

## How to Improve Erie County's Work First Program

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### Brief History

The major shift to a welfare to work model happened in 1996 with the Personal Responsibility and Work Opportunity Act. This federal law aimed to decrease dependency on public assistance by – among other things – forcing people to work for their assistance. Erie County did not need this Act to focus on work. Erie County Department of Social Services has been enforcing work requirements and operating as a work first county since 1988. In 1994, the County created its Welfare to Work Leadership Council. The goal of the council is to bring the community together to find jobs and training for employable public assistance applicants.<sup>1</sup> The two defining programs in Erie County are Jobs Club for the applicant and Workfare for the recipient.

### Applicant

When someone applies for public assistance, he or she must first go through a work assessment. This assessment is where the local County determines what work activities an applicant should be assigned to, as required by law.<sup>2</sup> If someone is found work eligible, he or she is then enrolled in the Erie County Department of Social Services Work First Job Club. Jobs Club is a three week mandatory program that applicants must complete to obtain public assistance. This program is where many people fall out of the application process. It operates on a three check system, where after three infractions you fail.

There are many rules to be followed in Jobs Club, starting with attendance. All applicants must be there by 8:45am every morning. They must check in on time or receive a check against them. They must be on

time returning from all breaks. They must provide notes in advance for any absence.<sup>3</sup> This part of the program requirements is not that problematic. It seems reasonable for an County to expect attendance and promptness. The part of the program that shows the most flaws is the job search requirement.

Under the job search requirements, an applicant must complete three applications a day in the first two weeks and four a day in the last week. The County will accept handwritten paper applications and on-site computerized applications. An applicant can complete one online application a day – if they receive a receipt from the company that same day.

The County will not accept the submission of resumes as an application – apparently even in response to an employer who advertises a position and does not ask for applications, but only for resumes. Similarly, the County will not accept the completion of open interviews.<sup>4</sup> If an applicant only submits two applications for the day, they have to make it up the next day and also get a check for the missed application. If they hand in four applications the next day, but one is not accepted by the County, they will receive another check for the same infraction they had the day before. When advocates complained about these issues to the County, the County said that there will not be any changes and that the program is incredibly successful.<sup>5</sup>

It is common for a class to begin with 25 applicants and finish with only a few.<sup>6</sup> This is not because applicants do not want to work or help themselves. It is because the program is designed to make sure that people will fail. 68% of Public assistance applicants are denied benefits, and most of them are denied because they cannot get through this program.<sup>7</sup>

There are ways that this program can be adjusted to meet the needs of the applicants while still requiring them to look for work. The most obvious actions would be for the County to start accepting the hand delivery of a resume as an application and open calls as an interview. The County needs to adjust with the times.

A deeper question is what the program is actually accomplishing, even when it “succeeds.” The work that is generated by these searches is often low wage jobs that keep people in poverty. They do not improve the lives of the applicants, and they do not keep them off of public benefits. Maybe focusing on job skills training would be a better option in terms of long term solutions. If applicants can be trained to do different kinds of work, they might be able to find a better job that would drastically decrease the need for governmental assistance.

## **Recipient**

When an applicant is fortunate enough to get through Jobs Club but does not have a job at the end of the program, they are placed into workfare. Workfare is when the local Department of Social Services places recipients on work sites in the public or non-profit sector to work for their temporary assistance grant.<sup>8</sup> The Comprehensive Employment Division (CED) of the Erie County Department of Social Services is in charge of the program. The CED makes sure that all participants are assigned an employment counselor who develops the individual's employment plan. That counselor then assigns the individual their work activities.<sup>9</sup> Workfare workers are everything from cleaners to volunteers in senior centers.<sup>10</sup>

When recipients begin Workfare, they sign a document agreeing to all of the rules. They must report to the assigned worksite on the date given to them by their employment counselor. They must also complete all hours that they have been assigned for each month. If the employee gets ill or there is a death in the family, they have to make up the hours that were missed that month. The employee cannot refuse any assignment if it is "reasonable" or be insubordinate in any way. If they are terminated from their workfare site for any reason, they can be sanctioned and can lose their benefits.<sup>11</sup>

Although the Department of Social Services says that Workfare is a great program that decreases the need for public assistance, there are many complaints about it, including the amount of hours assigned to the participants. Hours of each participant should be calculated through a special equation. The County should add the Temporary Assistance and Food Stamps and then divide it by the minimum wage. This gives the County the amount of hours that can be worked in manual labor. Often times, a person will be assigned 30 hours of straight manual labor when they should have only had 16 hours in that field and then a different placement.<sup>12</sup> This type of placement is against the law, and yet if a worker complains, she may be accused of being insubordinate.

