STATE OF NEW YORK

4266

2019-2020 Regular Sessions

IN ASSEMBLY

February 1, 2019

Introduced by M. of A. HEVESI, BARRON, SEAWRIGHT -- read once and referred to the Committee on Social Services

AN ACT to amend the social services law, in relation to public assistance employment programs for disabled persons; and repealing certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 131 of the social services law is amended by adding a new subdivision 21 to read as follows:

21. In addition to any requirements in section three hundred thirty-two-b of this article, if at any time a local social services district has reason to believe that an applicant for or recipient of public assistance has a disability, which may be evidenced by the fact that an individual has failed to successfully complete the process required to receive or continue to receive public assistance, such local social services district shall offer reasonable accommodations to assist the individual in successfully completing such processes. For the purposes of this subdivision, "disability" shall have the same meaning as set forth in subdivision five of section three hundred thirty of this article.

§ 2. Subdivision 5 of section 330 of the social services law is renumbered subdivision 9 and four new subdivisions 5, 6, 7, and 8 are added to read as follows:

5. "Disability" shall mean a physical or mental impairment that substantially limits one or more major life activities of an individual.

6. "Physical or mental impairment" shall include but not be limited to any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine, as well as

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD01041-01-9

any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

7. "Major life activity" shall include but not be limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, working, as well as the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

8. "Executive function" shall mean a set of mental skills and processes utilized in an individual's daily activities, including but not limited to, impulse control, working memory and mental flexibility.

§ 3. Section 332-b of the social services law, as added by section 148 of part B of chapter 436 of the laws of 1997, paragraph (b) of subdivision 2 as amended by chapter 214 of the laws of 1998 and subdivision 4-a as added by section 1 of part Y of chapter 54 of the laws of 2016, is amended to read as follows:

§ 332-b. Disability program. 1. (a) Upon application and recertification for public assistance benefits, or whenever a district has reason to believe that a [~~physical or mental impairment~~] disability may prevent the individual from successfully completing any process required in to receive or continue to receive public assistance or fully engaging in work activities, the social services district shall inquire whether the individual has any [~~medical condition~~] disability which would limit the individual's ability to successfully complete any process required to receive or continue to receive public assistance or participate in work activities pursuant to this title.

(b) An individual who is eligible to receive comprehensive health services through a special needs plan defined in paragraph (m) or (n) of subdivision one of section three hundred sixty-four-j of this [~~chapter~~] article, regardless of whether such a plan is operating in the individual's social services district of residence, shall be considered disabled and unable to engage in work activities or shall be considered work-limited.

(c) A local social services district that utilizes a screening or any other form of assessment to determine whether or not an individual has a disability shall not condition the eligibility of benefits on the willingness or failure of an individual to complete such screening or assessment. Any screening or assessment offered in a local social services district shall be completed solely at the option of the applicant for or recipient of benefits and such applicant or recipient shall not be denied, sanctioned, or terminated from benefits on the ground that he or she declined to complete such assessment or screening or declined or failed to participate in or obtain a professional evaluation.

2. (a) [~~Under the circumstances set forth in subdivision one of this section~~] If an applicant for or recipient of public assistance has self-identified as having a disability, written notice shall be provided to the individual of the opportunity to provide, within [~~ten~~] fifteen calendar days, any relevant medical documentation, including but not limited to drug prescriptions and reports of the individual's treating health care practitioner, if any; such documentation must contain a

specific diagnosis as evidenced by medically appropriate tests or evaluations and must particularize any work related limitations as a result of any such diagnosis.

(b) If, [~~prior to submitting his or her medical documentation, the individual is referred to a health care practitioner certified by the office of disability determinations of the office of temporary and disability assistance or, if applicable, to the contracted agency or institution by or with which such health care practitioner is employed or affiliated for an examination pursuant to subdivision four of this section, such individual shall make best efforts to bring such documentation to the examination, and in no case shall provide such records to the examining health care practitioner certified by the office of disability determinations or, if applicable, to the contracted agency or institution by or with which such health care practitioner is employed or affiliated later than four business days after such examination; provided that the individual may demonstrate good cause as defined in regulations, for failure to provide such records within the specific time periods~~] **at the time such written notice is provided, the individual does not have any relevant medical documentation described in paragraph (a) of this subdivision, the individual shall be referred to an independent health care practitioner or to a health care practitioner certified by the Office of Disability Determinations of the Department of Social Services for an examination as described in subdivision three of this section**.

