

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) AND THE FAMILY INDEPENDENCE ACT

Prepared by Sue Berkowitz
South Carolina Appleseed Legal Justice Center
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TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) AND THE FAMILY INDEPENDENCE ACT

Public Law 104-193
Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Section 43-5-1105 *et seq.*, of the Code of Laws of South Carolina (1976) as amended

R.114-1130 *et seq.*

Note: DSS has manuals for all benefit programs on line.

1. **Temporary Assistance for Needy Families (TANF)**
 - Federal law that changed welfare from entitlement (Aid to Families with Dependent Children) to block grant.
 - a. Requires states to put up 80% of dollars allocated in 1995 to draw down federal block grant.
 - b. If state runs out of federal dollars due to increase of caseload, it is unlikely it can get additional dollars.
 - c. State gets approximately \$99 million.
2. **What does this mean for clients?**
 - a. Applicant no longer has an automatic entitlement to receive welfare as she did under the Aid to Families with Dependent Children (AFDC) program.
 - b. State can make its own qualifications and has flexibility, although many rules were kept.
 - c. No federal due process rights.
 - d. Time limit: five year maximum with some exemptions permitted.
 - e. Changing to a workfare program.
 - f. End of \$50 child support pass through.
3. **Family Independence (FI) Act of 1995**
 - a. Statutory authority found in Title 43 of the South Carolina Code of Laws.
 - b. South Carolina also has a number of waivers that were approved by Health and Human Services to permit it to operate its program.
 - c. Changes cash assistance from an automatic welfare entitlement program to a work program with stipend attached. It has not been tested in the courts as to whether or not there is a state entitlement to benefits and services.
 - d. The Department of Social Services, the state agency authorized to administer this program, now views its role as employment agency rather than cash assistance agency.
 - e. Changes many policies and procedures.

R.114-1130(C)

R.114-1130(D)

Note: This bar does not apply to refugees or asylees, spouses and unmarried dependents of the military or veterans or immigrants who have worked in the US for ten years.

R114-1160(A)

Note: This is a good time for advocacy on behalf of the client to ensure she receives all benefits that are due.

R114-1160(B)

See Fair Hearings, at page 13.

4. Application Process

- a. Applicants apply for benefits at the DSS office in the county where they reside.
- b. With some exceptions, legal aliens who come to the United States after August 22, 1996 are barred from applying for benefits paid with Federal TANF. Applicants who arrived in the United States prior to that date may be eligible for benefits.
- c. Applicants will be asked to provide documentation of income, relationship to child and resources.
- d. The applicant must have her application acted upon within 30 days.
- e. All clients will be asked to sign an Individual Self Sufficiency Plan. This ISSP must list the responsibilities of the client as well as the services that should be provided.
- f. All applicants will be required to perform an initial job search.
 - i. If the client does not find a job, she will be assessed to determine if she is job ready.
 - ii. If she does not find a job and has been employed twelve of the last twenty-four months, or has a GED or diploma, she will be enrolled in job club and after that required to look for a job.
 - iii. If the client does not find work within sixty days the caseworker must review the ISSP and determine if new services are needed to address the barriers to employment.
- g. If she is denied she may request a Fair Hearing.

5. Eligibility

Note: If child is still in school and will complete it by age 19, then benefits can still be awarded.

R.114-1140(A)

Note: the amounts of the stipends have not increased since 1988 and are as follows for a family:

1 person \$119.00
2 people \$157.00
3 people \$201.00
4 people \$242.00

Increase by approximately \$41 per person

§43-5-1200

R.114-1130

Note: A non-relative caretaker will never be able to apply for FI on behalf of the child.

Note: transferring resources to try and become eligible for benefits will result in a period of disqualification that is related to the value of the property transferred.

R.114-1140

§43-5-1200

R.114-1140(I)

Note: resources that are deemed inaccessible will not be counted against the applicant.

