

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 183]

Income

The Department of Public Welfare (Department) adopts amendments to Chapter 183 (relating to income) to read as set forth in Annex A. The final-form rulemaking is adopted under the authority of sections 201(2) and 403(b) of the Public Welfare Code (code) (62 P. S. §§ 201(2) and 403(b)).

Notice of proposed rulemaking was published at 31 Pa.B. 4172 (August 4, 2001).

Purpose

The purpose of this final-form rulemaking is to amend Chapter 183 to be consistent with section VI(A)(7) (relating to determining eligibility) of the Temporary Assistance for Needy Families (TANF) State Plan published at 32 Pa.B. 6401 (December 28, 2002). Section VI(A)(7) of the TANF State Plan provides that lump sum income is counted as income only in the month of receipt and as a resource in the following months. For consistency between cash assistance programs, this change also affects the Commonwealth's General Assistance (GA) program.

Need for the Final-Form Rulemaking

The intent of both Federal and State welfare reform legislation is to establish requirements that promote personal responsibility, work and self-sufficiency. Under current regulation, which is based on Federal requirements of the former Aid to Families with Dependent Children Program, families that receive sizeable lump sum payments are often ineligible for cash assistance thereafter for extended periods of time. The prevailing opinion when this regulation was promulgated was that lump sum income should be used for basic living needs during the period of ineligibility. Federal welfare reform legislation gave states the flexibility to design and operate cash assistance programs that are tailored to meet the needs of the people they serve. This final-form rulemaking reflects the premise of personal responsibility and allows families to decide how best to use available funds. For example, the lump sum payment may be used to meet current or past due household expenses or to pay for needed items such as reliable transportation to work, start-up capital for self-employment endeavors or better housing.

Under the final-form rulemaking, families that receive a lump sum payment in excess of their monthly assistance payment will be ineligible for cash assistance in the month of receipt but may be eligible the following month as long as any lump sum remaining is less than the appropriate resource limit. In situations where the lump sum exceeds the family's monthly assistance payment but does not exceed the resource limit, cash assistance is not discontinued but, instead, suspended for 1 month.

Affected Individuals, Groups and Organizations

This final-form rulemaking affects applicants for and recipients of TANF and GA cash assistance who receive lump sum payments.

Accomplishments and Benefits

This final-form rulemaking affords families the opportunity to use lump sum payments in the manner that they determine is most beneficial to their circumstances. Under the former lump sum policy, the prescribed period of ineligibility, based on the amount of the lump sum received, left some families with no alternative but to use the lump sum payment to meet basic living needs. This final-form rulemaking is premised on the principle of personal responsibility and the belief that self-determination will lead to self-sufficiency. Families may use the lump sum payment to purchase a reliable vehicle, find and maintain better housing, invest in a business opportunity or otherwise improve their standard of living without fear of losing their cash assistance benefits for prolonged periods of time.

Summary of Public Comment and Changes

Written comments, suggestions and objections were solicited within a 30-day comment period after publication of the proposed rulemaking. The Department received two sets of comments: one from legal services attorneys and the other from the Independent Regulatory Review Commission (IRRC). In addition to suggestions for constructive revisions to the rulemaking, the legal services attorneys expressed strong support for this final-form rulemaking.

The Department has carefully reviewed and considered each suggestion and comment and thanks the organizations that commented on the proposed rulemaking. The following is a summary of the written comments received during the public comment period and the Department's responses.

1. § 183.2 (relating to definitions)

Comment: Since lump sum income is not defined in § 183.2 or in the body of the regulation, one commentator expressed two concerns. The first concern is that it is unclear what would specifically be considered lump sum income. This concern generated the following questions: (1) If a person receives an annuity 1 month of a year, is that considered lump sum income for the month of receipt or a resource?; (2) Does lump sum income "occur" at actual receipt of the income or the deemed receipt of the income?; and (3) Could multiple disbursements of a single amount be treated as lump sum income? A further concern is that it is not clear how the regulation will be applied to income. The commentator asked how an insurance payment (which is lump sum income as per the preamble in the notice of proposed rulemaking) is distinguished from an insurance reimbursement. Finally, the commentator questioned how an inheritance with limitations on spending affects a person's eligibility.

Response: The Department does not define lump sum income because those words are used with the dictionary meaning. (See *Pennsylvania Code & Bulletin Style Manual*, § 1.7(b) (relating to definitions).)

