, discontinuance or reduction.
 - (4) If the individual does contact the social services official within the periods set forth in paragraph (2) of this subdivision, the individual shall be responsible for providing the social services official with reasons for his or her failure or refusal to comply.
 - (i) if the social services official determines that the individual's refusal or failure to comply was willful and without good cause, the social services official shall issue a 10-day notice pursuant to the requirements of paragraph (3) of this subdivision;
 - (ii) if the social services official determines that the individual's failure or refusal to comply was not willful or was with good cause, the procedure shall terminate.
 - (5) The conciliation period shall last no longer than 14 days from the date on which an applicant for or recipient of safety net requests conciliation, and no longer than 30 days from the date of the conciliation notice issued to an applicant for or recipient of family assistance, unless the individual and the social services official agree that the conciliation period should last longer.
- (b) Conciliation for the grievances of individuals assigned to work activities.
- (1) The social services official must establish a conciliation procedure for the resolution of grievances initiated by individuals assigned to work activities.

- (2) In establishing such procedure, the social services official must:
 - (i) enter into an agreement with an independent entity; or
 - (ii) employ district staff at a supervisory level who are trained in mediation and who have no direct responsibility for an individual's case; or
 - (iii) designate supervisory staff, who need not be trained in mediation who have no direct responsibility for an individual's case to serve as mediators for such grievances.
- (3) Such procedure must afford the individual an opportunity to dispute an assignment to a work activity made in accordance with the provisions of this Part.
- (4) The social services official shall provide for at least one meeting which includes the individual, appropriate social services staff and the mediator. Such meeting shall occur within 30 days of the day on which the individual submitted a grievance in writing to the social services official.
- (5) No sanction relating to the subject dispute shall be imposed during the conciliation process, which shall begin on the day on which the individual submitted a grievance in accordance with the provisions of this subdivision and shall end on the day upon which written notice has been provided to the individual which indicates the results of the conciliation.
- (6) If the individual's grievance is not resolved through conciliation, the individual shall be informed of the right to a fair hearing. Notwithstanding such right to a fair hearing, the individual shall be required to participate in work activities as assigned in accordance with the requirements of this Part during the adjudication process.

Section 385.12 Failure to comply with the requirements of this Part.

- (a) Noncompliance of public assistance applicants and recipients with the requirements of this Part.
 - (1) Potentially employable applicants and recipients.
 - (i) An applicant who has been determined to be exempt from participation in work activities in accordance with the requirements of this Part due to being disabled pursuant to this section, who in the judgment of the social services official has the potential to be restored to self-sufficiency through rehabilitation, will be denied assistance if he/she fails to comply with requirements for potentially employable applicants pursuant to section 385.2 of this Part. Ineligibility for assistance continues until the applicant

agrees to comply with the requirements and demonstrates such compliance where appropriate.

- (ii) A recipient who has been determined to be exempt from participation in work activities in accordance with the requirements of this Part due to being disabled pursuant to this section, who in the judgment of the social services official has the potential to be restored to self-sufficiency through rehabilitation, is ineligible to receive public assistance until such time as he/she is willing to comply with such requirements.
- (2) A public assistance applicant or recipient subject to employment requirements who is determined to have refused or failed to comply without good cause with the requirements of this Part in accordance with the provisions of section 385.11 of this Part regarding conciliation must be provided a notice of such determination and of the intent of the social services district to deny, discontinue or reduce assistance, as follows:
- (i) An applicant must be issued an adequate notice of denial of public assistance which informs him/her that he/she has refused or failed to comply without good cause with employment requirements in accordance with the provisions of this Part.
 - (ii) A recipient must be issued an adequate and timely notice of intent to discontinue or reduce assistance which informs him/her that he/she has refused or failed without good cause to comply with employment requirements in accordance with the requirements of this Part.
 - (iii) The notices specified in subparagraphs (i) and (ii) of this paragraph must also inform:
 - (a) the applicant or recipient of the specific instance(s) of willful refusal or failure to comply without good cause with the requirements of this Part and of the specific section of this Part in which the requirement(s) is contained;
 - (b) the applicant or recipient that he/she has the right to apply for public assistance at any time, and for safety net recipients that he/she may reapply at least 45 days before the end of the sanction period to ensure restoration of benefits immediately following the applicable sanction period;
 - (c) the recipient of the duration for which he/she will be ineligible for public assistance or for a reduced amount of public assistance in accordance with this section; and

- (d) that he/she has the right to a fair hearing in accordance with the provisions of Part 358 of this Title.

