

**CHAPTER 187. SUPPORT FROM RELATIVES NOT
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Cross References

This chapter cited in 55 Pa. Code § 125.1 (relating to policy); 55 Pa. Code § 153.44 (relating to procedures); 55 Pa. Code § 171.21 (relating to policy); 55 Pa. Code § 183.91 (relating to LRR, parent of an AFDC minor parent and stepparent deductions); 55 Pa. Code § 183.104 (relating to deletions from the budget group); and 55 Pa. Code § 257.21 (relating to policy).

SUPPORT PROVISIONS FOR CASH ASSISTANCE**§ 187.21. General policy.**

Legal bases for support requirements. The Support Law (62 P. S. §§ 1971—1977) provides authority to the courts to order or direct support to needy individuals from LRRs upon petition from the needy individual or the Department. The Public Welfare Code (62 P. S. §§ 101—1503) requires the Department to grant assistance only to those individuals who apply for and meet all conditions of eligibility. By law, then, LRRs will be a potential resource to individuals applying for or receiving assistance. The Support Law (62 P. S. §§ 1971—1977),

23 Pa.C.S. §§ 4301—5104 and 7101—8415, and the Public Welfare Code (62 P. S. §§ 101—1503) mesh to make it mandatory to explore and develop the resource that an LRR may provide to an individual. Under the child support program, support collection and paternity determination services will also be made available upon request to individuals who are not applying for or receiving assistance. The domestic relations section in each county has been designated to process requests for support services.

Authority

The provisions of this § 187.21 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 5543 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33) (42 U.S.C.A. § 653(p)); the Federal TANF regulations in 45 CFR 260.10—265.10; and the Domestic Relations Code, 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418.

Source

The provisions of this § 187.21 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended March 7, 1980, effective April 1, 1980, 10 Pa.B. 977; amended October 22, 1982, effective October 23, 1982, 12 Pa.B. 3782; amended April 8, 1983, effective April 9, 1983, 13 Pa.B. 1259; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (252613), (252614), and (261253).

Notes of Decisions

Enforcement of Child Support Obligation

The Department of Public Welfare's standing to enforce an unwed recipient's right to receive child support payments from a noncustodial parent derives from state statute, where the custodial parent must, as a condition precedent to receipt of benefits on behalf of the family filing unit, assign to the State any right to receive child support and assist in the collection of that support. *Middleton/Department of Public Welfare v. Robinson*, 728 A.2d 368 (Pa. Super. 1999).

The receipt of public aid can never be an "unusual circumstance" which permits deviation from the support guidelines. *Sanders v. Lott*, 630 A.2d 438 (Pa. Super. 1993).

The language of the Code does not mandate that the DPW and only the DPW explore, develop and compel assistance which a legally responsible relative may provide to an assistance recipient. Rather, under § 1973 of the Support Law (62 P. S. § 1973) any person or public body or agency having an interest in the case can petition a common pleas court to compel financial assistance. *Mays v. Department of Public Welfare*, 448 A.2d 1194 (Pa. Cmwlth. 1982).

§ 187.22. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Arrears—Past due and unpaid support.

BCSE—Bureau of Child Support Enforcement—The organizational unit in this Commonwealth responsible for supervising the State Plan for Child Support Enforcement under Title IV-D of the Social Security Act (42 U.S.C.A. §§ 651—669b).

Budget group—One or more related or unrelated individuals who occupy a common residence or would occupy a common residence if they were not homeless and whose needs and eligibility are considered together in determining eligibility for cash assistance under one category of assistance.

CAO—County assistance office—The local office of the Department responsible for the determination of eligibility for cash, Food Stamps and MA Programs.

Cash assistance allowance—The monthly family size allowance, reduced by the net income of the budget group. The family size allowance is described under § 175.23(a) (relating to requirements).

DRS—Domestic relations section—The division of a court of common pleas responsible for establishing and enforcing support orders.

Domestic violence—One or more of the following:

- (i) Physical acts that resulted in, or threatened to result in, physical injury to the individual.
- (ii) Sexual abuse.
- (iii) Sexual activity involving a dependent child.
- (iv) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.
- (v) Threats of, or attempts at, physical or sexual abuse.
- (vi) Mental abuse.
- (vii) Neglect or deprivation of medical care.

Establishing paternity—The process that determines the legal father of a child.

LRR—Legally responsible relative—The spouse, including common-law, of the applicant or recipient of cash assistance, or the biological or adoptive parent of an unemancipated minor child for whom cash assistance is sought or received.

Obtaining support—Establishing, modifying or enforcing a support order.

Support—A judgment, decree or order whether temporary, final or subject to modification, imposed or imposable by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child or spouse, or both, which provides for monetary support, health care, arrears or reimbursement, and which may include other relief.

Unemancipated minor child—An individual who is under 18 years of age, or an individual 18 years of age or older but under 21 years of age, who has not graduated from high school, is not married and is in the care and control of a parent or caretaker.