R.114-1140(F)

- a. Any family who has a needy child up to age 18, with some exceptions, and meets income and resource guidelines. The income eligibility guidelines have remained the same.
 - i. The Standard of Need for an FI family is 50% of the current federal poverty guidelines. For example, in 1999 a family of 2 may have a net income of \$452.00.
 - ii. The state stipend does not equal the Standard of Need, but is a ratable reduction percentage based on the amount of money appropriated. The payment is the need standard, by family size, multiplied by the ratable reduction percentage.
- b. Can now be a family with both parents.
- c. Child must be within a certain degree of relationship to the adult who is applying on his or her behalf. They include the following relatives: brother, sister, uncle, aunt, nephew, niece, cousin, grandparents, step-parents, stepbrother/sister, or spouse or former spouse of the above. It is not necessary that the caretaker relative have legal custody of the child.
- d. Household can have certain resources
 - i. Up to \$2,500 in cash
 - ii. Home
 - iii. One car for each licensed driver
- e. Household may have up to \$10,000 in a special Individual Development Account (IDA) that can only be used to buy a home, for education, to start a business or buy a car.
 - i. Way to get around lump sum rule
- f. Minor child's income is excluded.
- g. Other federal grants and aid are excluded as income.

6. How to Determine Whether or not the Family is Income Eligible for the Family Independence Program
- R.114-1150(A)
 - a. Gross earned and unearned income may not exceed 185% of the need standard for the family. This will be the initial screen for the FI family.
 - R.114-1150(B)
 - b. Earned income means gross earned income prior to any deductions. Be assured anything that can be remotely construed as earned income will be under the regulations.
 - R.114-1150(B)(5)&(6)
 - c. Any other income that is derived and cannot be considered earned income is unearned income
 - i. child support
 - ii. Social Security
 - iii. interest and dividends except those excluded by statute
 - iv. unemployment benefits
 - d. SSI is not counted in the family budget as income for purposes of determining FI eligibility. This is a holdover from the old AFDC program.
 - e. If the family meets the gross income test then DSS will disregard certain income to determine what amount, if any, of benefits the client will be eligible to receive.
 - i. The family may have 50% of the monthly gross countable earned income disregarded. This disregard is only available for the first four months that income is counted. This disregard is only permitted once in a 24 month period.
 - ii. Families may also receive a \$100.00 per month disregard from gross countable income for the remaining months the family is eligible for FI after the four months have been exhausted.
 - f. An applicant over 18 who lives with individuals, such as family members, who are over income can apply without counting those persons in the benefit group. This will permit the adult and children to qualify for Family Independence and all supportive services.
 - g. Client has obligation to report any changes in resources, family composition and income to DSS within 10 days.
 - §43-5-1205

R.114-1150(C)

Note: This disregard may make the client still eligible to receive an FI payment, but it could be quite small. Clients should be advised that they may elect not to receive this benefit if they do not want to use any of their remaining 24 months of FI, which will happen no matter how small the payment. (See section on Time Limits, p. 6.)

R.114-1130(M)

7. Time Limits

- a. Families are now limited to receiving benefits under the TANF program for a maximum of five years.
- b. State Law limits benefits to 24 months in 10 years with a total lifetime cap of 5 years. Because South Carolina is operating under a waiver, this 5 year cap does not apply to any family who is exempt from time limits.
 - i. Federal law limits recipients from receiving federal TANF dollars after they have received benefits for a total of five years.
 - ii. The federal regulations issued April 12, 1999, permit the state to have a separate state-funded program that may fund families exempted from being affected by this provision. As of 1999, South Carolina has not created such a program.
 - iii. Because in early 1996 South Carolina requested and received federal waivers that permit the state to exempt certain families, the federal time limit should not affect those who are exempt.
- c. The state law permits extensions in certain cases:

§43-5-1170(4)

- i. A client is in a training/education program and would benefit from an extension of up to six months to complete the program. The client can receive a longer extension if the county director approves.

- ii. A client that has done everything asked, but cannot find a job, can receive benefits for up to twelve additional months.
- iii. After this thirty-six month period, client can request that county director grant a month-to-month extension.

- iv. Children living with a caretaker relative, who might otherwise be forced into foster care, can go past time limits.

- v. Caretaker is not parent of child and needs are not included in check.

§43-5-1170(8)
Note: Standard is clear and convincing evidence.

