

Hamilton, Monica A

From: Brandy Leigh <lyric@outlook.com>
Sent: Tuesday, July 11, 2017 2:59 PM
To: Hamilton, Monica A; barbaraf@wvhouse.gov
Subject: Drug Screening for Cash Assistance Comment

Follow Up Flag: Follow up
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Dear Sir or Madam:

I don't receive cash assistance, but I think this rule is horribly unfair, and a violation of the Constitutional right against search and seizure without due process and probable cause--much less a blank warrant on a scale like this.

Being poor and needing help is NOT "probable cause" to seize and search someone's urine, blood, or hair for traces of drug use. If a private employer uses drug screenings and a citizen doesn't feel comfortable with their body being searched, they can always find another employer that DOESN'T drug test. But the same is not true here. There is no alternative to welfare benefits for people who need them. If employment was an option at that moment, they would already have taken it.

EVERYONE knows how difficult-to-impossible it is to qualify already for TANF benefits in the state of West Virginia. Why make it harder??? In the horror-economy that the poor are facing in the near future, we should be making it EASIER for impoverished West Virginians to seek help for their families, not harder!

Drug tests can give false results depending on a myriad of common circumstances, from taking certain medications to simply eating certain foods. The re-test process delays benefits to a family who is desperately in need.

In other states where these tests have been implemented, the cost of the testing has FAR exceeded the amount of money saved by catching drug users and taking away their benefits.

But last and most importantly--how is it morally or ethically right to take food and shelter money away from needy children, just because Mommy or Daddy or some other adult in the household tests positive for a drug? One smoke of a marijuana cigarette at a cookout can leave you tainted for a month. That positive result doesn't mean that you bought drugs with your welfare money, but your benefits will be taken away anyway.

These laws are both cruel and, to quote our current resident of the White House, "mean" spirited towards people who already suffer and endure invasions of their privacy and slights to their dignity during the application process and the endless recertifications. We are about to have a lot more people who potentially need cash assistance. We ought to be expanding access, not trying to legislate it even closer to being literally impossible to qualify for!!!

As for the argument that if they have nothing to hide, they have nothing to fear. First--that is NOT true. Second--with that in mind, let's start drug testing West Virginia homeowners, business owners, legislators, teachers, police officers, firefighters, Senators, Congresspeople, elected officials, and everyone ELSE who benefits from state revenue, too. Fair is fair. We'll see how much THEY enjoy allowing the state to invade their privacy and violate their protections against search and seizure. My guess is that THAT wouldn't go over very well at all. But the poor have almost no voice in what happens to them. Nobody cares at all about their rights and their plight--especially the foxes who are currently in the henhouse down in Charleston.

God save us from socially and ethically destructionist Republican policies.

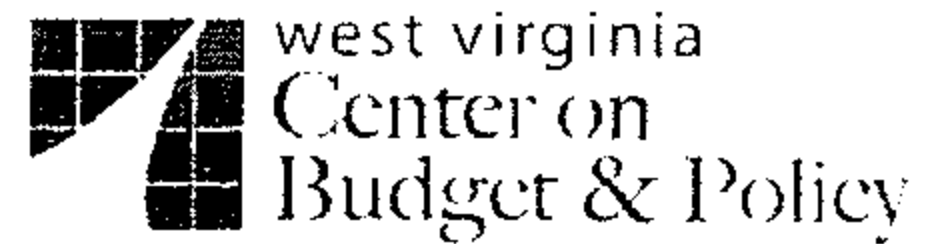
Brandy Leigh Hoover

P.S. The email address on the website frontpage is misspelled. You should fix that if you truly want comments from the public on this potential law. I will pay attention and see if you do. C.C.ing this to Barbara Evans Fleischauer--you know, just to be SURE it gets fixed.

