



Empire Justice Center

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Memorandum of Support

A More Just and Accurate Means to Determine Public Assistance Employability

A.4236 (Hevesi)/S.4641 (Persaud)

This bill would amend Section 332-b of the Social Services Law

Background – Evaluating Employability

Under the public assistance work rules, every adult client's employability must be determined. Clients have the right to bring in evidence from their treating health care practitioner, and the local Social Services District may refer the client for an evaluation by their own medical unit or by a private agency under contract with them. Until recently, the law gave the district nearly unfettered discretion regarding the weight given to the evidence.

2016 Amendment – Somewhat More Weight to the Treating Practitioner's Opinion

In 2016, the Social Services Law was amended to create SSL section 332-b(4-a). Section 4-a provides that when the agency doctor disagrees with the opinion of the treating practitioner, the agency doctor must explain in writing why they disagree and must present supporting documentation. This clearly improved the law, but still left very broad discretion in the hands of the agency doctor, who had very likely seen the client only once.

Proposed Amendment

A.4236/S.4641 adds a section 4(b) to the law, requiring that the treating practitioner's opinion would be "generally controlling" in the determination of employability. However, a number of factors would have to be considered with regard to the treating practitioner's opinion, including the length and frequency of treatment, the consistency of that opinion with the "record as a whole," the treating practitioner's specialty and the concrete evidence that supports that opinion. The law would retain the earlier amendment, section 4(a), requiring the agency doctors to explain in writing their disagreement with the treating practitioner's opinion, supported by concrete evidence.

Empire Justice Center Strongly Supports A.4236/S.4641

In any given month over the past five years, well over 10,000 public assistance recipients in the state are in "sanction status," meaning their benefits have been reduced or terminated due to an alleged failure to comply with the welfare work rules.¹ But the actual number of people who suffer the effects of these punitive sanctions over the course of a year, including the children in a household with a sanctioned parent, is much higher. In many cases, the sanction stemmed from an inadequate evaluation of

employability. The result of such faulty evaluations is that clients are frequently assigned to activities that are beyond their capacity or that might jeopardize their health. This bill modifies a deeply flawed process for determining employability, making it much more balanced and medically sound.

Treating Practitioners v. Agency Practitioners

Agency or contract evaluators rarely see clients more than once. By contrast, the treating practitioner likely provides regular, long-term care to the client. It seems beyond dispute that the treating practitioner's opinion should be entitled to significant weight in the assessment of employability.

This bill accounts for situations in which the treating practitioner does not have this long-term familiarity and understanding of the client's medical condition. Thus, the bill provides that the final employability decision must consider the length and frequency of the treating practitioner's contact with the client, the practitioner's area of specialty, and the concrete evidence supporting the treating practitioner's opinion.

Mental Disabilities

Extensive research indicates that the incidence of mental illness among adults receiving welfare is significantly greater than in the general population.² The brief evaluations conducted by agency practitioners are certain to miss conditions that might present differently from day to day, that might depend on the momentary effectiveness of medications and that might be denied by the individual. Only a health care provider who has seen the patient over an extended period of time can fairly assess such conditions and their impact on employability.

Disabilities and Sanctions

Many of those who are sanctioned have disabilities that have not been identified or addressed. Clients with disabilities are much more likely to be sanctioned than the general welfare population.³ A.4236/S.4641 will decrease the imposition of unwarranted sanctions upon disabled recipients by ensuring that the opinions of treating practitioners receive proper consideration. The bill will protect affected families against intense hardship and will assist the state in meeting its federal participation requirements as recipients are more likely to be given assignments with which they are able to comply.

A More Sound and Just Employability Determination

Under this legislation, local districts would still exercise ultimate discretion in determining client employability. The law only requires that they apply that discretion judiciously. Questions that may currently be overlooked would become integral to the process, questions involving the length of treatment, the practitioner's specialty, and the totality of the evidence. In short, this bill requires a carefully reasoned explanation of the ultimate determination. The result will be more accurate decisions, more appropriate treatment of people with disabilities and a reduction in sanctions that should be welcomed by all.

This memorandum was prepared by:

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¹ Statistical Report on the Operations of New York State Public Assistance Programs, Table 23, prepared by the Office of Temporary and Disability Assistance, Bureau of Data Management and Analysis, for the years 2013-2018.

² See, e.g., P. Loprest and E. Maag, "Disabilities Among TANF Recipients: Evidence from the NHIS," Urban Institute, May 2009. The study found TANF recipients four times more likely to have mental disabilities than the general population.

³ See, for example, Mark Nadel, Steve Wamhoff, and Michael Wiseman, "Disability, Welfare Reform, and Supplemental Security Income," Social Security Bulletin, Vol. 65 No. 3, 2003/2004.