July 1, 2019

Julian Baer, Senior Program Manager – TANF ASPIRE
Department of Health and Human Services
Office for Family Independence

Dear Mr. Baer,

Maine Equal Justice offers the following comments on the new proposed rule 25P, Working Cars for Working Families. We are very hopeful for the success of this pilot as we work together with the Department to develop a plan for the implementation of the rules. We appreciate the time taken by the Department in issuing these regulations. Thank you for considering the following suggestions:

- **Section 18: Working Cars for Working Families:**
  - **SUMMARY:**
    - **Comment:** We recommend the following changes, which clarifies that the goal of the program is not just for participants to find any employment, but sustainable employment. This language also mirrors the language a 22 MRSA §3769-F which establishes the program.
    - **SUMMARY:** This section describes the Working Cars for Working Families Program (referred to in this Section as “the Program”), which is created to provide transportation for low-income individuals to obtain and retain sustainable employment. This Section establishes the Program, sets out eligibility and ongoing participation criteria, and describes the application and decision-making processes.

- **III. ADMINISTRATION**
  - **Comment:** We recommend the following changes that reflects the language from §3769-F. We also note that this proposed rule would provide the Department with too much discretion to decide whether or not to provide an otherwise eligible person
with a car. The rule should provide specific criteria that will be used in determining whether someone is eligible for assistance and the type of transportation for which they will be eligible. For example, what standards will apply in determining whether an applicant will qualify for a car, or will be told that they must rely on ridesharing with neighbors? Will child care drop off be considered? Will public health considerations like social distancing be considered?

- **III. B. Definitions –**
  - **Comment:** Maine has among the highest rate of self-employment of any state and make up 10% of the workforce in Maine compared to 6% nationally. ¹ Given the large number of low-income folks that are self-employed we believe that people who are self-employed should be eligible for this benefit to the same extent as other workers. Self-employed individuals should be eligible for this program as they are for TANF, Alternative Aid, HOPE, PaS, Food Supplements and General Assistance. There is no reasonable rationale for excluding self-employment, as vehicles are just as necessary for people engaged in self-employment activities who must use a vehicle to procure supplies and deliver products and more. Thus, there is no rational basis to exclude this group of workers. As noted above, the governing statute requires that a person be eligible for the use of federal TANF funds without exclusion. An otherwise eligible self-employed person meets this test. The same applies for “earned income,” which is defined in the TANF manual as including self-employment income. With this in mind, we offer the following changes:

- 1. For purposes of this Program, “sustainable employment” is employment that leads or is reasonably expected to lead to a family ending its financial need for cash assistance, including TANF, PaS, and Alternative Aid. “Employment” within the meaning of this Section does not include self-employment or any form of employment that involves a subsidy to the employer.

- 2. For purposes of this Program, “earned income” is as defined in 10-144 C.M.R. Ch. 331 Introduction and Definitions, and limited by Subsection III (B) of this Section.

- **III. A. Funding Contingencies –**
  - **Comment:** We believe the Department should abide by the same timely and adequate notice requirements that exist for other programs, including categorical denials, as is the case for all notices sent to

TANF participants. Also similar to TANF and ASPIRE programs, the Department should abide by the requirement to give notice of the right to appeal a decision that would impact their eligibility for or amount of services, as well as how to appeal a decision before the Department makes such changes. In addition, the Department needs to develop specific procedures that it must follow to determine that there is insufficient money to continue with the program. The recommended changes are below.

- Pursuant to authorizing statute, funding for the Working Cars for Working Families Program is limited to $6,000,000 allocated from the federal TANF block grant accrued prior to state fiscal year 2017-2018. If the Department finds that its continued administration of the Program will or is reasonably likely to exhaust that funding before June 30, 2022, it will follow the procedures in this subsection to minimize the impact on program participants.

1. If funding allows, the Department shall stop accepting or processing new applications or Transportation Program Agreements (see Subsection VII), and shall continue to honor all current, signed Agreements to their completion date.

2. If funding is not sufficient to maintain current programming as described in subparagraph 1, the Department shall reduce specific transportation services and/or the frequencies with which such services are provided, giving timely notice to participants, giving as much advance notice to affected program participants as is reasonably practicable. The Department shall effectuate reductions and eliminations under this subsection on a generalized and categorical basis, and shall not make case-by-case elimination or reduction decisions.