In response to the first question, an annuity received in only 1 month of a year is lump sum income in the month of receipt. Any portion remaining is considered a resource in subsequent months.

In response to the second question, lump sum income is considered available in the month it is received by a member of the budget group. Lump sum income that is deemed available to a budget group from certain nonas-

sistance household members is deemed available in the month it is received by the nonassistance member.

In response to the third question, each disbursement of multiple disbursements from a single source may be considered lump sum income. The type of payment determines whether it is considered (and treated) as lump sum income. For example, an individual may receive a non-recurring personal injury award of \$75,000, which is paid in three installments of \$25,000. Each payment is considered and treated as lump sum income of \$25,000 in the month it is received.

In response to the commentator's further question regarding how an insurance payment is distinguished from an insurance reimbursement, the answer is that there is no need to distinguish between the two because they are treated in the same manner. The Department allows deductions from the lump sum payment for expenses related to receipt of the payment. For example, a deduction will be made from an insurance personal injury settlement for medical expenses related to the injury and costs of litigation, including attorney's fees in accordance with § 183.98(1) and (2) (relating to unearned income and lump sum income deductions). Allowable deductions also include the replacement cost of real or personal property that is part of a damage award or insurance settlement. For example, a recipient receives an insurance settlement for fire damage to the recipient's property. In determining countable lump sum income, the Department will deduct the replacement cost of the damaged property in accordance with § 183.98(3). Generally in these cases, this deduction reduces the countable amount of the settlement to a zero dollar amount.

Finally, in response to the commentator's question regarding treatment of an "inheritance with limitations," the Department will review these cases individually to determine the availability of the lump sum income. An inheritance with limitations will be counted as income to the extent it is available for basic living needs.

2. § 183.105(4)(i) (relating to increases in income)

Comment: As proposed, § 183.105(4)(i) provides that lump sum income deductions are applied as specified in §§ 183.91, 183.93—183.95 and 183.98(1)—(3). Commentators suggested that this sentence in § 183.105(4)(i) is confusing because most of the regulations that are cross-referenced in § 183.105(4)(i) do not mention "lump sum income deductions." One commentator stated that if the intent is to apply the income deductions outlined in those sections to lump sum income, then the last sentence in § 183.105(4)(i) should be revised as follows: "The income deductions specified in §§ 183.91, 183.92, 183.93, 183.94, 183.95 and 183.98 are applied to the lump sum."

Commentators also questioned why § 183.105(4)(i) did not include a reference to § 183.92 (relating to LRR residing elsewhere—GA). Finally, commentators questioned why the reference to § 183.98 is limited to paragraphs (1)—(3) when the entire section, including paragraphs (4)—(7), relates to unearned income and lump sum income deductions.

Response: The Department agrees that the commentators' suggested revisions to § 183.105(4)(i) would make the regulation more clear. Accordingly, the Department has revised § 183.105(4)(i) (redesignated as § 183.105(4)(ii)) to clarify that income deductions, as specified in §§ 183.91—183.95 and 183.98, are applied to the lump sum payment.

3. § 183.105(4)(v)

Comment: One commentator claimed that § 183.105(4)(v) is confusing and suggested the following revision: "Any portion of the lump sum retained by the sponsor of an alien subsequent to the month of receipt is a resource to the alien in subsequent months, provided the alien entered into the United States within 3 years prior to the month in which the resource would be counted. Once the alien has been in the United States for 3 years, income and resources of the sponsor are no longer deemed to the alien."

Response: The Department agrees and has revised § 183.105(4)(v) (redesignated as § 183.105(4)(vi)) to clarify that the portion of the lump sum payment retained by a sponsor after the month of receipt is considered a resource to the alien only if the alien entered the United States within 3 years prior to the month in which the payment is counted. Section 183.105(4)(i) is also revised to clarify that the requirement to deem lump sum income from a sponsor to an alien is subject to the same time frames.

4. Implementation procedures

Comment: One commentator suggested that the Department clarify in the final-form rulemaking that individuals determined ineligible for cash assistance under the old lump sum rules may apply for and receive cash assistance, if otherwise eligible, without waiting for the period of ineligibility to expire. This commentator suggested the Department add the following subparagraph to the final-form rulemaking: "§ 183.105(4)(viii). An individual who has previously been found ineligible due to receipt of a lump sum may reapply at any point, and may receive benefits if the remaining amount of the lump sum does not exceed the resource limit and if the individual is otherwise eligible."