Authority

The provisions of this § 187.22 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 5543 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33) (42 U.S.C.A. § 653(p)); the Federal TANF regulations in 45 CFR 260.10—265.10; and the Domestic Relations Code, 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418.

Source

The provisions of this § 187.22 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended October 22, 1982, effective October 23, 1982, 12 Pa.B. 3782; amended February 15, 1985, effective February 16, 1985, 15 Pa.B. 573; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial page (261254).

Cross References

This section cited in 55 Pa. Code § 141.53 (relating to eligibility based on domestic violence); 55 Pa. Code § 187.27 (relating to waiver of cooperation for good cause); and 55 Pa. Code § 281.2 (relating to definitions).

§ 187.23. Requirements.

(a) *Applicability.* This chapter applies to applicants for and recipients of cash assistance if there is: The reported absence of a parent from the home of an unemancipated minor child; a putative father for an unemancipated minor child; or a spouse absent from the home. The absence of a parent from the home is determined according to the requirements under § 153.44(a) (relating to procedures).

(b) *Cooperation requirements for child support.* As a condition of eligibility for cash assistance, every applicant or recipient seeking or receiving cash assistance on behalf of an unemancipated minor child shall cooperate in establishing paternity of an unemancipated minor child with respect to whom assistance is sought and cooperate in obtaining support from an LRR for the unemancipated minor child, unless the applicant or recipient establishes good cause for failing to do so. Cooperation includes taking the following actions:

(1) Identifying the parents of an unemancipated minor child for whom assistance is sought or received, including appearing for scheduled genetic testing with the child and submitting to the testing.

(i) Failure of the mother to identify by name the father of an unemancipated minor child shall create a presumption of noncooperation which may be rebutted only by clear and convincing evidence.

(ii) If the applicant or recipient provides the names of two putative fathers subsequently excluded from paternity by genetic testing, the second exclusion shall create a presumption of noncooperation, which may be rebutted only by clear and convincing evidence.

(2) Keeping scheduled appointments with the Department or the DRS.

(3) Providing truthful and accurate information and documents requested by the Department or the DRS.

(i) When the whereabouts of a parent or putative father are unknown, the applicant or recipient will be required to take whatever steps are appropriate to the individual circumstances to locate the missing parent or putative father. This may include contacting relatives and friends for information about the whereabouts of the parent or putative father or giving consent to the CAO to contact other agencies, relatives and other individuals, or possible employers and similar resources.

(ii) The CAO will provide whatever help is appropriate to the individual circumstances of the applicant or recipient to assist in locating the missing parent or putative father and supplement the efforts of the applicant or recipient by checking appropriate governmental records.

(iii) Together, the CAO and the applicant or recipient will plan and agree on the specific steps to be taken to locate the missing parent or putative father. Assistance will be authorized or continued on the agreement of the applicant or recipient to take the specific steps within the time set for doing so.

(4) Signing and returning any forms requested by the Department or the DRS.

(5) Appearing as a witness and providing testimony at judicial and other hearings as requested by the DRS.

(6) Paying to the Department any support payment received directly from an absent parent after an assignment of support has been made.

(c) *Cooperation criteria for spousal support.* As a condition of eligibility for cash assistance, every applicant or recipient seeking or receiving cash assistance on behalf of himself and for whom there is an absent spouse shall cooperate in obtaining support unless the applicant or recipient establishes good cause for failing to do so. Cooperation includes the following:

(1) Naming the absent spouse.

(2) Keeping scheduled appointments with the Department or the DRS.

(3) Providing truthful and accurate information and documents requested by the Department or the DRS.

(i) When the whereabouts of a spouse is unknown, the applicant or recipient shall take whatever steps are appropriate to the individual circumstances to locate the missing spouse. This may include contacting relatives and friends for information about the whereabouts of the spouse or giving consent to the CAO to contact other agencies, relatives and other individuals or possible employers and similar resources.

(ii) The CAO will provide whatever help is appropriate to the individual circumstances of the applicant or recipient to assist in locating the missing spouse and supplement the efforts of the applicant or recipient by checking appropriate governmental records.

(iii) Together, the CAO staff and the applicant or recipient will plan and agree on the specific steps to be taken to locate the missing spouse. Assistance will be authorized or continued on the agreement of the applicant or recipient to take the specific steps within the time set for doing so.

(4) Signing and returning any forms requested by the Department or the DRS.

(5) Appearing as a witness and providing testimony at judicial and other hearings as requested by the DRS.

(6) Paying to the Department any support payment received directly from an absent spouse after an assignment of support has been made.

(d) *Cooperation prior to authorization.* Except as provided in paragraphs (3) and (4), every applicant or recipient of cash assistance shall cooperate in establishing paternity and obtaining support. The applicant or recipient shall:

(1) Appear before the DRS or other applicable division of the court of common pleas and provide to the CAO certification from the DRS of cooperation by the applicant or recipient of cash assistance in establishing paternity and in obtaining support.

