

WR-SPECS

DEPARTMENT OF HEALTH AND HUMAN SERVICES
ASSISTANT SECRETARY FOR PLANNING AND EVALUATION

DUE PROCESS



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REMARKS: Move paper for Monday
from Michael Wald

DRAFT

DISPUTE RESOLUTION, DUE PROCESS, AND PROCEDURAL ISSUES

FRAMEWORK

If the proposed structure for changing the AFDC system is to be fair, and to achieve its goals, attention must be paid to the processes that are developed to ensure that both the recipients and the agencies live-up to a new set of reciprocal responsibilities and obligations. Recipients must understand that they are to make every effort to become employed. Agencies must understand that they are to facilitate and support, in a concerned and meaningful manner, the efforts of the recipient.

With these goals in mind, the dispute resolution process needs to perform a number of functions. One is making sure that the legal rights of recipients are protected. A second concern is developing mechanisms that can alter the behavior of people who are not acting responsibly. A third objective, sometimes overlooked, is the role dispute resolution procedures can play in changing the relationship between welfare offices and recipients. Procedures can influence the nature of worker-recipient relations and be a means of checking on system performance, in addition to protecting the rights of recipients.

The current statutes and regs contain a number of provisions designed to encourage cooperation between the agency and the recipient, to allow for sanctions of recipients who do not cooperate, and to insure that the sanctions are not applied unfairly. From a strictly legal perspective, existing law may largely provide sufficient due process protections. All that may be necessary is to extend existing procedures and protections to the new decisions that will have to be made.

There are a number of reasons to think that more is needed, however. First, it is unclear whether these procedures work adequately as designed. There is evidence that agency efforts to jointly plan with recipients may be perfunctory, sanctions may be used infrequently, recipients may forego fair hearing challenges to sanctions because they do not believe they will get an adequate hearing. In some states the process is highly litigious, which also can be counter-productive. (Unfortunately, there is very little research on how these processes work anywhere in the country.)

Second, the addition of time limits substantially changes what is at stake when either the recipient or the agency fails to meet

their respective obligations. Because decisions on the applicability of the time limit may involve evaluations of the adequacy of the performance of both the agency and the recipient with respect to the the JOBS program, the system should be designed to detect problems early, not wait until the time limits have expired before examining the recipient's and agency's action. This would only delay moving people into employment.

Finally, since the addition of time limits greatly increases the consequences of other decisions (e.g. whether a recipient is entitled to a deferment from JOBS and thus from the time limit, is the recipient entitled to an extension), it is likely that there will be an increase in the number of challenges to agency decisions and that both hearing officers and the courts will subject decisions to a higher level of scrutiny than at present. This will affect record-keeping procedures, as well as require a higher level of agency decision-making.

Moreover, in terms of changing the culture of welfare, it would be undesirable, from the recipients' perspective as well as the states', if the major mechanism for enforcing both the recipients' rights and obligations was a formalized hearing process. The central goal in designing the new system must be to insure that it works. This means that people subject to the time-limits must be participating in a program of good job training from the time they enter the AFDC program. Those recipients who need it must receive help in overcoming the many obstacles poor people face in finding and keeping jobs.

It can be tempting to view the system as one where the recipient is being offered a chance to become self-sufficient and the recipient bears the primary responsibility for success or failure. Recipients who don't conform with the system's expectations will lose the benefits of the system, through temporary loss of benefits at first (sanctions) and ultimately through total loss of support.

This view is too simplistic. While it is reasonable to expect and emphasize personal responsibility, other considerations also are important. First, because the entire purpose of AFDC is to help poor children, the system should be designed to facilitate success, not to punish failure. Sanctions, and the ultimate cut-off of people without jobs, obviously will be very detrimental to children and society. Therefore sanctions, while necessary in some circumstances, should not be the primary mechanism of encouraging success.

*Reward
Success,
not reward
failure*

Second, the dispute resolution system should try to reinforce mutual cooperation, not promote an adversarial relationship. It cannot be assumed that a system of financial rewards and sanctions will be sufficient to change the behavior of all recipients or welfare offices. Offering an opportunity may be

all that some recipients need. Some recipients will be pushed along by sanctions. Others, however, especially teenage mothers, will need far more support and guidance. A casework relationship is needed, but it must be based on mutuality, not a view that caseworkers are prodding unwilling people into the labor force.