1. If funding is not sufficient to maintain current programming as provided in subparagraph 1 or to equitably reduce or eliminate programming as provided in subparagraph 2, the Department shall terminate all Transportation Program Agreements and end all services, providing as much advance notice to program participants as is reasonably practicable.

2. The Department will notify program participants of reductions or program
termination that would impact their eligibility for or amount of services no less than fourteen (14) calendar days in advance of the reduction or termination of service and expressly include the participant’s right to appeal the decision if they believe the action was taken incorrectly or without proper basis.

3. Categorically applicable denials, reductions, and service terminations based on funding limitations are subject to administrative appeal.

- **IV. ELIGIBILITY DETERMINATION PROCESS**
  - **Comment:** As a matter of law and policy, we think this proposed rule leaves too much room for discretion for the Department and does not follow clear criterion for eligibility, creating a chance of abusing discretion and violating an applicant’s due process rights. If an applicant is found eligible according to the eligibility criteria and the resources are available, the Department should then provide them with a car. It is a matter of eligibility, not whether the Department deems that the participant is “appropriate” for the program. Further, the applicant always has the right to appeal. Thus, we urge the Department to make that clear in this section and everywhere else that the applicant can appeal “if applicable.” See our suggestions below.

  IV A. General -- The Department shall determine program eligibility and enrollment as follows:

1. The Department shall determine whether an application meets the financial and nonfinancial program eligibility criteria set out in Subsection V;

2. If the Department finds that an application meets the eligibility criteria, it will notify the applicant, and schedule and conduct an in-person or remote assessment as long as the assessment is administered in a reasonably accommodating manner for each applicant.

3. If the Department finds that Program participation is appropriate for the applicant is eligible for the Program pursuant to eligibility criteria set out in Subsection V, it will determine whether there are available Program resources that would remediate the applicant’s transportation barriers.

4. If the Department determines there are no resources available to remediate the applicant’s transportation
barriers, the Department shall issue a written decision stating the budgetary and resource issues that are the basis for the decision. Such written documentation shall also set out the participant’s right to appeal the decision and the procedure for doing so.

- **IV B. Application –**  
  - **Comment:** Translated versions of uniform applications for the Program should be available upon the request of an applicant in order to comply with federal law and the Maine Human Rights Act. The suggestions are below.

- **IV. B.** To facilitate the process described in Subsection IV (A), the Department shall develop a uniform application for the Program that is also language accessible at the request of the participant pursuant to the Civil Rights Act of 1964. This application will allow the Department to evaluate an applicant’s eligibility under Subsection V. The application will also include a list of transportation services that may be available, from which the applicant may indicate the specific service(s) sought. Applicants may submit completed applications at any of the Department’s regional offices or at statewide offices where ASPIRE services are provided.

- **IV C. Enrollment –**  
  - **Comment:** We recommend implementing language that provides the applicant with opportunity to explain circumstances that barred them from attending an assessment, and also to substitute “appropriate” and “suitability for the program” with “eligibility” for the reasons described above. See the suggestion below.
  - The Department shall determine whether an applicant may receive transportation services under this Section—and if so, what specific services to provide—based on the following:

  1. The Department’s review of the applicant’s eligibility under the Basic Eligibility Criteria in Subsection V, including the applicant’s timely production of any necessary or requested verifications that confirm such eligibility;

  2. The applicant’s timely compliance with requests for verification and attendance at the scheduled assessment unless the applicant provides timely notice stating the reason and good cause for not attending the assessment;
3. The Department’s review of the applicant’s transportation needs, employment situation, and eligibility suitability for the Program, in accordance with Subsections V and VI; and

4. The availability of Program resources, and non-program alternatives, that will alleviate reasonably address the applicant’s transportation needs.

If in its evaluation of factors 1-4, the Department determines that the participant is eligible to participate in the Program participation in the Program is appropriate, it will notify the applicant in accordance with Subsection IV (D). Program enrollment and service delivery shall not occur until the qualified applicant has executed a Transportation Program Agreement under Subsection VII (A).