(2) Cooperate with the procedures established for the county when a waiver of the personal appearance requirement is in place. The Secretary is authorized to waive the personal appearance requirement under paragraph (1) if another procedure would be as effective and efficient and a family court or DRS requests a waiver.

(3) In the case of a newborn, cooperate with the requirements under § 133.23(b)(4)(v) (relating to requirements).

(4) File a good cause claim. The cooperation requirements are waived from the time a good cause claim is filed until the CAO, court of common pleas or DRS makes a determination on the claim. If the CAO, court of common pleas or DRS determines that good cause exists, the cooperation requirements are waived as long as the good cause exists.

(e) *Assignment of support rights.* Acceptance of cash assistance shall operate as an assignment to the Department, by operation of law, of the assistance recipient's rights to receive support, on the recipient's own behalf and on behalf of any family member with respect to whom the recipient is receiving cash assistance. The assignment shall be effective only up to the amount of assistance received. The assignment shall take effect at the time that the individual is determined to be eligible for assistance. Upon termination of assistance payments, the assignment of support rights shall terminate, provided that any amount of unpaid support obligations shall continue as an obligation to and collectible by the Department to the extent of any unreimbursed assistance consistent with Federal law.

Authority

The provisions of this § 187.23 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 5543 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33) (42 U.S.C.A. § 653(p)); the Federal TANF regulations in 45 CFR 260.10—265.10; and the Domestic Relations Code, 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418.

Source

The provisions of this § 187.23 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended March 17, 1978, effective December 1, 1977, 8 Pa.B. 757; amended February 2, 1979, effective March 5, 1979, 9 Pa.B. 395; corrected March 2, 1979, effective March 5, 1979, 9 Pa.B. 745; amended March 7, 1980, effective April 1, 1980, 10 Pa.B. 977; amended July 11, 1980, effective September 3, 1980, 10 Pa.B. 2983; amended October 22, 1982, effective October 23, 1982, 12 Pa.B. 3782; amended October 4, 1991, effective October 5, 1991, apply retroactively to November 1, 1989, 21 Pa.B. 4643; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (244863) to (244868) and (261255) to (261256).

Notes of Decisions

Enforcement of Child Support Obligation

The Department of Public Welfare's standing to enforce an unwed recipient's right to receive child support payments from a noncustodial parent derives from State statutes, where a custodial parent must, as a condition precedent to receipt of benefits on behalf of the family filing unit, assign to the state any right to receive child support and assist in the collection of that support. *Middleton/Department of Public Welfare v. Robinson*, 728 A.2d 368 (Pa. Super. 1999).

Good Cause for Refusal to Cooperate

Notwithstanding testimony by a welfare recipient's mother, sister-in-law, and landlady as to harassment by the putative father which impaired her ability to care for her children, given her failure to submit a physician's statement corroborating her testimony of a visit to the physician to secure a prescription for a tranquilizer, it was not a capricious disregard of competent evidence for the hearing examiner to find that the recipient had failed to prove good cause under subsection (a). *Bootes v. Department of Public Welfare*, 439 A.2d 883 (Pa. Cmwlth. 1982).

Where an applicant for cash assistance claimed that she had "good cause" for refusing to cooperate in obtaining child support from her son's father on grounds that the pursuit of support would result in potential physical and emotional harm to herself and her son, but failed to timely submit requested additional documentation in support of her "good cause" petition, the applicant was properly found ineligible for the cash assistance benefit. *Renee v. Department of Public Welfare*, 702 A.2d 575 (Pa. Cmwlth. 1997); appeal denied 725 A.2d 1224 (Pa. 1998).

Cross References

This section cited in 55 Pa. Code § 125.1 (relating to policy); 55 Pa. Code § 133.23 (relating to requirements); 55 Pa. Code § 141.21 (relating to policy); 55 Pa. Code § 183.901 (relating to putative father/voluntary child support—statement of policy); 55 Pa. Code § 187.25 (relating to notification to the applicant or recipient); 55 Pa. Code § 187.26 (relating to noncooperation); and 55 Pa. Code § 187.73 (relating to requirements).

§ 187.24. [Reserved].**Source**

The provisions of this § 187.24 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended February 2, 1979, effective March 5, 1979, 9 Pa.B. 395; corrected March 2, 1979, effective March 5, 1979, 9 Pa.B. 745; corrected May 4, 1979, effective March 5, 1979, 9 Pa.B. 1469; amended December 28, 1979, effective February 27, 1980, 9 Pa.B. 4255; amended March 7, 1980, effective April 1, 1980, 10 Pa.B. 977; amended October 22, 1982, effective October 23, 1982, 12 Pa.B. 3782; amended August 26, 1988, effective November 1, 1988, 18 Pa.B. 3921; reserved September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (261256) and (244871) to (244878).