MEMORANDUM

RE: Comments on Drug Screening of Applicants Under TANF (CSR 78-26)

Date: July 13, 2017



The Union Building
723 Kanawha Blvd E, Ste 300
Charleston, WV 25301-2721
Tel: 304-720-8652
www.wvpolicy.org

Dear Department of Health and Human Resources,

A few questions and concerns have arisen regarding the implementation of West Virginia CSR 78-26, the pilot program for drug screening applicants for Temporary Assistance for Needy Families (TANF). The rule filed in the Secretary of State's office on June 27th, 2017 fails to address details which may cause confusion, costly litigation, and other inadvertent consequences. Paramount of the concerns are:

- The rule does not adequately define "reasonable suspicion";
- There needs to be more flexibility with the timing and methods of the drug tests and substance abuse treatment programs;
- Exemption for those formerly deemed ineligible because of past drug convictions.

This letter intends to provide some recommendations for your consideration that may better reconcile some of the gaps between the statute and the regulations.

I. The rule does not adequately define "reasonable suspicion"

Although the rule brief on Page 1 of the notice suggests that "three or more positive responses by the applicant indicating drug usage on the questionnaire" is reasonable suspicion that the applicant is abusing drugs, that threshold is not mentioned in the rule or justified with empirical evidence of its effectiveness. Since the rule brief is

not binding on the agency, the threshold for positive answers on the questionnaire cannot be considered legally binding.

The rule fails to adequately identify a standard for reasonable suspicion. It is not readily available what the questions themselves are and therefore impossible to determine whether three positive responses represent a reasonable suspicion of drug abuse. The definition of “reasonable suspicion” according to provision 2.9 simply says “a point total on the drug use questionnaire that indicates the possibility of drug abuse. Reasonable suspicion is also achieved if an applicant has been convicted of a drug related offense within three years of completion of the drug use questionnaire.” There is no elaboration in the definition that specifically mentions what the threshold is, whether it is three (as mentioned in the notice form), or if it is more or less.

The questions need to be formulated and made available to the public before the implementation of the rule in order to establish what constitutes a reasonable basis for a search under the pilot program. Not doing so may lead to costly litigation later if the questions and threshold are woefully inadequate to satisfy a reasonable basis for a search and applicants charge that they were wrongfully determined to be ineligible.

II. There needs to be more flexibility with the timing and methods of the drug tests.

Section 3.3.b. states, “the drug test must be completed within seven (7) days of the completion of the drug use questionnaire.” There is no elaboration within the rule as to what will happen if this criterion is not met. Presumably, the applicant will be deemed ineligible if they fail to take a drug test within seven days. Although the rule states that the applicant and the case manager will coordinate the drug test, there is nothing that says

upon certain circumstances the drug test may be postponed beyond the seven-day period. Many of those applying for TANF benefits do not have adequate access to transportation and sometimes life simply gets in the way of making appointments on time or at all (e.g. death in the family). We recommend that the period be extended or language be included to allow postponement of drug testing without penalty if circumstances prevent an applicant from completing the drug test and the case manager was timely notified of those circumstances.

The same is true for enrollment in a treatment program if they fail the initial drug test. Pursuant to provision 4.1, the denial of benefits if not enrolled in a drug treatment program within 7 days is not practical or fair considering what could happen while families are experiencing homelessness and other possible difficulties simultaneously. What if the treatment programs have a wait-list? Is that a circumstance in which the individual is not yet assigned to a program but can still receive benefits? The rule should make clear that if treatment is unavailable, or the case manager has not yet assigned a treatment program, or enrollment in a treatment program is hindered by circumstances that make access difficult, then benefits are still open after the 7 days because there was no refusal to participate in a program.

