

**DSS ADMINISTRATIVE LETTER NO. ECONOMIC AND FAMILY SERVICES 1-2008,
Clarification of Use of Benefit Diversion (November 5, 2008)**

(Work First Program)

TO: County Directors of Social Services

ATTENTION: Work First Program Administrators, Managers and Supervisors

DATE: November 5, 2008

SUBJECT: Clarification of Use of Benefit Diversion

EFFECTIVE DATE: Upon Receipt

Background

On May 19, 2008, the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance issued a Program Instruction to states regarding the use of TANF funds for Benefit Diversion and clarification of what does and does not constitute "assistance." This Program Instruction was made effective October 1, 2008. This letter is to provide county departments of social services with the same guidance that the federal government provided to states.

Definitions

The TANF regulation at 45 CFR 260.31(a)(1) and (2) specifies that "assistance" includes cash, payments, vouchers and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). The regulation at 45 CFR 260.31(a) (3) states that assistance also can include supportive services such as transportation and child care provided to families that are not employed.

The TANF regulation at 45 CFR 260.31(b) (1) **excludes** from the definition of assistance nonrecurring, short-term benefits that:

- (i) Are designed to deal with a specific crisis situation or episode of need;
- (ii) Are not intended to meet recurrent or ongoing needs; and
- (iii) Will not extend beyond four months. **Note:** In North Carolina, Benefit Diversion is limited to three months instead of four.

In addition, the TANF regulation at 45 CFR 260.31(b) (6) excludes from the definition of assistance:

Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement and other employment-related services that do not provide basic income support.

Since enactment of the Deficit Reduction Act of 2005 (DRA) (Public Law 104-193), a number of States have created "non-assistance" diversion programs, similar to North Carolina's Benefit Diversion. These programs were a way to provide up-front benefits to families in order to prevent their need for ongoing benefits and thereby keeping them out of the Work Participation Rates.

However, the federal government questioned whether these states' diversion programs were actually providing "assistance" as defined in the TANF regulations. In some cases, the federal government found that some states' diversion programs appeared to meet one or two of the above criteria for exclusion from the definition of assistance, but not all three. The federal government found that those programs did not qualify as non-assistance programs.

Policy

The definition of nonrecurring, short-term benefits at 45 CFR 260.31(b) (1) of the TANF regulations has three criteria, as listed above. A benefit must meet **all three** criteria to be excluded as assistance. If the benefit does not meet all three of the criteria, the benefit meets the definition of assistance, and the recipient would be subject to all of the requirements associated with Work First Family Assistance including work eligible status and inclusion in participation rates.

Nonrecurring, short-term benefits must be designed to deal with a *family's* specific crisis situation or episode of need. This does not include meeting the programmatic challenges of meeting the newly strengthened work participation requirements. Nor does it include a family's general need for income support or temporary assistance. The use of Benefit Diversion to "divert families from the welfare rolls by providing short-term relief that could resolve discrete family problems" continues to be allowable as long as it is being used based on all three criteria.

Examples provided in the Program Instruction of a family's specific crisis situation or episode of need, as well as supportive services that could be provided to address such situations include:

- The threat of possible or persistent homelessness, eviction, and/or utility shut-off: paying overdue rental and/or utility arrearages and utility payments to prevent evictions/cutoffs; payment of security deposits; payment of first month's rent; budget and or other counseling.
- In the case of disaster victims: furniture and clothing replacement; help with securing new or temporary housing (payment of security deposit, first month rent, moving expenses).
- Employment, school, or training-related needs: purchasing appropriate work or school attire, special clothing (e.g., uniform), or tools; moving expenses to accept a job offer or to be closer to work; automotive repair integral to accepting or maintaining employment or to attending work or training activities; fee for job placement services.

The important element for a non-assistance diversion program is that a bona fide specific *family crisis* or *family episode of need* exists, rather than a chronic or continuing situation. A specific crisis or episode of need does not include payments for needs that are ongoing. Nonrecurring, short-term benefits must not be intended to meet recurrent or ongoing needs. In particular, these benefits are not for the purpose of providing basic income support to meet a current recurring ongoing need that is expected to continue beyond the short-term period. Also, the Program Instruction makes it very clear that Benefit Diversion must not be used as the stepping stone or transition into the State's ongoing assistance program upon expiration of the "short-term" period.

Instruction

Using Benefit Diversion for three months for all applicant families across the board for Work First is not an acceptable use of Benefit Diversion. When approving Benefit Diversion, the specific family crisis or family episode of need and the assessment that the crisis or need is short term must be documented in the case record. Also, using Benefit Diversion to temporarily divert the family for three months and then moving the family into ongoing Work First Family Assistance is an inappropriate use of Benefit Diversion. This strategy has been used as a way to give the applicant an extra three months of job search and/or job readiness before they move into ongoing assistance and become work eligible, thus counting in the Work Participation Rate denominator. Clearly, if the assessment of an applicant is that they will likely have ongoing needs beyond the

Benefit Diversion period, an application should be taken for Work First Family Assistance and the option of Benefit Diversion should not be offered.

Please make note of this guidance and assess your county's use of Benefit Diversion to ensure that your agency is using Benefit Diversion as specified in this policy. If you have further questions, please contact your Work First Representative.

Sincerely,

A handwritten signature in cursive script that reads "Dean Simpson".

Dean Simpson, Chief
Economic and Family Services Section

cc: Sherry Bradsher
Hank Bowers
Sarah Barham
Sara Mims
Work First Local Support
Local Business Liaisons