Some of the other complaints surrounding Workfare include complaints about termination for failure to comply with employment rules, particularly for insubordination. The problem here is that if an employer says you are insubordinate, even if your "insubordination" was actually the refusal to do an inappropriate assignment, you will be terminated and your benefits will most likely be cut off.<sup>13</sup> It is also not uncommon for recipients to be terminated for missing their workfare assignment because they were attending another program assigned to them by their employment counselor. There is not enough communication between the different County offices, and the recipient suffers.<sup>14</sup>

## **Disabled Applicants and Recipients**

One complaint that seems to be a constant through the applicant and recipient process is the County's disregard for people with disabilities.<sup>15</sup> In the applicant stage, you often see inappropriate assessments. People are placed into jobs club when they really should be classified as work exempt due to mental and/or physical conditions. These assignments may violate the Americans with Disabilities Act (ADA). The ADA is meant to make sure that people who have disabilities are not discriminated against. It requires equal opportunities for participation to people with disabilities, as well as requiring agencies to make reasonable accommodations and modifications to accessibility for people with disabilities.<sup>16</sup>

There are many instances where applicants denied benefits for failure to comply with work programs have requested a Fair Hearing. In a 2008 Fair Hearing decision, the court decided that the Department of Social Services was wrong in its denial of public assistance to the appellant because the appellant was visibly mentally ill. The Administrative Law Judge (ALJ) found that there was sufficient evidence to support the Appellant's assertion of mental illness and the County's knowledge of that mental illness.<sup>17</sup> In an earlier decision issued by the Office of Temporary and Disability Assistance, the ALJ, using 18 NYCRR 351.26, found that when an applicant or recipient has a physical or mental condition that prevents compliance, the County's decision to deny benefits is wrong.<sup>18</sup>

## **Fair Hearings**

It is difficult to address the problems that are identified in the Workfare program by participants when the Department of Social Services is adamant in their claim that it is a great program. There needs to be more oversight of on-site assignments to guarantee that people are appropriately placed. Placements should also be made based on the abilities and needs of the individual. If necessary, individuals should go to Fair Hearings to fight their terminations.

Fair Hearings are crucial in forcing the local County to make appropriate determinations. Too many people get discontinued and do not do anything about it because they are not knowledgeable about their options or rights. People think that they cannot win in a Fair Hearing if they missed an appointment or work day, but that is not true. There are many good cause reasons that would allow someone to overcome a County decision to discontinue benefits. Some examples of good cause include a lack of necessary supportive services, unreasonable travel, family emergencies and lack of childcare.<sup>19</sup> People need to be made aware of their right to disagree with the County and fight for their benefits.

And yet more Fair Hearings cannot be the only answer. The problems addressed in many of these Fair Hearings have been long standing and are

still prevalent. The individual Fair Hearing addresses the need of the single recipient, but that is not enough. The County must improve its rules and its administration of them; if it does so, far fewer Fair Hearings will be necessary.

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<sup>1</sup> Erie County Works, essential departments. Erie County's Welfare to Work Initiative. <http://www.erie.gov/depts/health/welfare.phtml>

<sup>2</sup> 18 NYCRR 385.9

<sup>3</sup> Department of Social Services. Safety Net Accelerated Job Search Program Rules.

<sup>4</sup> Department of Social Services. Safety Net Accelerated Job Search Program Rules.

<sup>5</sup> DSS Dialog Meeting. December 2008

<sup>6</sup> Neighborhood Legal Services, Inc. Accelerated Job Search attendance records. 2009.

<sup>7</sup> Neighborhood Legal Services, Inc.

<sup>8</sup> Neighborhood Legal Services, Inc. Public Benefits. 2003-2008.

<http://www.nls.org/pdf/welmanul.pdf>

<sup>9</sup> Department of Social Services. Comprehensive Employment Division.

<http://www.erie.gov/depts/socialservices/cep.asp>

<sup>10</sup> Erie County Works, essential departments. Erie County's Welfare to Work Initiative.

<http://www.erie.gov/depts/health/welfare.phtml>

<sup>11</sup> Department of Social Services. Employment Program Rules.

<sup>12</sup> Neighborhood Legal Services, Inc.

<sup>13</sup> Neighborhood Legal Services, Inc.

<sup>14</sup> Neighborhood Legal Services, Inc.

<sup>15</sup> Neighborhood Legal Services, Inc.

<sup>16</sup> Empire Justice Center. An Advocates Guide to the Welfare Work Rules. January 2008.

<sup>17</sup> NYS OTDA. Fair Hearing # 5093273Q

<sup>18</sup> NYS OTDA. Fair Hearing # 4557620Z

<sup>19</sup> Neighborhood Legal Services, Inc. Public Benefits. 2003-2008.

<http://www.nls.org/pdf/welmanul.pdf>