(3) Refusal of employment.

- (i) In determining whether an applicant's or recipient's refusal to accept a referral to an employment opportunity or an offer of employment constitutes refusal or failure to comply without good cause, a social services official shall consider the report of the employment unit or agency through which the job referral was made, pertinent information supplied by the prospective employer, the explanation of the applicant or recipient for not accepting the offer of employment, and any other pertinent evidence.
- (ii) An individual is deemed not to have failed or refused to comply without good cause with employment program requirements or to have refused to accept a referral to an employment opportunity or an offer of employment in which such person is able to engage due to his/her refusal to accept an offer of employment, if the evidence shows that:
 - (a) the job offer was not bona fide;
 - (b) the salary or wages were less than the minimum required by law, or the conditions of employment were otherwise contrary to law;
 - (c) child care necessary for an individual to participate is not available in accordance with Part 415 of this Title;
 - (d) necessary supportive services are unavailable;
 - (e) a strike, lockout or other public or private industrial controversy was in progress at the place in which employment was offered;
 - (f) the job would have been hazardous to the applicant's or recipient's life or health, or there was an absence, if appropriate, of workers' compensation;
 - (g) the place of employment required unreasonable, based on the standards of the community, travel from the applicant's or recipient's home;
 - (h) child care plans were temporarily disrupted, making it impossible for the applicant or recipient to report as required;

- (i) accepting a job would result in a net loss of cash income for the household and the social services district does not make supplemental payments pursuant to section 352.7(m) of this Title to prevent a net loss of cash income;
 - (j) the assignment or activity is contrary to law;
 - (k) a personal or family emergency of substantial nature prevents compliance if the participant has notified the social services district with reasonable promptness of his/her inability to comply;
 - (l) such refusal is caused by circumstances beyond a participant's control.
 - (iii) The applicant or recipient is responsible for notifying the social services district of the reasons for failing to comply with an employment requirement and for furnishing evidence to support any claim of good cause.
- (b) Noncompliance of food stamp applicants and recipients with work registration or work requirements.
- (1) If an individual without good cause has refused or failed to comply with food stamp program work registration or assignment to work activities pursuant to the requirements of this Part, he/she will be ineligible to participate in accordance with the provisions of this section. If an individual is disqualified and he/she is a member of an otherwise eligible household, he/she is treated as an excluded member during the period of disqualification, under section 387.16(c)(1) of this Title.
 - (2) Prior to notifying the household of the proposed disqualification, the social services district must determine whether good cause for non-compliance exists, in accordance with subdivision (c) of this section.
 - (3) For food stamp recipients, within 10 calendar days of determining that the noncompliance was without good cause, the social services district must issue a timely and adequate notice of adverse action to the recipient. This notice must specify the particular act of non-compliance, the proposed period of disqualification, and that the individual may reapply in order to resume participation in the food stamp program at the end of the disqualification period. The notice must also contain information about ending the disqualification as specified in subdivision (e) of this section. The disqualification period begins with the first month following the expiration of the notice period unless a fair hearing is requested. In such case the disqualification period may not begin until the fair hearing request is withdrawn, the individual fails to appear or a fair hearing decision upholding the social services district's action is issued.