Third, the system should not be designed to require reliance on lawyers. While legal challenges are a necessary component of any system, they should be minimized, if for no other reason than that most recipients do not have, or utilize, access to lawyers. OK

Fourth, there will be many State agencies that do not perform very well in providing services. It is very difficult to develop measures that hold agencies accountable- the child welfare system is a case in point. A due process, sanction and reward system, is not likely to be effective in holding agencies accountable.

This paper discusses a number of procedures that might be utilized to help achieve the variety of goals embodied in the overall reform proposal.

MAJOR ISSUES

1. What procedures are needed to protect recipients' rights under the proposed system? Should the system rely primarily on fair hearings to protect recipients from illegal or arbitrary agency actions or should some form of alternative dispute resolution be emphasized?
2. What procedures should be employed to bring about agency compliance with its obligation to provide services?
3. What procedures and penalties should be used when a recipient is not complying with program requirements?

DECISION POINTS- CURRENT AND PROPOSED LAW

I. Issues Arising During First 2 Years-JOBS Determinations requiring hearing/dispute resolution

A. Establishing the Relationship-Reciprocal Responsibility Document

Current Law.

All recipients must be told about the conditions for eligibility at the point of applying for AFDC. In addition, at the time of application for, or redetermination of AFDC eligibility, the State must inform an applicant or recipient in writing, and

Michael: Need AC/part. measures to hold states accountable
Time limits on appeals of employ. plan

orally as appropriate, of the availability of the JOBS program activities and of the related supportive services for which he/she is eligible and of the responsibilities of the agency and individual.

Proposed Law.

1. Statement of Reciprocal Responsibilities. As in current law, the State agency would be required to offer applicants a general explanation of the AFDC/JOBS/JOBS PREP/WORK programs, including the responsibilities of both the recipient and the agency, and the structure of the time limits, in oral and written form, at the time that the person applies for AFDC. A new provision should be added to require that the applicant and the agency must sign a "statement of reciprocal obligations," indicating in general terms the responsibilities that each is assuming. Signing would be a condition of eligibility. The document should include a statement whereby the applicant indicates that he/she understood the elements of the AFDC program and the requirements with respect to participation. The recipient should be given a copy. The document should be in the recipient's primary language. (See Food Stamp requirements.)

→ will still call it PR up. Contract

2. Orientation. At the time of the signing of the Statement of Reciprocal Obligations, or within (2?) weeks thereof,¹ the agency should be required to provide each recipient with an orientation to the AFDC program, whenever possible in the recipient's primary language. This could be done either individually or in a group. Language should be added to the Act or regs indicating that the purpose of the orientation is to provide the recipient with the fullest possible understanding of the requirements of the AFDC program and of the opportunities that will be afforded the family during the period of participation.

UPFRONT JOB SEARCH BEFORE E-PLAN

Attendance at the orientation would be mandatory. States should be required to provide or pay for child care, if the orientation is not at the same time as the initial eligibility meeting. Individuals would be sanctioned if they did not show-up after two notices. The sanction would be subject to a fair hearing (on whether the recipient had good cause for not attending); the sanction should be curable if the recipient shows-up. (The regs might address the nature of these notices; some forms appear to

¹ While there is some efficiency in doing the orientation at the time of the initial application, there are several reasons why delay is preferable. First, the application process often is lengthy; recipients frequently must wait a long time until they are even interviewed. They may have children with them. It is difficult to have a meaningful orientation at this time. In addition, a number of applicants may not be eligible. There is some efficiency in waiting until eligibility is determined.

Annex: With variation in exemptions for disability
the people move there for access.

be more successful than others.)

Issue- How can we ensure that the person doing the intake is both clear in laying out expectations while also conveying a sense of the supportive role that the agency will play?

why worry

B. Deferrals/JOBS PREP

Current Law.

Under current law a number of people are categorically exempt from having to participate in JOBS. These categories are spelled-out in the statute and regs and further defined in a number of ACF Action Transmittals. A person determined to be non-exempt by an agency can challenge this decision through a fair hearing if the person has been sanctioned for failure to comply with a JOBS activity.

ugh

Proposed Law.

Under the proposed system, deferrals (placement in JOBS PREP) take on greater significance than at present, since a deferral means that the time limits do not apply. On the other hand, unless a state is required to provide JOBS and WORK to volunteers, a person deferred may be deprived of these services. Thus, there is a question of whether a recipient has a right to either deferral or non-deferral.