Cross References

This section cited in 55 Pa. Code § 153.45 (relating to joint or shared custody eligibility determination—statement of policy); 55 Pa. Code § 187.23 (relating to requirements); 55 Pa. Code § 187.74 (relating to procedures); and 55 Pa. Code § 287.24 (relating to procedures).

§ 187.25. Notification to the applicant or recipient.

(a) *Cash assistance sought or received for an unemancipated minor child.* Before requiring cooperation under § 187.23(b) (relating to requirements), the CAO will provide oral and written notice of the cooperation requirements to the applicant or recipient. The oral and written notice will advise the applicant or recipient of the following:

- (1) The potential benefits that the unemancipated minor child may derive from the cooperation of the applicant or recipient in establishing paternity and obtaining support.
- (2) Cooperation is a condition of eligibility.
- (3) Failure to cooperate without good cause will result in the reduction of the cash assistance allowance by 25%.
- (4) The right to claim good cause, good cause circumstances, proving the good cause claim, and the good cause determination under § 187.27 (relating to waiver of cooperation for good cause).
- (5) The CAO will waive the cooperation requirements when the CAO, the court of common pleas or the DRS determines that good cause exists.
- (6) A finding of noncooperation of an applicant or recipient does not affect the LRR's duty to pay support.

(b) *Cash assistance sought or received for a spouse.* Before requiring cooperation under § 187.23(c), the CAO will provide oral and written notice to the applicant or recipient of the cooperation requirements and the right to claim good

cause. The oral and written notice will advise the applicant or recipient of the information specified in subsection (a).

Authority

The provisions of this § 187.25 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 5543 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33) (42 U.S.C.A. § 653(p)); the Federal TANF regulations in 45 CFR 260.10—265.10; and the Domestic Relations Code, 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418.

Source

The provisions of this § 187.25 adopted September 13, 2002, effective retroactively to March 3, 1997, with the exception of subsections (a), (a)(3) and (b), which are effective September 14, 2002, 32 Pa.B. 4435.

§ 187.26. Noncooperation.

(a) *Determination of noncooperation by the CAO, court of common pleas or DRS.* The CAO, court or DRS may make the determination of whether an applicant or recipient refused to cooperate without good cause. The court of common pleas of each county will have the option of hearing appeals from any determination of its DRS that an applicant or recipient has not cooperated in accordance with § 187.23 (relating to requirements). If the court declines to exercise the option to hold hearings on the appeals, the procedures in subsection (b) apply. If the CAO determines noncooperation without good cause, the procedures in subsection (c) apply. Subsection (c)(1) applies to applicants. Subsection (c)(2) applies to recipients. The procedures in subsection (c)(1) or (2) also apply when the court declines to hold the noncooperation hearing. If the court, after notice and an opportunity to be heard, determines that the applicant or recipient refused to cooperate without good cause, the Department will implement the court's order, as specified in subsection (d).

(b) If the court or the DRS determines that the applicant or recipient has failed to cooperate, without good cause, with § 187.23, the court or the DRS will provide notice of any noncooperation determination to the CAO along with notice of its decision to opt not to hold a hearing on noncooperation. Appropriate court personnel shall be made available to provide testimonial evidence by telephone testimony at the time and location set by the Department for the Departmental appeal hearing. Upon receipt of the notice from the court or the DRS, the CAO shall proceed in accordance with subsection (c)(1) or (2) depending upon whether the individual is an applicant for or recipient of assistance.

(c) If the CAO determines that the applicant or recipient has failed to cooperate, without good cause, with § 187.23, or upon receipt of a notice of a noncooperation determination by the court or DRS under subsection (b), the CAO will:

(1) In the case of an applicant:

(i) Provide notice to the applicant of the noncooperation determination, the basis for the noncooperation determination and the reduction of the cash assistance allowance by 25% effective upon authorization of assistance.

(ii) Provide notice to the applicant of the right to appeal to the Department's Bureau of Hearings and Appeals under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

(iii) Authorize the cash assistance allowance reduced by 25% effective upon authorization of assistance.

(iv) Authorize the full cash assistance allowance if so ordered as a result of a decision rendered by the Bureau of Hearings and Appeals, as a result of a good cause claim initiated by the applicant, or as a result of the applicant cooperating with the support requirements.

(2) In the case of a recipient:

(i) Provide notice to the recipient of the noncooperation determination, the basis for the noncooperation determination, and the reduction of the cash assistance allowance by 25% 10 days after the date of the notice.

(ii) Provide notice to the recipient of the right to appeal to the Bureau of Hearings and Appeals under Chapter 275.

(iii) Authorize the reduction of the cash assistance allowance by 25% effective 10 days after the date of the notice, unless the recipient has invoked his right to a hearing and has filed an appeal within the 10-day period. If the recipient has invoked his right to a fair hearing within the 10-day period, cash assistance will not be reduced pending a decision in the hearing.

(iv) Initiate recovery of the assistance granted pending the fair hearing if the Department action is sustained.