- IV. D. Decision –
  - Comment: We echo the same sentiments as above regarding opportunity to prove good cause, and that the Department should not have discretion in providing anything less than what the applicant is eligible for and requests, as well as what is available under this program. If a transportation service available is not someone’s first choice, yet they are eligible, that means they should have the chance to decide what they want to do before the Department issues a denial and forces the applicant to go navigate the process of filing an appeal. See the changes below.
    - The Department will issue a written determination of eligibility at the conclusion of its evaluation. If the applicant is not deemed eligible and qualified for the program pursuant to Subsections V or VI, or if the Department determines that the applicant will receive a transportation service that is not the applicant’s first preference, then the notice will identify the reason(s) for the denial or for the particular service selection. The decision will be provided to the applicant within thirty (30) calendar days of the date the Department receives the completed written application, provided the applicant has replied to requests for verifications in a timely manner and attended the scheduled assessment, unless the participant has provided reasonable notice or good cause, pursuant to Resolve LD 1247. The notice of decision will include information on appeal rights pursuant to 10-144 Ch. 1 VI (B), when applicable.

- V. BASIC ELIGIBILITY CRITERIA
  - V. A. Financial Eligibility –
• **Comment:** We believe the eligibility criteria is too extensive and, we also flag that if an applicant is applying for Working Cars for Working Families it means they are receiving TANF, enrolled in Parents as Scholars or receive Alternative Aid. Families that would seek benefits under this program are therefore already eligible and it is unnecessary to create another new income eligibility test for it.

- **V. B. Transportation Need** –

  **Comment:** We believe that the only proof of “transportation need” that applicants should be required to provide is that the applicant would have improved access to sustainable employment or preparation for employment as a result of program participation. These proposed rules would require applicants to prove they could obtain or do currently have employment that consists of a 30-hour work-week at minimum. This is harmful because this does not have language requiring opportunity to show good cause for working less than that and ignores the fact that many people will in fact have good cause due to various reasons, including disability which would require reasonable accommodation by the Department pursuant to the Maine Human Rights Act.

• **V. Eligibility Criteria ---**

  1. The participant must show, through signed self-attestation, that the participant’s family:

     A. Includes a minor child or children living in the household;
     B. Is enrolled in TANF, PaS, or income sufficient to enroll in Alternative Aid.
     C. Is engaged in employment, or is participating in a training or education program directly leading to employment, including but not limited to the Parents as Scholars Program established pursuant to section 3790, the Competitive Skills Scholarship Program established pursuant to Title 26, section 2033 or any program approved by a career center administered by the Department of Labor;
     D. Would have improved access to sustainable employment or preparation for employment as a result of program participation;
     E. Has the financial ability or necessary resources available to insure and maintain a vehicle, including resources that may be available through the ASPIRE-TANF Program under section 3782-A or alternative aid under section 3763; and
     F. Agrees to participate in a case management program designed to improve
understanding of the responsibilities of car ownership as a condition of program eligibility.

- V. B. 2. Transportation Limitations. ---
  - Comment:
    - The requirements under this section should set out a clear deadline for the Department’s verification process.
    - Regarding subsection i., it is not necessary to delay the benefit in order to check with agencies from states other than Maine where the applicant has lived. If the applicant is a Maine resident and needs a car to enable them sustain employment, then they are eligible and should be provided a car pursuant to state law. We recommend that the Department make the necessary verifications within 7 days.
    - Subsection ii. Provides that an applicant is not eligible if someone they live with has a running car and that other person’s work and childcare schedule does not conflict with the applicant’s. This assumes the applicant has the right to use someone else’s vehicle. The Department needs to verify with the applicant whether or not they have authority to use that car, and if they do not then the Department is obligated to provide a car under this program pursuant to state law. The Department may perhaps verify whether the applicant has authority or not by seeking a self-attestation or the attestation of the car owner.
    - Subsection iii. is problematic because it fails to flag that public transportation needs to be reasonably accommodating for each applicant according to the MHRA. The provision should make it clear that public transportation in this context will only be considered an alternate resource if it is reasonably accommodating pursuant to the MHRA. The 1 hour time frame set out in this subsection, for example, should be removed because that long of a commute may be the reason why an individual is in need and applying for a car at the Department.