- (4) When a member of an applicant household has without good cause failed to comply with work registration requirements pursuant to section 385.3 of this Part, the social services district must inform the household of the individual's disqualification in the notice of action taken. This notice must specify the particular act of non-compliance, the proposed period of disqualification, and that the individual may reapply in order to resume participation in the food stamp program at the end of the disqualification period. The notice also must contain information about ending the disqualification as specified in subdivision (e) of this section.
 - (5) A voluntary participant in a food stamp employment and training program who is exempt from food stamp work registration and/or participation in an employment and training program must not be disqualified for failure to comply with the requirements of this Part unless the volunteer is sanctionable pursuant to paragraph (6) of this subdivision.
 - (6) Failure of certain food stamp applicants and recipients who are exempt from work registration to comply with other work requirements. If a household contains a member who is exempt from work registration solely because he/she is registered for work under an unemployment compensation work requirement or because he/she is subject to participation in work activities funded under title IV of the Social Security Act, and such individual refuses or fails to comply with the work requirements of those programs, such individual must be treated as though he/she has failed to comply with the requirements of this Part.
- (c) Good cause for failure to comply with public assistance and food stamp employment requirements.
- (1) The social services official is responsible for determining good cause in those instances where an individual has failed to comply with the requirements of this Part. In determining whether or not good cause exists, the social services official must consider the facts and circumstances, including information submitted by the individual subject to such requirements. Good cause includes circumstances beyond the individual's control, such as, but not limited to, illness of the member, illness of another household member requiring the presence of the member, a household emergency, or the lack of adequate child care for children who have reached age 6 but are under age 13.
 - (2) The applicant or recipient is responsible for notifying the social services district of the reasons for failing to comply with an employment requirement and for furnishing evidence to support any claim of good cause.
- (d) Public assistance sanctions for failure to comply with employment requirements. An applicant for or recipient of public assistance who refuses or fails without

good cause to comply with employment requirements assigned pursuant to this Part shall be ineligible to receive public assistance for the periods specified in this subdivision. However, such sanctions shall not apply to: an applicant deemed ineligible for public assistance pursuant to section 385.2(c)(1) of this Part; an applicant who is ineligible for public assistance pursuant to section 385.6(a)(6)(i) of this Part; an applicant who is ineligible for public assistance pursuant to section 385.7(a)(6)(i) of this Part; or an applicant who is ineligible for public assistance pursuant to section 385.9(e)(5)(i) of this Part.

(1) In the case of a parent or caretaker of a dependent child, the public assistance otherwise available to the household of which that individual is a member shall be reduced pro rata as determined by the commissioner of the Office:

- (i) for the first such failure or refusal to comply, until the individual is willing to comply;
- (ii) for the second such failure or refusal to comply, a period of three months and thereafter until willing to comply;
- (iii) for the third, and all subsequent instances of such failure or refusal to comply, a period of six months and thereafter until willing to comply.

(2) In the case of an individual who is a member of a household without dependent children applying for or in receipt of safety net assistance, the public assistance otherwise available to the household of which that individual is a member shall be reduced pro rata as determined by the commissioner of the Office:

- (i) for the first such failure or refusal to comply, a period of 90 days and thereafter until willing to comply;
- (ii) for the second such failure or refusal to comply, a period of 150 days and thereafter until willing to comply;
- (iii) for the third such failure or refusal to comply, a period of 180 days and thereafter until willing to comply.

(3) Willing to comply as used in this section means that an individual, as required by the district, reports to an assigned work activity site or other location as assigned by the local services district on time and prepared to engage in the assigned activity.

(4) In the case of an individual who was the member of a household without dependent children prior to being sanctioned in accordance with the provisions of this subdivision, and for whom the specified sanction period has ended, the social services official shall send a reminder to such

individual indicating an opportunity to end the sanction by complying with employment programs. The commissioner shall establish through an Office policy directive the language required in the reminder.

- (e) Food stamp sanctions for failure to comply with employment programs.
 - (1) The needs of an individual who is required to work register and who has failed without good cause to comply with the requirements of this section will not be considered in determining the needs of his/her household for food stamps for the periods set forth in this subdivision.
 - (i) For the first instance of failure to comply without good cause commencing on or after September 22, 1996, a period of two months and thereafter until the individual complies with the requirements of this section.
 - (ii) For the second instance of failure to comply without good cause within a three year period beginning with the effective date on which the individual became ineligible for food stamps in accordance with subparagraph (i) of this paragraph, a period of four months and thereafter until the individual complies with the requirements of this section.
 - (iii) For the third instance of failure to comply without good cause within a three year period commencing with the effective date on which the individual became ineligible for food stamps in accordance with subparagraph (ii) of this paragraph, a period of six months and thereafter until the individual complies with the requirements of this section.
 - (iv) For all subsequent instances of failure to comply without good cause within a three year period commencing with the effective date of the last instance in which the individual became ineligible for food stamps due to failure without good cause to comply with the requirements of this section, a period of six months and thereafter until that individual complies with the requirements of this section.
 - (2) Following the end of the disqualification period for noncompliance with the requirements of this Part, a household may request that the disqualified individual be added to the household and resume participation. The social services district must act on this request in accordance with section 387.17(e)(3) of this Title.
 - (3) Eligibility may be reestablished during the disqualification period if the participating household requests that the disqualified individual be added to the household, provided that the disqualified individual becomes exempt from the work requirement other than by reason of participation in