(d) *Determination of noncooperation by the court.* A hearing or appeal with respect to the recommendation order of noncooperation directed by the court or DRS will be conducted by the court in accordance with the 231 Pa. Code (relating to rules of civil procedure).

(1) Upon receipt of a court order issued by a court of common pleas, the CAO will implement the order within 10 days of receipt. The CAO will:

(i) Provide notice to the applicant or recipient of the court order and the cash assistance allowance reduction by 25%.

(ii) Provide notice to the applicant or recipient of the right to appeal to the Bureau of Hearings and Appeals under Chapter 275 and that the right of appeal to the Bureau of Hearings and Appeals does not include appeal of a court order in which noncooperation has been determined by the court. The

right to appeal in this instance to the Bureau of Hearings and Appeals under Chapter 275 is restricted to the calculation of the assistance allowance.

(iii) For an applicant, authorize the cash assistance allowance reduced by 25% effective upon authorization of assistance. For a recipient, the CAO will reduce the cash assistance allowance by 25% effective 10 days after the date of the notice, unless the recipient has invoked his right to a hearing and has filed an appeal within the 10-day period. If the recipient has invoked his right to a fair hearing within the 10-day period, the cash assistance allowance will not be reduced pending a decision in the hearing.

(2) If the court order directs the Department to rescind the sanction for noncooperation, the Department will implement the order immediately upon receipt.

Authority

The provisions of this § 187.26 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 5543 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33) (42 U.S.C.A. § 653(p)); the Federal TANF regulations in 45 CFR 260.10—265.10; and the Domestic Relations Code, 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418.

Source

The provisions of this § 187.26 adopted September 13, 2002, effective retroactively to March 3, 1997, with the exception of subsections (c)(1)(i) and (iii) and (c)(2)(i) and (iii) and (d)(1)(i) and (iii), which take effect September 14, 2002, 32 Pa.B. 4435.

§ 187.27. Waiver of cooperation for good cause.

(a) *Good cause circumstances.* Cooperation requirements may be waived for good cause. Good cause circumstances include the following:

- (1) The child was conceived as a result of incest or rape.
- (2) Legal proceedings for the adoption of the child are pending before a court.
- (3) The applicant or recipient of cash assistance is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption and the discussions have not progressed for more than 3 months.

(4) Action to establish paternity or obtain child or spousal support would make it more difficult for the individual or family member to escape domestic violence, as defined in § 187.22 (relating to definitions), or unfairly penalize the individual who has been victimized by the violence, or who is at risk of further violence.

(b) *Proving the good cause claim.* The applicant or recipient of cash assistance shall provide relevant verification.

(1) A good cause claim may be verified with the following types of evidence:

(i) A birth certificate or medical or law enforcement records which indicate that the child was conceived as the result of incest or rape.

(ii) Court documents or other records which indicate that legal proceedings for adoption are pending.

(iii) A written statement from a public or licensed private social agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to relinquish the child for adoption.

(iv) Medical records which indicate emotional health history and present emotional health status of the applicant or recipient or the child for whom support would be sought; or, written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the applicant or recipient or the child for whom support would be sought. Supportive evidence submitted from a mental health professional will be defined as statements written by individuals who have obtained licensure or certification, if applicable, or have received a degree in defined areas of mental health including psychiatry, social work, psychology, nursing, occupational therapy or recreational therapy.

(v) Court, medical, criminal, child protective services, social services, psychological or law enforcement records which verify domestic violence, as defined in § 187.22.

(vi) Statements from individuals other than the applicant or recipient with knowledge of the good cause circumstances, including a domestic violence service provider, a medical, psychological or social service provider, a law enforcement professional, a legal representative, an acquaintance, friend, relative or neighbor of the claimant or other individual.

(vii) *Domestic Violence Verification Form*. The CAO and applicant or recipient will complete this form for all good cause claims based on domestic violence in accordance with one of the following circumstances:

(A) To accompany acceptable verification as specified in subparagraph (iv), (v) or (vi) that an applicant or recipient has provided.

(B) To grant good cause upon written consent of the applicant or recipient based on verification of the good cause claim provided by a third party on the form.

(C) To grant good cause for up to 6 months when an applicant or recipient affirms she is at risk of domestic violence and unable to safely obtain other evidence to verify the claim of domestic violence within the established time frames for providing verification.

(2) When the applicant or recipient of cash assistance initiates a claim of good cause, the CAO, court or the DRS may provide assistance with obtaining verification. If requested by the applicant or recipient, the CAO, court or DRS will provide assistance in securing the needed evidence by advising how to

obtain specific documents that may be available and by undertaking to obtain specific documents the applicant or recipient is not able to obtain. The CAO may not contact the putative father or noncustodial parent to verify good cause based on a claim of domestic violence.

