

To: Commission
From: John Cannel
Re: Title 44, Poor Law
Date: September 11, 2017

MEMORANDUM

Two issues remain open in regard to the Poor Law, (1) financial responsibility of relatives to repay welfare benefits paid, and (2) financial responsibility of the beneficiary to repay welfare benefits paid.

(1) Financial responsibility of relatives.

As was discussed at the June meeting, welfare agencies have not made claims against relatives for any payments under the current law or for any payments under the prior law since 1980. Financial ability of certain relatives is considered, but at the beginning of the process, before the applicant is found eligible for relief. N.J.A.C. 10:90-3.12 (2017) provides in part:

Treatment of income and resources from eligible and noneligible individuals in the WFNJ TANF/GA household, as appropriate

(a) Income of the spouse is considered available for the other spouse and income of a parent (natural or adoptive) is considered available for children under 18. If the spouse or parent is living with his or her spouse or children, respectively, income is considered available regardless of whether the spouse or natural or adoptive parent is noneligible or sanctioned.

I have found no regulation that relates to other relatives or to relatives that are not part of the applicant's assistance unit.

The issue remains whether current practice should be reflected in the proposed law by not including any provision on financial responsibility of relatives or whether an updated version of current statutes should be added to the draft report. A draft of such a provision (as considered by the Commission in July) is:

Support by spouse or adult children

a. If a person applies for, and is eligible to receive public assistance under a Work-First program, the public agency that provides the assistance may assess for a portion of the assistance:

(1) the person's children who are at least 18 and less than 55 years of age; and

(2) the person's spouse.

b. A child or spouse may be assessed for support only after notice, an opportunity to be heard and a court finding of the amount if any that the relative is

financially able to provide considering the relative's personal and family obligations.

c. However, if the person receiving public assistance failed to support and maintain a child during the child's minority, the court may reduce the amount assessed against the child in proportion to the actual support and maintenance rendered by the person receiving public assistance.

d. This section shall not authorize an action for support by any party other than the public agency that provides Work-First assistance.

e. Nothing in this section shall affect the duty that a parent has to provide support for a child. That duty shall continue to be controlled by N.J.S. 2A:17-56.67.

(1) Financial responsibility of beneficiary.

The only current law that provides what may be a general obligation of a beneficiary to reimburse benefits paid is:

44:10-64. Satisfaction of sanction, repayment obligation

a. A person shall be required to satisfy any sanction or repayment obligation incurred pursuant to any federal or State law governing public assistance, including any act repealed by this act, as a condition of eligibility for benefits.

However, I have not found a provision of federal or State law that imposes a general repayment obligation. There is a more limited and specific provision of 44:10-64 that relates to pending entitlements such as workers compensation or tort claims:

b. (1) Whenever a parent or relative with whom a dependent child is living applies for or is receiving benefits for that child, and it appears that there is pending entitlement to a payment to the child or to either or both of his parents of funds arising from a claim or interest legally or equitably owned by the child or by either or both of his parents, other than that portion of a personal injury award which a court specifically awards to a child to make him whole as a result of an injury, the county agency may, as a condition of eligibility or continuation of eligibility for benefits, require either or both parents, or relative, to execute a written promise to repay, from the funds anticipated, the amount of benefits to be granted from the date of entitlement to that payment. Upon any refusal to make repayment, including refusal by any person acting for or on behalf of either or both parents, or relative, in accordance with the written promise, the county agency may take all necessary and proper action under State law to enforce that promise, and the granting or continuing of benefits, as the case may be, shall be deemed due consideration therefor. Any payments from the settlement of the claim or interest legally or equitably owned by the child or by either or both of his parents made by any person acting for or on behalf of either or both parents, or

relative, subsequent to notice of claim of the county agency and prior to express written approval by the county agency shall cause that person to be liable to the county agency in the amount of the payment.

N.J.A.C. 10:90-2.2 (2017) also provides:

6. Sign an Agreement to Repay benefits (pursuant to N.J.S.A. 44:10-64), if not already incorporated into the application, in the event of receipt of income or resources. (See N.J.A.C. 10:90-3.18 for treatment of lump sum income as well as N.J.A.C. 10:90-7.8 for settlement of suits and claims);

As a matter of practice, that provision has been taken to mean that every applicant signs a general promise to repay benefits in the event of receipt of income or resources. Unlike an assignment of a specific claim, this general promise is not specific as to time or amount.

The draft report contains a section 2-10 that tracks 44:10-64 closely. As a result, there is nothing in the current draft that specifically supports a general requirement of a promise to repay benefits. A provision could be added such as:

As a condition for eligibility, an applicant shall sign an agreement to repay benefits in the event of future receipt of income or resources beyond those ordinary and necessary for the support of the applicant and dependents.