The same commentator urged the Department to notify affected individuals of the change in lump sum regulation and that they may reapply for cash assistance benefits. The commentator is concerned that these individuals, who can be identified through the Department's computer files, will have no way of knowing that their period of ineligibility for cash assistance is no longer in effect. IRRC asked whether family groups who are ineligible under existing regulation will be notified that they may be eligible under the new regulation and, if so, how.

Response: The Department agrees that individuals determined ineligible under the previous lump sum rule may qualify for cash assistance under this regulation without waiting for any period of ineligibility resulting from the old rule to expire. The Department does not agree that a regulation is needed to achieve this result. Individuals can reapply for assistance at any time. Effective upon publication, this final-form rulemaking will apply to all applicants and recipients, including those previously ineligible due to receipt of a lump sum.

The Department will notify individuals affected by this change in the lump sum rule. Data indicates the average period of ineligibility due to receipt of a lump sum is 14 months. The Department will contact those individuals whose cash assistance was closed due to receipt of a lump sum within 18 months prior to the effective date of the final-form rulemaking. The notice will inform those individuals of the effect of this change in regulation and remind them that they can reapply for cash assistance.

Many of the individuals whose cases were closed because of the old lump sum rule are also receiving monthly benefits from the same source that provided the lump

sum, for example, Social Security benefits, and currently have income in excess of the limits for cash assistance. Of the other individuals whose cash assistance was closed because of lump sum income, many are currently receiving Medicaid or food stamps and are in regular contact with a county assistance office. They will be reviewed for cash eligibility.

Additional Revisions

The following is a discussion of additional revisions to the final-form rulemaking which the Department made as a result of its own internal review in preparing the final-form rulemaking.

1. *§ 183.105(4)*. The Department revised § 183.105(4) to clarify that a lump sum payment is treated as income in the month of receipt and a resource in subsequent months.

2. *§ 183.105(4)(ii)*. The Department revised § 183.105(4)(ii) to provide that income deductions as specified in §§ 183.91—183.95 and 183.98 are applied to a lump sum payment. This provision was in § 183.105(4)(i) in proposed rulemaking.

3. *§ 183.105(4)(iii)*. The Department revised § 183.105(4)(iii) to add clauses (A)—(C) that describe how a lump sum payment affects eligibility and payment amount. For example, a lump sum payment may result in a grant reduction in the corresponding payment month, a temporary suspension of cash benefits or a termination of cash benefits.

4. *§ 183.105(4)(iv)—(vi)*. These subparagraphs are renumbered from subparagraphs (iii)—(v), respectively, in proposed rulemaking.

Fiscal Impact

Public Sector

Commonwealth: The Commonwealth will incur an estimated annual cost of \$360,000. This estimate represents an additional 13 months of eligibility for 135 GA clients at an average monthly cost of \$205 per client. The estimate assumes that clients will spend down the resource limit in 1 month.

Political Subdivisions: No other government entity will incur any costs or realize any savings. Since TANF is a block grant, there is no change in Federal expenditures.

Private Sector: No private sector entity will incur any costs or realize any savings.

General Public: The general public will not incur any costs or realize any savings.

Paperwork Requirements

This final-form rulemaking will moderately decrease the paperwork requirements associated with the lump sum eligibility process. The calculation of ineligibility in the month of receipt of the lump sum is simpler. There is no longer a need to determine a period of ineligibility.

Effective Date

This final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

There is no sunset date. The Department conducts periodic reviews of the GA program in accordance with section 403(e) of the code (62 P. S. § 403(e)). TANF regulations are reviewed through the Department's Quality Control and Corrective Action review process.

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 23, 2001, the Department submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B. 4172, to IRRC and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 14, 2003, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 24, 2003, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration of the code.

Order

The Department, acting under the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 183, are amended by amending § 183.105 to read as set forth in Annex A.

(b) The Secretary of the Department has submitted this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law. The Office of General Counsel and the Office of Attorney General have approved this order and Annex A as to legality and form.

(c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ESTELLE B. RICHMAN,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 4040 (August 9, 2003).)