an employment program under title IV of the Social Security Act or in an unemployment compensation employment program.

- (4) A disqualification for noncompliance with work registration requirements may be ended, after the time periods specified in paragraph (1) of this subdivision, if the disqualified individual complies with the requirement which caused the disqualification respectively, as follows:
 - (i) failure to participate in a food stamp employment or training program: participation in that component or in another component as assigned;
 - (ii) failure to respond to a request for information regarding employability: compliance with the request for information;
 - (iii) failure to report to an employer: reporting to the employer if employment is still available, or reporting to another employer upon referral;
 - (iv) failure to accept suitable employment: acceptance of employment if it is still available, or securing other employment which yields weekly earnings at least equal to the refused job, or securing full-time as specified in section 385.3(a)(1)(vii) of this Part.

Section 385.13 Voluntary termination of employment and voluntary reduction of earning capacity (voluntary quit).

- (a) Public assistance.
 - (1) For purposes of this section, the term "voluntary" quit means voluntary termination of employment and/or a reduction in earning capacity for the purpose of qualifying for initial or increased public assistance. Such term shall include individuals who provoke their own termination from employment or provoke an employer to reduce their work hours.
 - (2) An individual will be disqualified from receiving public assistance for a period specified in this subdivision if the social services official determines that such individual voluntarily quit his/her job.
 - (3) Public assistance will not be denied to a public assistance applicant or discontinued for a recipient of such public assistance who requests an increase in benefits, unless he/she has been provided a reasonable opportunity to explain why he/she terminated his/her employment or reduced his/her earning capacity or otherwise demonstrated that he/she did not terminate employment or reduce earning capacity for the purpose of qualifying for initial or increased public assistance.

- (4) It is the responsibility of the applicant or recipient to provide reasons or otherwise demonstrate that his/her voluntary quit was not for the purpose of qualifying for initial or increased public assistance.
- (5) Upon determining that the applicant or recipient voluntarily quit his or her job, the social services district must inform the individual that:
 - (i) he/she will be provided a reasonable opportunity to explain his/her reasons for such action or otherwise demonstrate that such action was not taken for the purpose of qualifying for initial or increased public assistance; and
 - (ii) it is his/her responsibility to provide reasons or otherwise demonstrate that such action was not taken for the purpose of qualifying for initial or increased public assistance.
- (6) If the applicant or recipient provides reasons or other relevant information regarding his/her voluntary termination of employment or reduced earning capacity, the social services official must determine if the information is sufficient to conclude that the applicant or recipient did not terminate employment or reduce earning capacity to qualify for initial or increased assistance.
 - (i) if the information is determined to be sufficient, the applicant or recipient will receive or continue to receive public assistance if all other eligibility conditions are met
 - (ii) if the information is determined not to be sufficient, the applicant or recipient will receive a notice of denial or intent to reduce or discontinue the public assistance benefits.
- (7) If the applicant or recipient provides no reasons for his/her voluntary termination of employment or reduction in earning capacity, then the social services official must conclude that such action was taken with the intent to qualify for initial or increased public assistance.
- (8) An applicant or recipient who has been determined by the social services official to have voluntarily terminated his/her employment or reduced his/her earning capacity for the purpose of qualifying for public assistance or increasing his/her public assistance benefits will be disqualified from receiving assistance as follows:
 - (i) as an applicant, for 90 days from the date of voluntary termination or reduced earning capacity;
 - (ii) as a recipient, such disqualification will be in accordance with the sanctions prescribed for non-compliance with employment requirements as specified in section 385.12(d) of this Part.