(3) An applicant or recipient shall provide verification of the good cause claim, as specified under paragraph (1)(iv)—(vii)(A) and (B), within 30 days from the date the claim is made, except when the applicant or recipient cannot otherwise provide verification of the good cause claim as specified in paragraph (1)(vii)(C).

(i) In the case of an applicant, assistance will be authorized no later than 30 days following application when the applicant is claiming good cause and verification is not readily available or pending from a third party.

(ii) In the case of a recipient, the CAO will continue assistance if verification is not provided within 30 days and the delay is due to a third party.

(c) *Good cause determination.* The CAO, court or the DRS will make a determination within 45 days from the day the claim was initiated by the applicant or recipient of cash assistance. The CAO, court or the DRS may approve additional days for the determination to be completed.

(1) If the CAO makes a determination on a good cause claim, the CAO will notify the applicant or recipient of cash assistance in writing of the final determination regarding the claim of good cause and the basis therefor and of the right to appeal under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings). If the good cause claim is denied, neither the Department nor the Bureau of Child Support Enforcement will attempt to establish paternity or obtain support for at least 30 days after the individual has been informed orally and in writing of the denial of the good cause claim.

(2) If the court of common pleas or DRS makes a determination on a good cause claim, the DRS will notify the applicant or recipient of cash assistance and the CAO of the final determination and the basis therefor and of the right to appeal under Chapter 275.

(3) When the CAO, court of common pleas or the DRS approve a waiver of the cooperation requirement based on a claim of good cause, the DRS will not attempt to establish paternity or obtain support.

(4) When good cause is determined to exist, the CAO will review the circumstances upon which the good cause determination is based, at least every 6 months.

(i) If the good cause waiver was granted based on verification, no additional verification is required if circumstances have not changed since approval of the initial waiver.

(ii) If the good cause waiver was granted based on the recipient's affirmation under subsection (b)(1)(vii)(C), and she is unable to provide verification as specified in subsection (b)(1)(iv)—(vii)(A) and (B), the CAO will

make a determination of good cause based on a current assessment of the recipient's circumstances. This assessment will be completed by an individual with domestic violence training and substantiated by completion of the verification of good cause based on the domestic violence form under subsection (b)(1)(vii).

Authority

The provisions of this § 187.27 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 5543 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33) (42 U.S.C.A. § 653(p)); the Federal TANF regulations in 45 CFR 260.10—265.10; and the Domestic Relations Code, 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418.

Source

The provisions of this § 187.27 adopted September 13, 2002, effective retroactively to July 3, 2002, 32 Pa.B. 4435.

Cross References

This section cited in 55 Pa. Code § 141.53 (relating to eligibility based on domestic violence); and 55 Pa. Code § 187.25 (relating to notification to the applicant or recipient).

SUPPORT PROVISIONS FOR MA FOR THE CATEGORICALLY NEEDY

§ 187.71. Policy.

Support from LRR's. Legally responsible relatives will be limited to the spouse of the applicant and the natural or adoptive parent or parents of an unemancipated minor child. However, there will be no relative responsibility by the relatives of the following children for MA purposes:

- (1) Adoptive or natural parents of a child, regardless of age, adopted under the provisions of the act of June 13, 1967 (P. L. 31, No. 21) (62 P. S. §§ 771—774) known as the Adoption Opportunities Act. The adoptive parents of children adopted under the provisions of the Adoption Opportunities Act will be issued a “Certificate of Subsidized Adoption” card, CY 931, by the Child Welfare Office, which will be sufficient proof of adoption under the terms of this act.
- (2) Parents of a child, 18 to 21 years of age, when the child receives MA services in the MH/MR facility.
- (3) Parents of a child, regardless of age, or a spouse when the child or spouse is receiving SSI payments. The parent or spouse will be liable in determining MA eligibility and payment until the child or spouse receives SSI ben-

efits, at which time, the child or spouse will be categorically needy on the basis of SSI eligibility and there will be no further relative liability for MA purposes.

Source

The provisions of this § 187.71 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180.

Cross References

This section cited in 55 Pa. Code § 187.73 (relating to requirements).

§ 187.73. Requirements.

The requirements of § 187.23 (relating to requirements) will apply as modified by § 187.71 (relating to policy).

Source

The provisions of this § 187.73 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180.

§ 187.74. Procedures.

(a) For nonapplicant spouse and the natural or adoptive parent or parents of an unemancipated minor child living with the applicant, PA Manual 175 and § 183.64 (relating to income averaging), the method of arriving at assistance, will apply.

(b) For the spouse of an applicant and the natural or adoptive parent or parents of an unemancipated minor child not living with the applicant, the following method will be used to determine financial ability to support:

(1) The dependents living with the spouse/parent will be determined. Minor children under 18 will always be included. Other persons will be included if they are without income of their own or the spouse/parent requests their income be added to his income.

(2) Total net income of the spouse/parent including that of his dependents whose income must be taken into account will be determined. Net income from self-employment or business is profit before tax deductions. Net income from other employment is gross less \$20 per month for work expenses.

