



October 4, 2006

Jacqueline G Kelley
Assistant Director
Office of Legal Services
Department of Human Service
600 New London Ave.
Cranston, RI 02920

Re: Proposed Child Support Rules

Dear Jacqui:

The following comments are submitted by the Poverty Institute regarding the filing of rules regarding Child Support. First, the filing fails to comply with the requirements of the Administrative Procedures Act which will render the final rules invalid. I urge the Department to re-promulgate the rules providing timely notice to interested parties and specifying in the proposed rules the provisions that new, those that are deleted and those that are amended.

It is impossible to ascertain from the information posted on the DHS website which regulations in the 200+ pages of rules are being changed. The Scope of Change provides that “The Department of Human Services- Office of Child Support Services has updated its policy manual to reflect current state and federal laws pertaining to Child Support. Several references to specific procedures have been eliminated from the manual.” The Notice of Change repeats this information and adds that the Administrative hearings will now be heard by DHS and refers to a change in the trigger for passport denials. This is the same description of the rule change filed with the Secretary of State’s office. Yet the proposed regulations show only two changes: the deletion of section 0722.20.40.05 (strike out) and the addition of a new section 0719 (underlined and in red). What are the changes to reflect “current state and federal laws”? What are the specific procedures that were eliminated? It’s impossible to know from the rules or even the explanation of the rule-making. (A summary of the Child Support Policy Manual Revisions was provided to people serving on the Child Support Advisory Committee, but this does not substitute for providing notice in the formal rule-making process.)

The Department has violated the administrative procedures act by failing to “Ensure that any proposed additions, deletions or other amendments to the rules and regulations be clearly marked.” 42-35-3(a)(5).

The Department is also required to give notice of the proposed rule-making at least 30 days in advance of its intended action to “all persons who have made timely request of the agency for advance notice of its rule-making proceedings” (42-35-3(a)(1)). There was no notice sent to interested parties. Moreover, even if one should look at the website, it’s not possible to know the date by which comments must be submitted. While the Notice of Change advises that comments must be submitted within 30 days of the “date of this notice”, no date of the notice is provided anywhere in the Notice or the Scope of Change.

Because the agency has substantially failed to comply with the APA requirements, the rules will not be not valid.

While I strongly urge the Department to re-promulgate the regulations, I will provide the comments we have on what appear to be some of the changes. This is based on the document entitled “Child Support Policy Manual Revisions”.

Non-cooperation (0704.25.02)

What is “the reasonable equivalent” of the information required in section 0704.25? Who decides what “reasonable equivalent” is?

How can individuals other than the custodial parent give the identity of the non-custodial parent? How can records from law enforcement, social service agencies or the other documents listed in this section provide information about the identity of the non-custodial parent, if the custodial parent doesn’t know who he is? These references should be deleted. It may be reasonable to provide information about the location of the non-custodial parent from these sources, but not who he is.

If a parent truly doesn’t know who the non-custodial parent is or if she cannot provide any information listed in section 0704.25, she should be allowed to attest to that fact and an affidavit to that effect should be sufficient. The paragraph providing that “it is important to emphasize that a sworn statement attesting to lack of verifiable information about the absent parent will not meet the requirement of co-operation” should be deleted. There will be some instances in which a parent cannot provide the information and that must be acceptable.

This section should provide that where a parent refuses to name the non-custodial parent the OCSS worker should ascertain whether domestic violence may be a reason the parent does not want to disclose the information and if it appears this is the case the parent should be referred to the Domestic Violence Advocate for a determination of “good cause” not to cooperate.

Requirement of Continued Cooperation (0704.25.03)

This section requires that an applicant or recipient who has to miss a court appearance or an appointment due to an emergency must give prior notice of that emergency or be judged in non-compliance. An emergency is a circumstance that cannot be predicted and it is unreasonable to require advance notice. A mom who must rush her child to the hospital on the morning that she is supposed to go to court may not think to call the OCSS to inform them of this emergency. In an emergency no prior or same-day notice should be required.

Moreover, requiring that OCSS send a notice to DHS every time a parent misses an appointment or a court appearance indicating that the parent is in non-compliance is unreasonable and will result in a harsh consequence for the parent. A parent who is in non-compliance with child support faces reduction in FIP and/or loss of Rite Care and/or loss of child care (depending on the programs in which the parent is participating). A parent who habitually fails to keep appointments or to appear in court without good cause might trigger a notice to DHS regarding non-cooperation, but certainly not for isolated instances.

Before OCSS notifies DHS that the parent is not making a good faith effort, OCSS should provide written notice to the parent explaining what the parent must do, and what the consequence of failure to cooperate will be. If the parent fails to comply, then OCSS should notify DHS.

Non Cooperation (0704.25.05)

When OCSS determines that the parent is not making a good faith effort to cooperate, OCSS should send written notice to the parent before sending notice to DHS. The notice should explain the non-compliance, what the parent must do or what information she must provide and the consequences of failing to provide the information/act by a specified date. The notice should explain what happens if it is determined that the parent is not cooperating – ie. the FIP sanction, the Child Care sanction and the Rite Care sanction. The notice should also explain the rights of victims of domestic violence and the availability of the Family Violence Option Advocate to help establish good cause.

Good Cause (0704.25.10)

This section should include reference to the criteria for establishing “good cause” not to cooperate with child support as described in the DHS manual, since this is the standard that DHS will use. See, for example, 0808.05.15.15 (FIP). The DHS standard differs from that contained in the OCSS regulation – it is not necessary to establish that physical harm caused to the parent would render her unable to care for her child.

If the custodial parent indicates she has good cause not to cooperate with OCSS, OCSS should immediately refer her to the Domestic Violence Option Advocate for a determination of good cause and notify the appropriate DHS worker that the referral has been made.

Again, I urge the Department to “start again” and give notice of the rule-making in compliance with the APA so that the public has the opportunity to provide comment and so that the final rules will be valid. I request that the Department provide me with a response to these comments.

Sincerely,

Linda Katz