- V. C. Additional Nonfinancial Requirements—
  - Comments:
    - Subsection 1 (a) should include a provision saying that the subsection does not apply if the applicant had provided good cause for the sanctions or can provide good cause now. This is a legally obligated process and consideration that must be made before a participant is sanctioned from the ASPIRE program. See LD 1247. Therefore, when considering whether an applicant has been sanctioned from the ASPIRE program and basing ineligibility on that sanctioning, the Department should ensure that those ASPIRE sanctions were done legally through the good cause determination process.
    - Subsection 2 (b): See comment for subsection 1(a).
- **Subsection 2(d):** This proposed rule provides that in order to be eligible for Working Cars for Working Families, an applicant that is a mandatory ASPIRE participant must have completed requirements for the previous three months or since the beginning of participation in the program without having claimed good cause. Does this mean that if someone claimed good cause in the previous three months and because of that did not meet the requirements of the ASPIRE program, they are disqualified from this program? If so, we disagree and think that Working Cars for Working Families should not exclude mandatory ASPIRE participants who have not successfully fulfilled ASPIRE requirements due to the fact that they had needed good cause. To the extent that this is an erroneous interpretation of the proposed rule, and the Department agrees with the idea that good cause claimants cannot be excluded from this program, we think the language should be re-drafted to be clearer and ask for clarification. Good cause in an integral part of the ASPIRE program and if someone needed good cause while participating in that program that does not mean they should be disqualified from any program.

- **V. D. Additional Eligibility Criteria for Vehicle Access—**
  - **Comments:**
    - **Subsection D. 4.:** The Department should shorten the time frame for having a OUI, DUI, or DWI conviction. 10 years is excessive, and seems arbitrary, as are the time frames set out in D. 4 (b) - (c).
      Furthermore, this provision is likely to have a discriminatory impact as it is well documented nationally and within our state that Black people and persons of color are arrested at much higher rates than their white counterparts.\(^2\) Not to mention the general fact that someone’s past does not determine who they are and where they are in life currently.
      Furthermore, it is our understanding that it is the vehicle owner who is responsible for insuring the vehicle under this program, not the Department, and the recipient would liable for any accidents. Therefore, it is enough the applicant proves their responsibleness through case management services, assessments, and the course set out in subsection D (3). There is no reason that the Department should have this requirement or information about someone and section 4 should be removed, or the time frames for having a record without convictions should be shortened to the last 12 months and the category of convictions should only be for high level crimes such as intentional homicide or aggravated sexual assault. The Department should also mirror the model of 22 MRS 3104 (14), an affirmative Maine law prohibiting ineligibility determinations on the basis of drug-related felonies, and (15), which allows a determination of ineligibility for SNAP in cases where the applicant has had a conviction for a violent

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\(^2\) Bangor Daily News, *Maine can take these steps to reform its criminal justice system.*
crime and sexual assault. The TANF statute states the same policy un
22 MRS 3762 (17). Moreover, when an applicant is found ineligible
because of their criminal record, we recommend limiting the period of
ineligibility for a period where the applicant may provide proof of
successfully completing rehabilitative social services programs.

- **Subsection D. 5.:** Considering the fact that the Program is to aid low
  income families and help them integrate into the workforce through
  sustainable employment, requiring three monthly premium payments
  without the offer of any extended pay periods or financial assistance
  would create major barriers for Maine’s most vulnerable population.
  Therefore, we recommend the changes above. Moreover, it is not clear
  whether a down payment and a car payment must be made in the same
  month. Given the limited income of eligible families we strongly
  recommend that these costs may not be charge in the same month, but
  rather that the first 3 months of payment be considered the down
  payment.

- **V. E. Verifications –**
  - **Comment:** The time period for responding to a request from the Department
    for verifying documents should be 12 days (10 days for notice and two days
    for mailing), which is the same amount of time the Department has to provide
    notices to TANF participants.

- **VI. ASSESSMENT ---**
  - **Comments:**
    - **Subsection A.:** We flag again that the Department’s discretion in
      providing anything other than a working and reliable car should be
      limited. If a car is available and the client has demonstrated need and
      meets the eligibility criteria as set out in LD 1475. The Department
      should not be able to decide to offer anything different than a car
      under this program unless they show that resources are not available
      and/or the applicant makes an alternative request.
    - **Subsection B:**
      - The assessment scheduling should always be done in writing
        and a record of it should be provided to the applicant. It should
        always also be done verbally, not either/or.
      - The Department should notify the applicant verbally if they are
        eligible or not to provide for the applicant to ask any questions
        and be provided with a clear understanding of appeal right,
        followed with a written decision stating the applicant’s right to
        appeal.
      - In person meetings should be subject to the needs of the
        applicant in order to comply with the MHRA reasonable
        accommodations provision.
      - The Department should be required to inform the applicant at
        the assessment that they are eligible if they are indeed eligible.
- The terms “if such a determination is appropriate” and “the Department may begin providing Program services immediately, as appropriate” are too ambiguous, imply discretion that is not allowable, and should be replaced with the terms “if the applicant is eligible” and “the Department shall begin providing Program services immediately if the applicant is eligible.”
- “Transportation Program Agreement” should be defined in the Definitions section.
- **Subsection C.:** The Department should add that the applicant will be notified of their right to show good cause for anything that is missing or any potential discrepancies that may result in the loss of benefits, additional charge, or other penalty.