§43-5-1170(6)

R.114-1130(O)(e)

R.114-1130(O)(g)

Note: The client does not have to agree to move when she asks for an extension but must state that she will consider moving if a job, housing, daycare and transportation are found in another county.

Note: If client calls with a notice that her time limit is approaching, advise her to get as much proof together as she can that she is fully cooperating yet she still cannot find a job. Should also check for barriers such as no transportation, child care, or if client has disability as defined under ADA.

§43-5-1170(3)

R.114-1160(B)

Note: DSS must assist with child care and transportation if the client needs either and is otherwise barred from doing what is asked.

§43-5-1185

§43-5-1190

- vi. If recipient has no childcare or transportation.
 - vii. The client must demonstrate a willingness to relocate.
- d. The client must receive a notice from the caseworker that her time limit is approaching - this is usually sent in month 22.
 - e. If client was not provided any of the services that were listed in her Individual Self Sufficiency Plan then she should have very good grounds for an extension.
 - f. If the client is under the age of 18 when she begins receiving FI, then the 24-month clock does not begin until the client turns 18 or finishes high school, whichever comes first.

8. What the Department of Social Services May Ask of a Client

- a. Before DSS approves the application it may require an applicant to make a reasonable number of job search contacts.
 - i. It cannot be an excessive or unreasonable number.
 - ii. If the client cannot find transportation or child care, DSS must assist.
- b. DSS can require the client to go to life skills classes.
- c. If the client has a history of substance abuse, DSS can require the person to participate in drug counseling and / or treatment.
- d. The client will be required to go through an assessment.
- e. Client may be required to go through a job club.
- f. Client who does not have job skills will be required to go through work experience.
 - i. If with private industry, cannot require client to provide the employer with work the employer can profit from or work more than what would be equal to minimum wage.

- ii. Non-profit employers cannot make the recipient work more hours than equals paying minimum wage.
 - (1) How do you calculate minimum wage?
 - (a) Add FI and food stamp benefits then divide by minimum wage. That is the maximum number of hours the client must work.
- R.114-1160(H)
 - g. DSS should provide client with information on training programs and has an obligation to market the programs.
- §43-5-1190
 - h. DSS may require a minor parent, under 18, to live at home with a relative or guardian. There are a limited number of exceptions to this rule if the minor client can show:
 - i. There is no living parent or the living parent will not permit the child to come home.
 - ii. The minor lived away from the home for at least one year after she had the child.
 - iii. The health and safety of the minor is compromised due to incest or abuse.
 - iv. Other good cause.
 - i. An FI parent who is under the age of 18 must stay in or go back to school.
- §43-5-1215
 - 9. **Client must cooperate with child support enforcement**
 - a. Client is going to be required to provide certain information on absent parent.
 - b. Must be certain information: first & last name, last known address, social security number, place of employment and parent's name and address.
 - i. Client may have good cause to not provide information. For example, threat of violence or incest.
 - ii. If client does not have information, will be barred from getting child benefits.
 - iii. Can try and give descriptive information such as "middle house on Maple Street."
 - c. Client can only give wrong name of absent parent two times. After two strikes, child will be permanently barred.
- §43-5-1270

10. Sanctions

- a. DSS may mandate any family who has a child over the age of one to participate in FI if they are not otherwise exempt. If the adult is under the age of 25 and does not have a high school diploma, DSS can require the adult to participate prior to the child turning one.
- b. Sanctions for non-cooperation apply to the entire family. This is a huge change from the AFDC program, that only sanctioned the non-cooperating parent.
- c. Client can be sanctioned for not cooperating with child support enforcement, job training, job search, community work experience, education, life skills, or other requests outlined above.
- d. Client must be informed by case worker of potential sanction and provided with an opportunity for conciliation.
 - i. Conciliation should mean client and case manager work out problem to see how the client can comply.
 - ii. In practice what really happens is the case worker tells the client to comply without determining what special needs may be outstanding, and calls this conciliation.
- e. If client still does not comply, the entire family is sanctioned.
- f. If, after the sanction is imposed, the client begins to comply, benefits will be restored in 30 days.
- g. If the client believes the sanction is improper, a fair hearing may be requested
 - i. If requested within 10 days, benefits will continue.
 - ii. Client can have a representative present.
 - iii. Process of fair hearing has not changed.

