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May 12, 2015

To: Rules Review Commission

Re: Public comments on 10A NCAC 73A .0104 – “Drug Testing Requirements”
Submitted Via Email to All Commission Members

Dear Commission Member:

The American Civil Liberties Union of North Carolina Legal Foundation (“ACLU of NC”) and the North Carolina Justice Center (“Justice Center”) submit these comments regarding the above-referenced rule related to substance use screening and drug testing of Work First Program applicants and recipients. The ACLU of NC is dedicated to defending and preserving the individual rights and liberties guaranteed by the U.S. and North Carolina Constitutions. The Justice Center is dedicated to ensuring that every household in the state has access to the resources, services and fair treatment it needs to achieve economic security. We ask that the Rules Review Commission object to the permanent Rule 10A NCAC 73A .0104 since it lacks statutory authority.

10A NCAC 73A .0104 Drug Testing Requirements states in part:

“(b) If the applicant or recipient refuses to complete the DAST-10 the entire household unit shall be ineligible for cash assistance.” (emphasis added)

“(d) If an applicant or recipient declines to submit to the drug test or fails to complete the drug test the household shall be ineligible for cash assistance.” (emphasis added)

“(e) If an applicant or recipient substitutes, adulterates or tampers with the drug testing the household shall be ineligible for cash assistance.

NCAC 73A Sections .0104(b) (d) and (e) disqualify the entire household contravening the statute’s mandate that children of the disqualified applicant or recipient remain eligible for benefits paid to a protective payee. These rule sections exceed the Division’s authority under the statute.

Regardless of the term, “entire household” or “household,” the above referenced rule sections lack statutory authority. N.C.G.S.A. § 108A-29.1(c) states, “[t]he children of any applicant or current recipient shall remain eligible for benefits, and these benefits shall be paid to a protective payee pursuant to G.S. 108A-38.” It is clear that the legislature intended for children to remain eligible and for children to be able to receive benefits through a protective payee regardless of the applicant or recipient’s possible or actual drug use. Sections .0104(b), (d) and (e) disqualify the entire household, including the children, in the event that the applicant or

recipient refuses to complete the DAST-10 screening tool, refuses to submit to a drug test or fails to complete the drug test, or if there is evidence that an applicant or recipient substitutes, adulterates or tampers with the drug testing.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRA") provides that in the event a person is disqualified because of a felony drug conviction, the household remains eligible for prorated benefits. Title I, Section 115(b)(1) of the PRA provides, "The amount of assistance otherwise required to be provided under a State [TANF] program . . . to the family members of an individual [disqualified due to a felony drug conviction] . . . shall be reduced by the amount which would have otherwise been made available to the individual under such part." Only the ineligible household member(s) should be sanctioned and punishing the entire household, including the children, is punitive and goes beyond the authority and intent of the statutes that govern this program.


In North Carolina, we have had a Protective Payee option in the Work First Family Assistance program for a very long time. The Protective Payee serves the purpose of ensuring that the cash assistance provided is used to meet the needs of the family when the head of household/applicant is unable to assume responsibility for proper management of the cash assistance. N.C.G.S.A. § 108A-29.1(c) provides that children "shall remain eligible for benefits" through the protective payee option. Nowhere in the statute does it state that entire households will be disqualified for an applicant's failure to comply with the drug screening or testing requirements.

The Rules Review Commission should object to the permanent Rule 10A NCAC 73A .0104 since it lacks statutory authority. Thank you for your consideration of these comments.

Sincerely,



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