1. It would be strongly preferable, in terms of legal considerations and fairness, if deferrals are determined by specified categories rather than through case by case discretion.² Allowing agencies substantial discretion with respect to deferrals raises constitutional questions about equal protection, since there is no way of guaranteeing that decisions will not be arbitrary or discriminatory. The categories should be specific, and applicable to all persons who come within them. States could be given the option of a capped residual category ("or for other good cause, according to criteria established by the state"); this is legal on its face, although there could be challenges to the actual implementation of such a provision.

2. Caseworkers should be required to inform the recipient of the deferral categories and to help the recipient determine whether

² The use of caps does poses some legal issues, but it is likely that a residual cap is Constitutional. NOTE: There are procedural questions that need to be answered. For example, can a "deferral-denied" recipient request deferral again if the numbers go below the cap? Does the State have to notify the recipient it is again granting deferrals?

no ?
no

Michael - fair hearings are not common. 44% in NY
500,000 disability appeals in SSI system (bad backs)
Cap the medical portion - equal protection suit apply after cap is hit

Howard: want until sanctioned

he/she qualifies.

3. A recipient who is denied a deferral could request a fair hearing, focusing on whether the person falls within one of the categories. The hearing should be held prior to the development of the employability plan, since the outcome will affect the nature of the plan.

Why?
(same as current)
shorter than conciliation

4. As currently structured, the requirement that persons in this category engage in some activity does not seem to require any dispute resolution or due process procedures, since there is no monitoring or sanctions. The implementation may pose problems if States try to push people into activities without providing child care and without some monitoring of what participants are being "encouraged" to do.

5. A recipient would not be able to challenge a decision to defer her/him, since there is no right to participate in JOBS and the clock doesn't run during the period of deferral. (What are we doing about volunteers?)

C. Employability Plan

The development of the employability plan is a key element in making the system work. The process needs to accomplish three things; create a realistic plan, in light of the recipient's skills, needs, and the available resources and jobs in the community; give the recipient a sense of ownership in the plan; and be fair in terms of giving recipients the opportunity to acquire skills that will enable them to obtain reasonably paying jobs consistent with the recipient's abilities. Since the failure of the recipient to comply with the plan subjects the recipient to sanctions and the failure of the agency to provide resources will lead to extensions of the time limit, the procedures for establishing and reviewing these plans are critical. These procedures should stress mutuality, with recipients being given the chance to have a meaningful role in determining the elements of the plan.

Current Law.

The State is to make an initial assessment of an individual's employability. The individual has a role to play in this assessment, insofar as the State may conduct it through such methods as interviews, testing, counseling and self-assessment instruments to be completed by the individual. However, the State is the sole determiner of the initial assessment.

Following this assessment, the State is to develop an employability plan, "in consultation with" the individual, that takes into account the individual's preferences "to the maximum extent possible" within the limits of the State's JOBS program.

*Key: need to spell out "joint"
- more specific - anyone who*

*Mitchell: similar procedure
in Reemployment Act*

Harold: But I want to be a nurse...

States may require that an individual to "negotiate" and "enter into" an agency-participant agreement setting forth in detail the individual's JOBS obligations and the related services to be provided by the State. While final approval of the employability plan rests with the State, a recipient who objects to the plan can challenge it through a fair hearing, although this might not occur until the recipient is sanctioned for non-participation.

Under current law, each state must establish a conciliation process for resolving disputes about program participation and provide for a hearing for disputes not resolved through conciliation. States are given great latitude in defining conciliation and there is substantial variation in procedures.

Proposed Law.

1. Employability Plans. As in current law, the State agency would be required to make an initial assessment of the educational, child care, and other supportive services needs, as well as of the skills, prior work experience, and employability, of each participant in the program, including a review of the family circumstances. The agency would also review the needs of the child(ren) of the participant.

The law should be changed to require that the agency and the recipient jointly develop an employability plan. The recipient should be informed of the requirements established by the regs with respect to employability plans and the designation of specific activities. A maximum time period (60 days?) for developing the plan should be established, since the time limits run from the day of eligibility.

Why?