South Carolina has a very high sanction rate.

See section on Fair Hearings, page 13.

11. Supportive Services

R.114-1160(A)

- a. All clients will be required to develop and sign an Individual Self Sufficiency Plan when they first begin with the FI program. It will identify the barriers and state what services are needed. It is intended to be done by mutual agreement, but clients rarely know to assert their rights to have certain services in the ISSP.

§43-5-1125(5)

- b. FI clients must be given assistance with both child care and transportation.
- c. FI clients also receive Medicaid.
- d. If transportation or child care is not available, client cannot be sanctioned and the client should be granted an extension to the time limit.
 - i. Many counties interpret the transportation requirement to mean that the county's only obligation is to pay for the service.
 - ii. County is obligated to do much more. DSS must help the client find transportation if the client is unable to locate this service. A client cannot be sanctioned if she cannot find transportation, even if DSS has offered her money for this service.
- e. FI clients who leave the program due to income receive transitional child care for up to two years.
 - i. The client should not just ask to leave the case-load. Client must report income and have case closed due to being over income. This is how transitional child care is triggered.
- f. FI clients who leave the program due to income may receive transitional Medicaid for one year, possibly two.
 - i. To receive Medicaid the second year, the family income must be at or below 100% of poverty.
 - ii. Children up to age 18 who are at or below 150% of poverty will receive Medicaid indefinitely under the new program, South Carolina Partners for Healthy Children, also known as Children's Health Insurance Program (CHIP).
- g. Child care for low income working families is now being used for FI participants, leaving little child care assistance for the working poor.

§43-5-1170

See the section on time limits,
page 6.

These are called child-only
cases because only the child is
receiving benefits.

Note: Some clients may want to
participate but have a special
need due to a disability - these
cases should be assessed for
ADA compliance.

§43-5-1125(B)(1)

§43-5-1175, R.114-1140(B)

Note: clients are not always
told about vouchers and all
clients who had a child while
receiving FI should be advised
about this section of the law.

Note: See section on earned
income, page 5.

R.114-1120(C)

12. Exemptions from work requirement or time limits

- a. Both federal and state law permit some persons to be exempt from participating in the program.
 - i. Federal law does limit the percentage of people who are exempt. This is going to cause some tension as the pool of participants shrinks.
- b. Recipients who do not have child care or transportation are exempt from requirements.
- c. Recipients who are caring for children who would otherwise need to be in foster care if they were not cared for by the family member or cases where non-parent adult is not receiving benefits are exempt.
- d. Recipients who have a disability or are caring for a family member who has a disability are exempt.
- e. Women who are at least six months pregnant.
- f. FI clients who have a child under one are exempt from work participation, but are encouraged to participate when the child is six months. If the parent is under age 25 and has not completed high school, then regardless of the age of the child, the parent must participate in an educational activity.

13. Miscellaneous

- a. After-born children - recipients who are on benefits for 10 or more months and then have a child cannot add that child to the family budget and get an increase in the check.
- b. The client should be provided vouchers for necessities such as diapers.
- c. Income disregards have been increased to 50% of income for four months out of the twenty four.
 - i. This is optional and the client may not want to exercise this option because the clock is still running and the FI check may be greatly reduced.

Note: Clients who apply for FI will be categorically eligible for food stamps. Therefore the more restrictive food stamp car rule will not apply.

R.114-1130(G)

Note: This could occur when a child goes to spend summer with a relative while mom is finishing school or a training course.

Example for family of 4:

\$696 need standard

\$242 payment

\$150 child support

$\$242 = 34.7\% \text{ of } \696

\$150 (Child Support)

$\times .653 (100\% - 34.7\%)$

97.95 gap payment

total owed to client:

\$ 242

+ \$97 (rounded)

\$ 339 total to client

- d. An application must be decided within 30 days. The same applies with Food Stamps.

- e. Verification requirements have been greatly reduced.