(3) The amount the LRR is paying for the support of his spouse or his minor child or children outside his home will be deducted.

(4) The appropriate figure from the following income scale will be selected and subtracted from the total net income:

No. of Persons Dependent Upon LRR's Income	1	2	3	4	5	6	Each Additional Person
Net Monthly Income	\$173	\$260	\$317	\$373	\$423	\$459	Add \$54

- (5) The appropriate fraction will be applied to the remainder:
- (i) $1/2$ when the assistance unit includes one legal dependent.
 - (ii) $2/3$ when the assistance unit includes two legal dependents.
 - (iii) $3/4$ when the assistance unit includes three or more legal dependents.
- (6) The expected contribution will be the resulting figure or the total allowances for the persons for whom the LRR is legally responsible, whichever is lesser.
- (c) The total allowances for the person or persons for whom the relative is legally responsible will be the difference between the family size allowances with the person or persons in the assistance unit, excluding special needs allowances, and what the allowances would be if the person or persons were not included in the assistance unit. When it has been determined that an LRR is financially able to provide support, the client will be expected to either contact the LRR directly to arrange for the amount of the expected contribution or to give consent for the

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County Office to contact the LRR. If the expected contribution from the relative is secured, it will become available to the client. Court action will be required in accordance with the procedures in § 187.24 (relating to procedures) whenever the following occur:

- (1) The total amount of the expected contribution is not secured.
- (2) The client is unwilling to contact the LRR directly and objects to the Department contacting the LRR.
- (d) Assistance will be continued until the court makes a decision. Any amount that the LRR is actually contributing will be considered income available to the client.

Source

The provisions of this § 187.74 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180.

**SUPPORT PROVISIONS FOR MA
FOR THE MEDICALLY NEEDY**

§ 187.81. Policy.

Support from LRR's. Policy regarding support from the LRR's will be as follows:

- (1) Legally responsible relatives will be limited to the spouse of the applicant and the natural or adoptive parent or parents of an unemancipated minor child. However, there will be no relative responsibility by the relatives of the following children for MA purposes:
 - (i) Adoptive or natural parents of a child, regardless of age, adopted under the provisions of the act of June 13, 1967 (P. L. 31, No. 21) (62 P. S. §§ 771—774) known as the Adoption Opportunities Act. The adoptive parents of children adopted under the provisions of the Adoption Opportunities Act will be issued a "Certificate of Subsidized Adoption" card, CY 931, by the Child Welfare Office, which will be sufficient proof of adoption under the terms of this act.
 - (ii) Parents of a child, 18 to 21 years of age, when the child received MA services in a MH/MR facility.
 - (iii) Parents of a child, regardless of age, or a spouse when the child or spouse is receiving SSI payments. The parent or spouse will be liable in determining MA eligibility and payment until the child or spouse received SSI benefits, at which time, the child or spouse will be categorically needy on the basis of SSI eligibility and there will be no further relative liability for MA purposes.
- (2) A finding of financial ability to contribute to the applicant group will be made for each such relative except that a relative over 60 years of age will be excluded.

(3) Parent will include the father of a child born out of wedlock only if paternity has been legally established.

(4) The court alone will have the authority to decide that a spouse or parent must provide support and to what extent. If there is an existing court order, or, where appropriate, the Revenue Agent has determined the amount to be paid, no further determination will be needed. The amount of the order that is being paid will be considered as the income of the person.

(5) For cases where there is no existing order, or where an established court order is not being met, the Department has developed regulations for determining the amount a spouse or parent might be expected to contribute towards meeting the cost of the MA care received.

(6) The findings of the Department on the financial ability of a spouse or parent will be exclusively for the purpose of determining the amount of the monthly income in excess of the amount the Department believes is reasonable for the support of himself and others dependent on him.

(7) If the applicant is otherwise eligible and if an immediate finding cannot be made of the financial ability of a legally responsible relative to help meet the medical care costs of his spouse or unemancipated minor children, the client will be eligible for medical assistance for a temporary period, not to exceed such time as a decision can be reached as to the availability of funds from the legally responsible relative.

(8) A determination of ability to support will be made at each redetermination. If it is necessary to determine the LRR's ability to pay before 6 months have passed since the last application of redetermination, the amount the LRR has already paid or has obligated himself to pay since the contribution was last determined will be deducted from the amount arrived at in § 187.84 (relating to procedures) to determine the amount by which the LRR continues to be a resource. If the case was referred to the Claim Settlement Area Office for court action, before the County Office makes a new determination of ability to support and the amount of support expected, it will request the Area Office to report the amount collected and any other pertinent information.

(9) The liability of a parent for children receiving MA services in a mental health or mental retardation facility will be limited to children under 18 years of age.

Source

The provisions of this § 187.81 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180.

§ 187.83. Requirements.