The vagueness in current law regarding how disputes over elements of the employability plan are to be settled needs to be addressed. It does not seem sensible to force the recipient to fail to comply with the plan, be sanctioned, and then request a fair hearing to challenge the plan. An earlier, more mutual, process for resolution seems desirable. This is best done through a conciliation type process.

As an initial step, the legislation should provide that if the recipient and caseworker cannot reach agreement, the caseworker and the recipient shall bring in the caseworker's supervisor, or a person trained by the agency to mediate these disputes, to provide further advocacy, counseling, or negotiation support.³

³ This approach is consistent with the aim of current law. The preamble to the current regs states that an effective conciliation process could be used to: (1) resolve disagreements over the employability plan, (2) to correct the problem when a participant's attendance at an assigned activity has been

Although recipient's may not trust the supervisor to be independent, and caseworkers may be defensive when being reviewed by a supervisor, it would be best from a time and resource perspective if disputes could be resolved by those immediately engaged with the recipient. To ensure that reasonable processes are followed, the Department should be required to establish regs regarding this process.

OPTIONS. If this process fails to resolve the differences, there are several alternatives that might be used:

a. The agency could be allowed (required) to establish an internal review board to resolve disputes. (This process would be similar to that developed in Florida's and Iowa's § 1115 demonstrations.) This Board would have the final say. The Department would establish regs for such boards. ?

b. Agencies could be given the option to employ trained teams to mediate, rather than arbitrate as in option a, the dispute.

c. The recipient could be entitled to a fair hearing, contesting whether the plan meets the general criteria established by the state for developing employability plans. A fair hearing could be the exclusive remedy or could be allowed in addition to the procedure in (a) or (b).

Discussion.

Not all caseworkers will be sensitive to the need to fully involve the recipient in developing the employability plan and to develop a sound plan, with adequate services (some entire agencies may not be). Recipients need protection from unreasonable decisions. Moreover, failure to provide appropriate services at the front-end will lead to more disputes and extensions at the end of 2 years, which is highly undesirable, since this will delay moving people into jobs.

At present, the primary way for a recipient to challenge the employability plan is through a fair hearing following a sanction for failing to participate in a JOBS assignment. The above goals might be satisfied better through primary reliance on some type of mediation or internal review system.

irregular but not yet sanctionable, and (3) prevent the need to go to a hearing even if it appears that the failure to participate is clear.

An internal review process is likely to be faster and less adversarial. Moreover, an internal review board can provide agency management with a chance to see where problems are arising at the line level. (Fair hearings may also serve this function, but they are more likely to be viewed as outside intervention.)

If a large number of disputes reach the review board, this knowledge may lead to changes in policies or to increased training of staff. A review process may help identify gaps in services available to the agency. This is not likely to be accomplished through a system that relies exclusively on fair hearings, since hearing officers do not focus on systemic problems. The number of complaints to the review board could be a performance measure and the board could be required to produce an annual report summarizing the number of disputes and noting problem areas.

The utility of such boards depends on the willingness of the agency to make them meaningful and upon convincing recipients that the review will in fact be independent. It may be difficult to achieve either of these objectives. An internal board may simply reinforce caseworker decisions. Some States have developed mediation systems, using trained outside mediators. Mediation by a neutral party would empower recipients to a greater degree than any other review process. Given the cost, the required training, and the lack of research examining whether mediation produces better outcomes, the most that could be supported at this time is making this an option.

Allowing fair hearings after a review board decision or after a failed mediation would provide some protection against an agency director who wanted to limit the actions of the review board. It is not likely that there would be a large number of requests for fair hearings in most states. However, an additional layer of review may appear (and be) burdensome. The benefits of the additional review may not be worth generating the view that we are overburdening the process with procedures.

why
have a
review
board if
it can be
challenged.

2. Agreements or Contracts. Under current law, a state may require a recipient to enter into an agreement or contract with respect to the employability plan. The difference between the two is that a contract would be binding in court- the recipient could sue the agency for promised services. Using contracts should have implications primarily for the agency, since the recipient can already be sanctioned for failing to participate in JOBS.

It has previously been decided to require that the agency and recipient sign the employability plan, making it at least an agreement. Like the signing of the statement of reciprocal responsibilities, a signed document may help indicate seriousness of intent and enhance the mutuality of the process.