### VII. PARTICIPATION AND CONTINUED ELIGIBILITY REQUIREMENTS
- **Comments:**
  - **Subsection A. (2):** As a matter of policy, and to be consistent with the administration of other public benefit programs for which this program’s applicants will be enrolled in, before terminating services the Department should implement a process that provides opportunity to claim good cause followed by a reasonable procedure for assessing the applicant’s good cause and circumstances.
  - **Subsection A. (3) C:** The Transportation Program Agreement should not require the applicant to commit to working 30 hours a week if they provide reason for not being able to do that, and in that case the Department should reasonably accommodate that applicant by decreasing the amount of hours required on a case by case basis.
  - **Subsection A (3) f.:** Instead of requiring a commitment to not engage in disruptive behavior, this rule should say “…to not engage in disruptive behavior intentionally and to communicate with the Department if a mental health or other condition may cause disruption of the transportation services.
  - **Subsection A. 4 (a):** This rule should include childcare, shopping for necessities and medical care as well as work as primary uses of the vehicle.
  - **Subsection A. 4 (m):** Again, the monthly premiums and payment plan should be tailored to what the applicant can afford.
  - **Subsection A. 4 (o):** This rule should be amended to say that a vehicle will only be taken away if the applicant fails to show good cause after a good faith process of assessing the applicant’s good cause and circumstances.
  - **Subsection C. 2.:** See comment to subsection A. 4 (m). Rather than require $100 monthly premium payment across the board, the Department should consider the fact that applicants are folks who are enrolled in PaS, TANF, etc. and have very low income. $100 a month
is a huge financial burden for these families. We suggest determining the payments on a case by case basis, specifically requiring a reasonable percentage of an applicant’s income, e.g. 3%. For example, a person under 50% of poverty would have a $0 premium given their low income. A person at 51% might contribute 2% of their income; a person at 100% might contribute 3%. This way the low income families who will be applying for the Program do not have to worsen their already vulnerable financial state in order to participate in Working Cars for Working Families.

- VIII. TERMINATION AND APPEAL

• Comments:
  ▪ Subsection A. 2: For the same reasons regarding good cause above, this section should provide: “The participant fails to comply with a provision in their Agreement and after notice of good cause and opportunity to claim of good cause the participant is still found ineligible.

  ▪ Subsection A. 2 (b): This section should include “other good cause” along with noncompliance due to mental illness or health condition. Additionally, noncompliance due to a disability or other form of good cause may last more than two weeks and it could still not be the participant’s fault. A requirement that the noncompliance be no longer than two weeks even under such circumstances is discriminatory and contradicts the Department’s legal duty to be reasonably accommodating. Therefore, the two-week language should be removed and no similar language should replace it.

  ▪ Subsection B.: It should be made clear in this paragraph that the list of reasons set out for appealing is not exhaustive and that the participant always has the right to appeal. Whether or not there was indeed a right to appeal may be disputed after that appeal is made, but participants need to be informed that they can always appeal any final decision or action taken by the Department.

  ▪ Subsection B. 1.: The last sentence in this subsection would limit the participant’s right have their benefits continued pending timely appeal by stating that the participants if they violate their Agreement. This is contrary to the rules of due process and Administrative Hearings, and is an arbitrary rule just now being proposed by the Department. The participant always has the right request a hearing, and if done so within the specific time frame the participant’s benefits must continue. Therefore, this last sentence should be taken out.

  • A participant who disputes an application decision or a program decision, including but not limited to: a decision on a
selection, reduction, or termination of transportation services; a
denial of a monthly premium temporary waiver; or an
overpayment; has the right to an administrative hearing,
provided the request for the hearing is made timely.

Respectfully,

Deborah Ibonwa, Esq.
Maine Equal Justice
Policy and Legal
Advocate