- (b) Food stamps. For purposes of this section, the term voluntary quit means voluntary termination of employment and/or a reduction in work effort when a participant, after such reduction, is working less than 30 hours per week. Such term shall include individuals who provoke their own termination from employment or provoke an employer to reduce their work hours.
- (1) If an individual voluntarily quits his/her job without good cause, he/she is not eligible to participate in the food stamp program. Disqualification from participation must be in accordance with the provisions of section 385.12(e) of this Part. This provision applies if the individual voluntarily quit his/her job within 60 days prior to the date of application for food stamp benefits or any time thereafter.
 - (2) Benefits may not be delayed beyond the normal processing times as specified in section 387.14 of this Title pending the outcome of the determination of whether the applicant voluntarily quit his/her job.
 - (3) In the case of an applicant household where a voluntary quit without good cause by a household member has been established, the household member's application for participation in the food stamp program must be denied and the household member must be disqualified for a period of time determined pursuant to the provisions of subdivision (e) of section 385.12 of this Part provided, however, that the time period of such disqualification shall begin on the date of the voluntary quit.
 - (4) (i) In the case of an applicant or recipient where a voluntary quit without good cause by an individual has been established, including where the voluntary quit by the individual occurred prior to application or between application and certification but which was discovered after certification, the individual must be disqualified from participation in accordance with the provisions of subdivision (e) of section 385.12 of this Part; provided, however, that the period of disqualification begins with the first month after all normal procedures for taking adverse action have been followed unless a fair hearing is requested and the household requests that assistance be continued without change. In such case, the disqualification period may not begin until the fair hearing request is withdrawn, the individual fails to appear, or a fair hearing decision upholding the local department's action is issued. An individual whose voluntary quit occurs or is determined in the last month of his/her certification period must be denied recertification for a disqualification period established pursuant to the provisions of subdivision (e) of section 385.12 of this Part beginning with the first month after the certification period ends. If such individual does not recertify, the disqualification period begins with the month after the month in which the voluntary quit

occurred, and a claim must be established for any benefits received by the household during that period of ineligibility.

- (ii) In the case of an applicant or recipient where a voluntary quit by a member of the household has been established, the provisions of subparagraph (i) of this paragraph apply, and the sanction will only apply to the needs of the disqualified member.
- (5) A household member who is an employee of any Federal, State or local government who is dismissed from his/her job due to participation in a strike is deemed to have voluntarily quit his/her job. The social services official must evaluate such a voluntary quit in accordance with the requirements of this subdivision. However, terminating a self-employment enterprise or resigning a job at the employer's demand cannot be considered a voluntary quit for purposes of this subdivision. In addition, for an individual who quits a job, secures new and comparable employment, but through no fault of his/her own loses the new job, the earlier quit must not be considered a voluntary quit.
 - (6) Persons who at the time they terminated employment were exempt from work registration pursuant to section 385.3 of this Part, except those persons who were exempt by reason of full-time employment, are exempt from the voluntary quit provisions.
 - (7) Applicants and recipients must be provided with appropriate notice as specified in section 387.20 of this Title if they are disqualified from participation due to a determination of voluntary quit. Such notification must contain the proposed period of disqualification, notice of the household's or a household member's right to reapply in order to resume participation at the end of the disqualification period established pursuant to the provisions of section 385.12(e) of this Part, and notice of such person's right to a fair hearing.
 - (8) A person who has been disqualified for a voluntary quit and who joins a new household remains ineligible for the remainder of the disqualification period.
 - (9) If an application is filed in the last month of disqualification, the social services official must use the same application for the denial of benefits in the remaining month of disqualification and for certification for any subsequent month(s) if all other eligibility criteria are met.
 - (10) Good cause for leaving employment or reducing work hours.
 - (i) Prior to any action to deny or terminate eligibility, the social services official must determine whether there was good cause for terminating employment or reducing the hours of work to a total of less than 30 hours per week. In determining whether or not good

cause exists, the social services official must consider all relevant facts and circumstances, including information submitted by the individual who quit or reduced his/her hours and by the current or former employer of such member. A determination of good cause will be made where the social services official finds that employment was terminated due to:

- (a) discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs;
- (b) work demands or conditions that rendered continued employment unreasonable, such as not being paid on schedule;
- (c) acceptance by the individual of employment or enrollment of at least half-time in any recognized school, training program or institution of higher education, that required the individual to leave employment;
- (d) acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program or institution of higher education in another county or similar political subdivision which required the household to move and thereby required the individual to leave employment;
- (e) resignations by persons under the age of 60 which are recognized by the employer as retirement;
- (f) acceptance of a bona fide offer of employment of at least 20 hours per week or which on a weekly basis yields earnings of at least 20 times the federal minimum wage but which, because of circumstances beyond the individual's control, subsequently did not materialize or which resulted in employment which is less than 20 hours per week or which pays less than 20 times the federal minimum wage on a weekly basis;
- (g) leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work; and
- (h) resignation from a job which is unsuitable pursuant to the criteria specified in paragraph (11) of this section.

- (ii) Questionable information pertaining to a voluntary quit must be verified. The social services district must offer assistance to the household in order to assist it to obtain needed verification. Whenever documentary evidence cannot be obtained, the social services district must substitute a possible collateral source. If the household and social services district are unable to obtain the requested verification because the voluntary quit resulted from circumstances that for good reason cannot be verified (such as a resignation from employment due to discrimination practices, unreasonable demands by an employer, or because the employer cannot be located), the household cannot be denied access to or terminated from participation in the program.
- (11) Any food stamp employment is considered unsuitable if:
- (i) the wage offered is less than the highest of the applicable Federal minimum wage, the applicable State minimum wage, or 80 percent of the Federal minimum wage, if neither the Federal nor State minimum wage is applicable;
 - (ii) the employment is offered on a piece-rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly wages as specified in subparagraph (i) of this paragraph;
 - (iii) the household member, as a condition of employment, must join, resign from, or refrain from joining a legitimate labor organization; or
 - (iv) the work is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under section 208 of the Labor-Management Relations Act, commonly known as the Taft-Hartley Act, or unless an injunction has been issued under section 10 of the Railway Labor Act.
- (12) In addition, employment is suitable unless the household member involved demonstrates or the social services district otherwise becomes aware that:
- (i) the degree of risk to health and safety is unreasonable;
 - (ii) medical evidence or other reliable information documents that the individual is physically or mentally unfit to perform the job;
 - (iii) the employment offered is not within the individual's major field of experience; however, this provision only applies during the first 30 days after the date of registration;

- (iv) the distance from the individual's home to the place of employment is unreasonable. In determining reasonability, the social services district shall consider the expected wage and the time and cost of commuting. Employment must not be considered suitable if daily commuting time exceeds two hours per day, not including the time involved in transporting of a child to and from a child care facility. Employment may also be considered unsuitable if the distance to the place of employment makes walking prohibitive and neither public nor private transportation is available;
 - (v) the working hours or type of employment conflicts with the individual's religious observance, convictions or beliefs; or
 - (vi) the individual lacks adequate child care for children in the household who have reached age 6 but are under age 13.
- (13) Ending a voluntary quit or reduction in hours disqualification.
- (i) An individual may reestablish after the end of his/her disqualification period and, if he/she applies and is otherwise eligible, must be permitted to resume participation if he/she:
 - (a) secures new employment which is comparable in salary or hours to the job which was quit; however, comparable employment may entail fewer hours or lower net salary than the job which was quit; or
 - (b) becomes exempt from work registration requirements pursuant to section 385.3 of this Part other than by reason of subparagraph (a)(1)(iii) or (v) of such section.
 - (ii) an individual may end a disqualification for voluntary quit at the end of the disqualification period established in accordance with the provisions of section 385.12 of this Part by applying for food stamps and by complying with the requirements of this section and of this Part.