Failure to sign the agreement, after the recipient has utilized the dispute resolution process, would be subject to sanction. There would be no further hearing on the sanction, but it would be curable by signing. The sanction should be a small amount, since the main sanction would come if the recipient fails to participate in JOBS activities.

States could still be given the option of making it a contract. Contracts would better protect recipients right to services, but they also are likely to generate more disputes and litigation. Contracts should not be required. It is doubtful any states will use them. good

3. JOBS Assignments.

a) Current law. The State makes the final determination with respect to JOBS activities. The regs specify a number of factors that must be taken into account in making an assignment (see attached). If a recipient fails to report to an assignment and then is sanctioned, the recipient is entitled to a fair hearing focusing on whether these criteria have been violated.

A recipient also is entitled to a fair hearing if, after starting a JOBS assignment, the recipient has complaints about health or safety conditions, discrimination by the employer, and issues arising with respect to the adequacy of worker's compensation coverage and wage rates used in calculating hours. Recipients also may appeal decisions related to on-the-job work conditions to the Department of Labor.

b) Proposed Law. The decision about the type of JOBS assignment should be part of the employability plan and reviewable by the procedure described above. Disputes also might arise with respect to specific assignments. For example, the regs provide that the assignment may not require more than 2 hours commuting time. When a recipient claims that he disagrees with a specific assignment, rather than with the type of assignment, a conciliation process between the worker, recipient and supervisor should be required. If this does not resolve the dispute, a fair hearing would be appropriate, focusing on the criteria currently in the statute and regs.

D. Receipt of Services during JOBS

Current Law. There is no right to any review if the agency fails to provide adequate training or education. AFDC applicants are entitled to fair hearings with respect to disputes regarding the provision of child care and supportive services. However, there is no right to the continuation of child care or supportive services pending the hearing decision.

Proposed Law. It is extremely important to the success of a time-

limited system that services be delivered on a regular and timely basis and that regular monitoring of the recipients participation take place, so that problems can be identified and resolved rapidly. Moreover, because the applicability of the time limit will be contingent upon the provision of services, it is essential that adequate records be maintained regarding the participants' and the agencies' activities.

It is difficult to ensure adequate service delivery and monitoring of participant performance. In the child protection area a variety of mechanisms-- court reviews, citizen review panels, and reporting requirements-- have been less than successful in ensuring adequate delivery of services to families.

It seems unlikely that primary reliance on fair hearings is an adequate mechanism. Review should not await a crisis, and fair hearings often involve far too much delay. It is suggested that requiring of regular contact between a caseworker and the recipient, mandatory periodic reviews of the participant's progress and up-dating of the employability plan, specified record-keeping requirements on the agency, and a conciliation process for resolving disputes about the adequacy of performance of both the recipient and the agency are all needed to make the system work.

The following requirements might be adopted to achieve this:

a) to help keep the agency informed, and to encourage the recipients to take responsibility as part of moving toward employment, a form should be sent to the recipient on a monthly/periodical basis (e.g., as an attachment to the monthly check) asking if he/she is participating; is getting the necessary services; or if he/she wants to discuss the plan/services with a caseworker. Workers would contact recipients indicating problems.

No - self-reporting

b) Caseworkers should be required to make monthly (quarterly) entries in the casework file indicating what services are being provided to the recipient. This would be based on contact with the actual providers of the services. Copies of notices to the recipient of any failures should be kept as a regular part of the caserecord.

regs, not law

c) At least, every 6 months the caseworker and the recipient must conduct a face to face review of whether the employability plan is still appropriate, whether the individual is participating, and whether services are being provided. A revised plan should be developed as needed (following the same procedures as the original plan.) At this meeting, the recipient should be informed of the months of eligibility left; the recipient and the caseworker shall determine the number of months in which the recipient did not receive and which therefore should not be counted towards the time limit. The agency should keep

NO

What does it mean not to receive services in a given month? Does not showing up count? Does your Employ. Plan have to offer services in every month?

documentation of these items.

d) As a last resort, recipients should be able to request a fair hearing if they believe that the agency is not providing agreed upon services. The delivery of services is critical and review of system failures should not await two years. While the fair hearing officer would not have the power to order specific services, the hearing officer could suspend the time limit. Reports of such suspensions should be forwarded to HHS to be used as a performance review measure. (NOTE-A danger of providing hearings is that agencies may try to limit the services offered in the employability plan so that it would not be held liable later.)