Fiscal Note: 14-471—FINAL. (1) General Fund; (2) Implementing Year 2002-03 is \$360,000; (3) 1st Succeeding Year 2003-04 is \$360,000; 2nd Succeeding Year 2004-05 is \$360,000; 3rd Succeeding Year 2005-06 is \$360,000; 4th Succeeding Year 2006-07 is \$360,000; 5th Succeeding Year 2007-08 is \$360,000; (4) 2001-02 Program—\$271,774,000; 2000-01 Program—\$292,301,000; 1999-00—\$311,394,000; (7) Cash Grants; (8) recommends adoption. Funding for this change is included in the 2002-2003 and 2003-2004 budgets.

Annex A
TITLE 55. PUBLIC WELFARE
PART II. PUBLIC ASSISTANCE MANUAL
Subpart D. DETERMINATION OF NEED AND
AMOUNT OF ASSISTANCE
CHAPTER 183. INCOME
MONTHLY ASSISTANCE PAYMENT
DETERMINATION

§ 183.105. Increases in income.

An increase in actual, deemed or estimated income of the budget group in a calendar month affects eligibility and the amount of the monthly assistance payment as follows:

(1) If the increase in recurring income results in ineligibility, and the ineligibility is expected to last more than 1 month, assistance is terminated for the first check which can be reached in the first month of ineligibility or the following month with proper notice being provided as described in § 133.4 (relating to procedures). An overpayment occurs for assistance received beginning with the first month of ineligibility.

(2) If the increase in recurring or nonrecurring income results in ineligibility, but ineligibility will exist for only 1 month, and it is caused by excessive income or other similar circumstances in the budget month, assistance is suspended for the corresponding payment month using the proper notice as described in § 133.4.

(3) If the increase in recurring or nonrecurring income does not result in ineligibility, the increase in actual or deemed income in the budget month affects the assistance payment in the corresponding payment month.

(4) If the increase in income is due to receipt of a lump sum payment, the payment is treated as income in the month of receipt and a resource in subsequent months as follows:

(i) A lump sum payment is counted if it is received by a member of the budget group or certain other household members such as an LRR, a parent of a TANF minor parent, a stepparent or a sponsor of an alien. A lump sum payment received by a sponsor is subject to deeming, provided the alien entered the United States within 3 years prior to the month in which the payment would be counted under § 183.36 (relating to income deemed available from a sponsor).

(ii) Income deductions, as specified in §§ 183.91—183.95 and 183.98, are applied to a lump sum payment.

(iii) The receipt of a lump sum payment affects eligibility as follows:

(A) If a lump sum payment does not result in ineligibility, the actual or deemed lump sum is adjusted as income in the corresponding payment month.

(B) If a lump sum payment results in ineligibility only in the month of receipt, assistance is suspended in the corresponding payment month.

(C) If a lump sum payment results in ineligibility that may last more than 1 month, assistance is terminated for the first payment date that can be reached either in the month of receipt or the following month after proper notice is provided, as described in § 133.4 (relating to procedures). An overpayment occurs for cash assistance received during a month of ineligibility.

(iv) When a lump sum payment is received by a budget group member or LRR living in the household, the portion of the lump sum payment that remains after the month of receipt is considered a resource under § 177.1 (relating to general requirements).

(v) When a lump sum payment is received by a stepparent or a parent of a TANF minor parent, the portion retained by the stepparent or parent of a TANF minor parent after the month of receipt is a resource to that individual and is not considered in determining the eligibility of the budget group unless it is actually made available to the budget group.

(A) If a stepparent or parent of a TANF minor parent received a lump sum payment, the net amount of the lump sum, after allowable deductions, is deemed as income to the budget group in the month the lump sum is received.

(B) In the month following the month of receipt, the remaining portion of the lump sum would be a resource to the stepparent or parent of a TANF minor parent. This resource amount would be excluded as a resource to the budget group unless the stepparent or parent of a TANF minor parent made any or all of it available to the budget group.

(vi) When a lump sum payment is received by a sponsor of an alien, the portion retained by the sponsor after the month of receipt is a resource to the alien in subsequent months, provided the alien entered the United States within 3 years prior to the month in which the payment would be counted, as specified under subparagraph (i).

(vii) If the exact amount of a lump sum payment that is received is unknown because of a refusal to provide this information, the budget group is ineligible due to failure to cooperate under § 125.21(a) (relating to policy).

[Pa.B. Doc. No. 03-1627. Filed for public inspection August 22, 2003, 9:00 a.m.]