Requirements for seeking support from LRR. Requirements for seeking support from LRR will be as follows:

(1) *Information about the financial circumstances of the LRR.* The statement of the client that the circumstances of the LRR are one of the following

will be acceptable verification that the LRR is financially unable to help, and his financial ability will not need to be determined:

- (i) The relative has six or more dependents, including the LRR himself.
 - (ii) The relative is unemployed or receiving assistance other than SBP.
 - (iii) The earning capacity of the relative is so limited because of physical or mental handicap that there is little likelihood of his ever having enough income to help meet the costs of MA.
 - (iv) The occupation of the relative and the prevailing wage rates for that type of work indicate that there is little likelihood of his having enough income to help meet the cost of MA.
 - (v) The relative is a housewife without income.
 - (vi) The LRR is missing.
- (2) *Missing LRR's.* No efforts will be made to locate a missing LRR if the client states that the current location of the relative is unknown.

Source

The provisions of this § 187.83 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180.

§ 187.84. Procedures.

(a) *Determination of expected contribution.* The contribution expected from a spouse or from a parent of an unemancipated minor child will be determined as follows:

- (1) The allowable dependents living with the spouse parent will be determined. Dependents that may be included are as follows:
 - (i) Minor children for whom the LRR is legally responsible.
 - (ii) Other legal dependent without income.
 - (iii) Other legal dependent with income, providing the LRR so requests.
- (2) Total net income of the spouse parent and his dependents will be determined. Net income from self-employment or business is profit before tax deductions. Net income from other employment is gross income less \$20 per month for work expenses. Income earned under Title I of the Economic Opportunity Act of 1964 (42 U.S.C.A. §§ 2711—2756b) will not be included.
- (3) The following will be deducted from the total determined in paragraph (2):
 - (i) The amount the LRR is paying for the support of a person not living with him, and for whom he or his wife is legally responsible.
 - (ii) The amount the LRR is contributing towards the support of spouse or child.
- (4) If the spouse or parent is an SBP recipient, \$85 will be deducted from the monthly income.
- (5) The appropriate figure will be selected from the following income scale and subtracted from the total net income:

No. of Persons Dependent Upon Relative's Income (Including the Relative)	1	2	3	4	5	6
Net Monthly Income	\$230	\$340	\$400	\$460	\$520	\$580

(6) Six times the resulting figure will be considered to be available for meeting the cost of MA.

(b) *Waiver of expected contribution.* When an LRR has been determined able to contribute according to subsection (a), and it appears unsound, unreasonable, or impracticable to expect the LRR to make the determined contribution, the situation will be presented to the Executive Director or his delegate for a decision as to whether the expected contribution is to be waived. The fact that the scale in subsection (a) does not reflect current living costs will not of itself be a sound basis for waiver. A waiver will be made for a specified period. The basis of the waiver as well as the time period specified will be recorded in the notes section of the Form PA 743 or Form PA 743-R.

(c) *Court action.* The county office will refer a case for court action under the following conditions:

(1) *Legally responsible relative refuses to acknowledge liability for support.* A legally responsible relative who refuses to acknowledge liability for support will be as follows:

(i) An LRR will be considered as refusing to acknowledge liability for support in the following cases:

(A) The LRR fails to provide information about his financial circumstances within 15 days of the date of the request for the information.

(B) The LRR is found to be financially able to contribute but advises the county office that he will not pay or that he will pay only part of the expected contribution.

(ii) In either of the circumstances in clauses (A) and (B), an otherwise eligible client will be found eligible for MA, counting as an available resource only the amount the LRR has agreed to pay. The county office will refer the case to the Claim Settlement Area Office on a Form PA 173-M for collection from the LRR by court action if necessary in accordance with the following:

(A) If the first invoice paid is for inpatient hospital care, hospital-home care, or private nursing home care, the referral will be made at that time.

(B) If the invoices paid are for services other than the three listed in clause (A), then the referral will be made at the end of the quarterly period covered by the identification card. The amount to be collected will be the sum of the invoices paid during that period up to the amount of the expected contribution.

(iii) The LRR's listed on the Form PA 173-M will be only those who refuse to acknowledge liability for support. If the Form PA 173-M indicates that the county office has not computed the amount of the expected contribution, claim settlement will determine the amount of the expected contribution in accordance with subsection (a).

(2) *Legally responsible relative agrees to contribute.* When an LRR agrees to contribute, the expected amount will be counted as another available resource in determining eligibility for MA.

Source

The provisions of this § 187.84 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180.

Cross References

This section cited in 55 Pa. Code § 187.81 (relating to policy).

APPENDIX A. [Reserved]

Source

The provisions of this Appendix A reserved July 11, 1986, effective July 12, 1986, Pa.B. 2524. Immediately preceding text appears at serial pages (29352) to (29353) and (33288).

APPENDIX B. [Reserved]

Source

The provisions of this Appendix B reserved July 11, 1986, effective July 12, 1986, 16 Pa.B. 2524. Immediately preceding text appears at serial page (33289).

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