*You shouldn't get clock stopped for requesting a hearing
true*

One area that may raise special problems is child care. At present most disputes arise when the agency informs the recipient of its intent to terminate, suspend, discontinue or reduce payment for child care because the recipient is not complying with JOBS. In a greatly expanded program, there may be many more disputes about whether appropriate care is available, especially for very young children. The need for child care, and the appropriate type of care, should be part of the employability plan. Disputes about care should be resolved by the process proposed there.

With respect to actions to terminate, the law (or regs) should be changed so that child care continues while the agency is resolving the dispute over JOBS participation, in order to avoid disruption to the child and to facilitate resolution he participation issue.

Incentive to ask for hearing

E. Sanctions

1. Current Law. Under HHS regulations, a non-exempt person can be sanctioned if he\she, without good cause, fails to participate in JOBS, refuses to accept employment, terminates earnings, or reduces earnings. Prior to the imposition of a JOBS sanction, a State is required to have a conciliation procedure for the resolution of disputes regarding an individual's participation in the JOBS program. A State must provide a recipient an opportunity for a hearing prior to the imposition of a sanction when the conciliation process does not resolve a dispute.

2. Proposed Law. Recipients would continue to able to request a hearing on whether a sanction should be imposed.

A more difficult question is whether the current requirement that conciliation must be utilized before a notice of an intent to sanction is issued should be made optional. Conciliation serves a number of important functions, including resolving disputes quickly, generating discussion between the recipient and the agency, avoiding harming children through the imposition of

sanctions if the recipient's behavior can be affected without a sanction, and diminishing the chance of an adversarial relationship developing. On the other hand, extensive use of conciliation might diminish the deterrent effect of a strong sanction policy and can be costly and time-consuming if a large percentage of disputes go on to the fair hearing stage.

Recommend. Require conciliation. Failures in participation should be an event that triggers exploration of why there is a problem. While some recipients need the prod of sanctions, many recipients will fail to participate because they are in a period of depression (depression is commonplace among the portion of the population who become long-term recipients), because of family crisis (e.g. the return of an abusive spouse or boyfriend, children in trouble, sick relatives), or because they are unable to cope with interpersonal problems at the assignment. They may not respond to notices or sanctions-their reasons for not participating may not come within standard good cause reasons for non-participation. Personal contact, begun by a phone call, with a caseworker prepared to help them with the crisis can have a very positive impact. This is best triggered by a conciliation process.

give me a break

NO
make it optional
↓
certainty of sanction is essential

F. Extensions

1. Current Law. Since the time limit is new, there is no current law.

2. Proposed Law.

a) Ninety days prior to the end of the 24 months, the caseworker would be required to meet with the recipient to discuss the transition to WORK. A notice regarding the need to set-up a meeting would be sent to the recipient (the notice would describe the transition to WORK process, including the availability of extensions, the need for job search and the right to enroll in WORK). Follow-up notices shall be sent if the recipient fails to appear. A recipient may not enter the WORK without participating in a meeting and completing a job search.

The caseworker and recipient shall review the recipient's progress and any remaining barriers to the recipient's ability to find employment. The caseworker shall determine if the recipient comes within, or is likely to come within, one of the categories that justifies extension of the time-limit. If an extension is needed to allow the recipient to graduate from high school, or to complete a GED, an ESL or other approved program, the recipient and the caseworker shall set a timeline for completion of the activity. If the caseworker and the recipient determine that the recipient has been unable to complete any elements of the employability plan because the State has failed to substantially

= means what?

provide the services, including child care, called for in the employability plan, the caseworker and recipient shall determine the time period necessary to complete the plan.

Unless the recipient is entitled to an extension, the caseworker and the recipient shall develop a transition to employment plan. This plan shall specify that the recipient must engage in a job search for a period of not less than 45 days and shall specify the services that the agency will provide to facilitate the job search.

b) If the caseworker and the recipient disagree with respect to whether the recipient is entitled to an extension, the caseworker shall inform the recipient of her\his right to request a fair hearing on this issue. The recipient must request a hearing at least 20 days prior to the date that benefits are scheduled to be terminated. All hearings shall be held prior to this date. In a fair hearing regarding a recipient's claim that he\she is entitled to an extension because he\she did not get the services in the employability plan, the State must show what services were provided.