- f. A family may receive benefits even when the child is temporarily out of the home, up to 90 days, if the case worker finds this would be in the best interest of the family.

14. Gap Payments

- a. South Carolina permits the family to keep part of the amount of child support that it collects from the absent parent. This is called the Child Support Gap Payment and is not counted as income against the family. This is collected from current child support obligations.

- i. DSS determines this gap payment by multiplying the difference between 100% of the need standard and the percentage of need actually paid in monthly FI payments times the monthly child support collected by DSS. This payment is not counted as income.

15. Overpayments and Fraud

R.114-1140(Q)

Note: If upon collecting the overpayment the FI becomes \$0, the case is still considered an active FI case under the program and the 24-month time limit will continue to run.

- a. DSS may recover the overpayment of FI that has occurred from prior or current assistance regardless of whether it is client or agency error.

- b. DSS may recover the overpayment from the assistance unit which was overpaid, any assistance unit of which an adult member of the overpaid assistance unit has subsequently become a member, or any adult member of the overpaid assistance unit whether or not they are currently receiving FI.

- c. If the case has both an underpayment and overpayment DSS must still try and recover the overpayment.

- d. If an underpayment has occurred the agency may make retroactive payments totaling 12 months of underpayments.

- e. If the client is a current FI recipient then the agency may recoup the overpayment from the FI stipend.
 - i. If the agency recovers by recoupment it may only collect 10% of total income and resources that the family receives.
- f. DSS may elect to waive collection if the overpayment is \$35 or under.
- g. DSS will attempt to get the client to repay the overpayment administratively. If the client contests the overpayment she may ask for a fair hearing.
- h. Those cases that are more than ninety days delinquent are referred to the SC Department of Revenue and/or the Internal Revenue Service for tax intercept. Client must be provided written notification when the cases are referred.
- i. Clients who are suspected of criminal fraud may be prosecuted.

§16-23-240

§43-5-1120
R.114-1180

Note: The regulation for the Fair Hearing process is R.114-110.

16. Fair Hearings and Appeals

- a. An agency action may be appealed by the applicant/recipient. This is called a Fair Hearing.
- b. Appealable actions include the denial of assistance, reduction or termination of assistance, failure to timely process application, failure to provide certain services, overpayment or underpayment determinations.
- c. It is not appropriate to use the fair hearing process to appeal the legality or constitutionality of a certain law or provision of the FI program, only whether or not it was applied appropriately to the applicant/recipient.
- d. If the client requests a hearing within 10 days of the adverse action and in addition requests in writing that benefits be continued pending the hearing, then the family will continue to receive its FI stipend. If the Fair Hearing upholds the agency decision, the client will be assessed an overpayment.
- e. DSS fair hearings are governed by the South Carolina Administrative Appeals Act.

§1-23-310 *et seq.*

- f. The hearing is conducted by a hearing officer employed by the South Carolina Department of Social Services.
- g. It is conducted on the record and under oath.
- h. The rules of evidence apply to all Fair Hearings. Therefore hearsay and irrelevant evidence may not be admitted.
- i. The client has a right to the following:
 - i. To be represented at the hearing by an advocate or representative. This person does not have to be an attorney.
 - ii. The client has a right to a conference with the caseworker before the hearing and must receive a case summary at least ten days before the hearing.
 - iii. At least 10 days' notice of the time, date and location of the hearing.
 - iv. The opportunity to review and copy the client's case file.
 - v. The right to present witnesses and evidence as well as the right to cross-examine any witnesses presented by DSS.
 - vi. The right to a written decision that must be immediately implemented if the Fair Hearing Committee reverses DSS's action.

Note: DSS's failure to provide proper notice or the case summary could result in a continuance if the client deems it necessary.

Note: This should be done well before the date of the hearing.

§1-23-130

17. Judicial Reviews

- a. Fair Hearing decisions may be appealed to the Administrative Law Judge within 30 days pursuant to the South Carolina Administrative Procedures Act.
- b. Review is based on the administrative record using the "substantial evidence rule." Any complaint for judicial review must specifically allege the errors committed by the agency.