Fair Hearing
Frequently Encountered NYCWAY Codes

100A CASE NOTE ENTRY
100P NOTIFICATION OF WORK REQUIRED CLIENT PRESENT
105 ELIGIBILITY CALL-IN
105E REFERRED FOR EMPLOYMENT APPT-EMPLOYABLE
10SN SANCTION APPOINTMENT
105S SANCTIONED CALL-IN EMPLOYMENT REFERRAL
105W REFERRED FOR JOP/WAGE SUBSIDY
109Z MANUAL RETURN APPT
10JB JOB CENTER REFERRAL FOR BEGIN ASSESSMENT
10SB INTENSIVE SERVICES CENTER SANCTION REFERRAL T
10SW SANCTION CLIENT WALK IN APPOINTMENT
155G REFERRAL TO PARKS/GRANT DIVERSION
119U EP BARRIER: EXEMPT
169C WC CSP COMPLETE
100L NOWR LIMITED EMP
168L WC EMP REQ VRS
169B WC BPS I COMPLETE
169R WC RTRN APPT BPS CSP
168I CSM REFRL TO WECARE
169E WC ENROLLED IN VRS
168Q WC VRS REQ HRS:35
169I WC IPE COMPLETE
16HR REFERRAL TO WECARE REVIEW BOARD - FAIR HEARING RESULT
184P 8-9 MONTHS PREGNANT
185V DETERMINED EXEMPT - ADVANCED AGE
186H EXCUSED 19 YEARS OLD AND IN SCHOOL
188V DETERMINED EXEMPT -OVESID
191G SPECIAL ASSESSMENT REASSESSMENT APPT
193 REFERRED TO SUBSTANCE ABUSE SERVICE CENTER
193B BEGIN REFERRAL TO SASC
193C REFERRAL BACK TO CSM VENDOR
194R REFERRAL FOR CASE CONTROL TO SSI - RECEIVIN
195 CARETAKER OF CHILD UNDER 13 WEEKS ON PA CAS
196 CARETAKER OF NPA CHILD UNDER 13 WEEKS
188V DETERMINED EXEMPT -OVESID
191G SPECIAL ASSESSMENT REASSESSMENT APPT
195 CARETAKER OF CHILD UNDER 13 WEEKS ON PA CASE
196 CARETAKER OF NPA CHILD UNDER 13 WEEKS
205S SACC RETURN APPOINTM
242c SA PROG/CL.ASSESSMT
222a SEEN:ICC RECEPTION
214B CALLIN-HRA RECALL DT
243A SA/ADC UPDATE RECALL
404V CONCIL INITIATED-FTC
430K FTR/FTC INT APPT
457C FTC/CASAC
468B WC FTR BPS I
468V WC FTC VRS

401K CONCIL. INITIATED
406H CONCIL. INITIATED
430K FTR/FTC INT APPT
434H FTC emp/FTR work std
109G Call in-mand appt
434A FAILED TO KEEP MANDATORY APPOINTMENT
700A CASE NOTE ENTRY
725 FH SCHEDULED
701F FH&C PACKET COMPLETE
701H PACKET HANDED TO FHC
701P AGENCY WILL DEFEND
701N APPEL.DID NOT APPEAR
701D MDR - TO DISCONTINUE
702W W-270 REQUEST FORWARDED TO JC OPERATIONS
70RF RIVERA REQUEST - FAX
70RM RIVERA REQUEST - MAIL
70RP RIVERA REQUEST - IN PERSON
70RT RIVERA REQUEST - TELEPHONE
70SF RIVERA SID REQUESTED BY FAX
70SM RIVERA SID REQUESTED BY MAIL
70SP RIVERA SID REQUESTED IN PERSON
70ST RIVERA SID REQUESTED BY PHONE
710S FAIR HEARING REQUESTED - MANUAL ATC POSTING
710 FH REQ/AID 2 CNT
730 FAIR HEARING DISPOSTION - DEF
70RM RIVERA REQUEST - MAIL
70RP RIVERA REQUEST - IN PERSON
70RT RIVERA REQUEST - TELEPHONE
70SF RIVERA SID REQUESTED BY FAX
709F FH REQ - FAX
709T FH REQ - PHONE
730 FAIR HEARING DISPOSTION - DEF
730P FH ISSUES RESOLVED PRIOR TO HEARING STILL PENDI
730R FH&C RESOLVED ISSUES PRIOR TO HEARING
799X FAIR HEARING NO LONGER OPEN WITH STATE
810 ADC Good Cause Grant
820E GOOD CAUSE GRANTED:FULL TIME EMPLOYMENT
820 Good cause granted
830 Good cause not grant