III. Exemption for those formerly deemed ineligible because of past drug convictions.

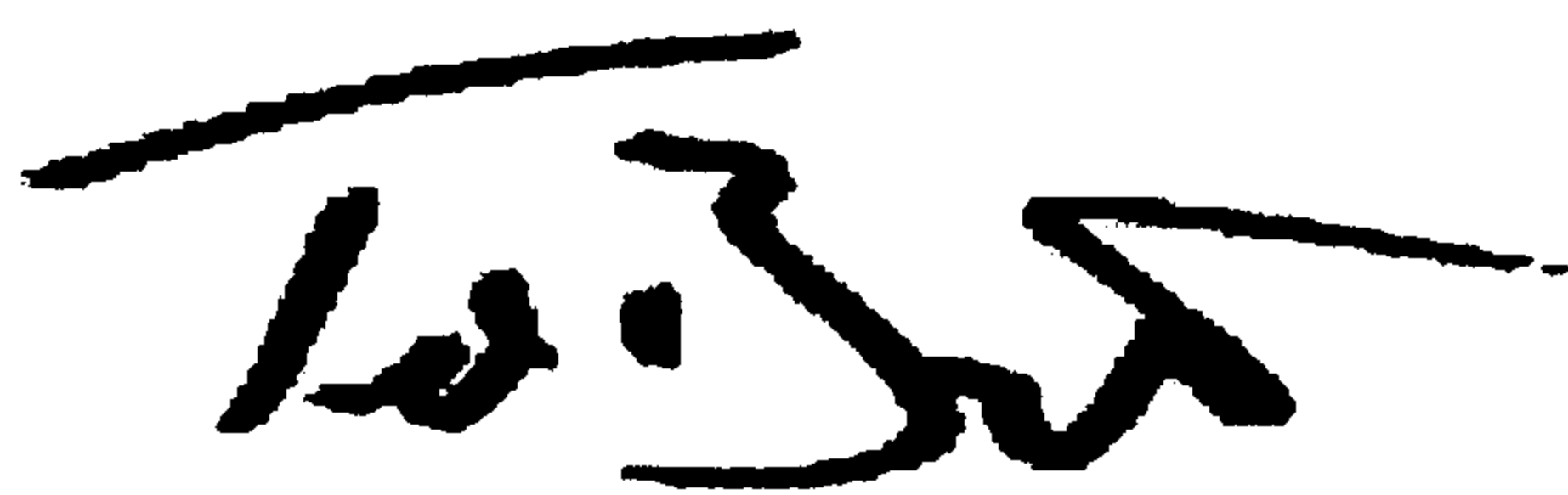
For purposes of the pilot program contained in this rule, provision 1.1 exempts all persons domiciled within the state from the application of 21 U.S.C. §862a(a), which denies federal assistance and benefits for certain drug related convictions. The state legislature thus opted out of both TANF and SNAP of the federal bar for those with drug-related felony convictions since 1996. Although this is very much a positive change in

state policy, the reference in the rule along is not sufficient to implement the change. The agency should be taking (and may be taking) additional actions to implement the lifting of the ban including revising manual provisions, instructing workers to review existing cases, and reaching out to individuals who were formerly denied who may be now eligible. Parents who were denied for this reason but whose kids are receiving benefits should also now be reviewed and notified and benefits should be increased to include them.

Conclusion

Answering these concerns may save some confusion and costly litigation that may arise after the pilot program is implemented. Consideration of these comments is very appreciated as it is everyone's goal to have a well-functioning and effective TANF program, which provides essential cash assistance to desperate families in West Virginia. Thank you for your time and please let us know if you have any questions, concerns, or comments.

Best Regards,

A handwritten signature in black ink, appearing to read 'Ted Boettner', with a long horizontal line above the first few letters.

Ted Boettner, *Executive Director*

A handwritten signature in black ink, appearing to read 'Levi Pellegrin', written in a cursive style.

Levi Pellegrin, *Research Associate*

Hamilton, Monica A

From: joann@lewisfarmwv.com
Sent: Wednesday, July 26, 2017 1:23 PM
To: Hamilton, Monica A
Subject: Fwd: Drug Screening

Importance: High

joann@lewisfarmwv.com wrote ..

- > I agree that applicants for all state funded assistance should be drug tested regularly.
- >
- > I also would like to see all DHHR employees drug tested. I know for a
- > fact that one of your employees who is a current employee in the
- > Clarksburg office overseeing cases of neglect involving substance abuses is smoking
- > marijuana herself.
- >
- > Your state employee has 1 and 3 year old sons, as a single parent who
- > smokes marijuana she should be reported to CPS but I cannot do that since my
- > brother is dating her!
- >
- > This legislation should include all state employees as well.
- > Joann Lewis
- > 3047892232