A recipient shall be entitled to an extension if the hearing officer finds that the recipient was unable to complete the elements of the employability plan because the agreed upon training was not available for a period of time, because the recipient was unable to complete the elements of the employability plan due to the unavailability of support services needed by the recipient to participate, such as transportation or child care, it is determined that adequate services were not provided, the recipient and State shall develop a revised employability plan. Disagreements about the revised plan would be subject to the same agency review process as the original plan. Any extension should be sufficient to complete the employability plan. Aid-paid-pending would be available.

c) Recipients should be able to request a hearing on whether they had good cause for not completing job search in the required time period before taking a work assignment, with aid-paid-pending.

Why?

d) Recipients should also be entitled to a fair hearing on challenges to the determination that the recipient has exhausted the 24 month time period. Aid-paid-pending may not be necessary since recipient would go into Work program and continue to receive some form of income.

What does this mean?

Issue Paper: REASSESSMENT

There would be no absolute limit on the length of time a person could participate in the WORK program. States would be required, however, to conduct a comprehensive reassessment, at the earliest available time, of any individual who had spent at least two years in the WORK program. For example, if an individual were in the midst of a WORK assignment at the two-year point, the reassessment would be conducted at the conclusion of that WORK position.

The reassessment would be an evaluation of the individual's employability, with a particular focus on identifying barriers to obtaining an unsubsidized job, and of the individual's compliance with WORK program rules and requirements.

The State would take one of four steps following the reassessment:

*MICHAEL: Federal civil service protections
will anyone get more than others?*

- 1) A person who was judged to be employable but who had not yet found an unsubsidized job would be assigned to supervised job search. If the job search were not successful, the individual would be placed in another WORK position, preferably a subsidized private sector job holding the promise of permanent employment. *- Work rules*
- 2) A WORK participant who was found to have complied with the requirements of the WORK program but was nonetheless in need of further education or training services in order to obtain unsubsidized employment (e.g., an individual who lacked basic communication skills or a person located in an unusually poor labor market) would be referred back to the JOBS program to obtain those services. Persons re-assigned to the JOBS program would be eligible for cash benefits while participating in the appropriate activities. *KATIE: Use SE quit/forced good cause rules*
- 3) An individual who was found to be facing a serious obstacle to employment, such as a disability which was not detected earlier, would be placed in the JOBS-Prep phase. Such persons would be eligible for cash benefits and would count against any overall cap on placements in JOBS-Prep status. *MICHAEL: Ch will treat like a govt benefits program*
- 4) A State could deny assistance, both access to a WORK assignment and eligibility for cash benefits, to a person who had not performed his or her WORK assignments and required job search in good faith. An individual dropped from the program would have the right to a fair hearing. *DAVID: Child only cases are our safety valve.*

→ NEEDS CHILD ONLY LIMIT

*MTB: If you what mother ought to be doing for her children is to show up for that job. (vs. Larry)
Representative payee*

A Few Questions:

Would there be any explicit criteria to guide the post-reassessment decision (i.e., grounds for placement in JOBS as opposed to assignment to job search and another WORK position?)

If so, would such criteria be written into the statute or would States be required to establish such guidelines? Would the criteria be more specific than the language above?

In particular, on what grounds could a person be denied further assistance (following the reassessment)? A history of difficulties at WORK sites (e.g., a dismissal from a WORK assignment)? A poor attendance record (e.g., many absences without good cause)? Reports from WORK employers

of poor performance, a lack of effort or a poor attitude? General recalcitrance and reluctance to cooperate with the WORK agency? How would such terms be defined?

If there are no explicit criteria guiding the reassessment, would the decision be left to the individual caseworker? What are the legal implications of such caseworker discretion? [Michael Wald to jump in here and resolve this whole question.]

What appeal rights would exist? Would an individual have the right to appeal any decision (e.g., could a person assigned to continue in the WORK program petition to be referred back to the JOBS program for training services)?

Would the reassessment be a one-time event? Would persons who remained in the WORK program be reassessed again at a later date? What about persons referred back to the JOBS program? Could they remain in JOBS indefinitely, or would they have to re-enter the WORK program eventually? If so, when? How would this new time limit be determined?

In instances in which a person was dropped from the program, would this represent a lifetime ban? Could the individual (and his or her children) ever again receive assistance, either in the form of cash benefits or a WORK assignment? If so, when (e.g., 36 months later)?