[~~3.~~] **(c)** The district [~~may in its sole discretion~~] **shall** accept such **medical** documentation as **described in paragraph (a) of this subdivision, that contains a specific diagnosis as evidenced by medically appropriate tests or evaluations as** sufficient evidence that the individual cannot fully engage in work activities and in such case shall modify work assignments consistent with the findings in such medical documents.

3. The health care practitioner who performs the professional evaluation as described in paragraph (d) of this subdivision shall:

(a) review and consider all records or information provided by the individual or any records or information that are pertinent to the claimed medical condition previously on file with the health care practitioner if such health care practitioner is the individual's primary treating physician;

(b) make a specific diagnosis as to whether the individual has a disabling condition as evidenced by medically appropriate tests or evaluations;

(c) based on the health care practitioner's specific diagnosis, determine whether the individual is:

(i) disabled and unable to engage in work activities pursuant to this title indefinitely or for a stated period of time, in which case the applicant or recipient shall be exempt in accordance with paragraph (a) of subdivision one of section three hundred thirty-two of this title;

(ii) disabled but able to engage in work limited activities with stated limitations pursuant to this title indefinitely or for a stated period of time;

(iii) disabled but able to fully engage in work activities pursuant to this title without limitations either indefinitely or for a stated period of time; or

(iv) not disabled;

(d) render to the individual and the local social services district within ten days of the individual's appointment:

(i) their determination based on medically appropriate tests or evaluations;

(ii) whether such individual has a disability;

(iii) the severity of the disability, if one exists;

(iv) the functional limitations resulting from that disability, if any;

(v) what accommodations, if any, are appropriate and necessary; and

(e) in the event that the health care practitioner identifies a condition, other than the alleged condition, that may interfere with the individual's ability to successfully navigate the application process or fully engage in work activities, the practitioner shall report such condition to the individual and the district as well; and

(f) if, during the professional evaluation it is determined that an individual has a disability, the district shall be required to offer reasonable accommodations not only in the context of a recipient's required work activity, but also with regards to any other process required in connection with receiving public assistance.

4. [~~In instances where the district determines either that the documentation is insufficient to support an exemption from or limitation on work activities or that further medical evaluation is appropriate, the individual shall be referred to a health care practitioner certified by the Office of Disability Determinations of the Department of Social Services for an examination of such individual's medical condition.~~

~~The health care practitioner who performs the examination of the individual shall:~~

~~(a) review and consider all records or information provided by the individual or his or her treating health care practitioner that are pertinent to the claimed medical condition;~~

~~(b) make a specific diagnosis as evidenced by medically appropriate tests or evaluations in determination of the individual's claimed condition;~~

~~(c) render to the individual and the social services district, an opinion, particularizing the presence or absence of the alleged condition; and~~

~~(d) In the event that he or she identifies a condition, other than the alleged condition, that may interfere with the individual's ability to fully engage in work activities, the practitioner shall report such condition; and~~

~~(e) determine whether the individual is:~~

~~(i) disabled and unable to engage in work activities pursuant to this title for a stated period of time, in which case the applicant shall be exempt in accordance with paragraph (a) of subdivision one of section three hundred thirty-two of this title;~~

~~(ii) for a stated period of time, not disabled, but work limited, and able to engage in work activities pursuant to this title, with stated limitations, or~~

~~(iii) neither disabled nor work limited.~~

~~4-a.~~] If the practitioner to whom the individual is referred pursuant to [~~subdivision four or~~] paragraph (b) of subdivision two of this section issues an opinion that differs from the applicant's treating health care practitioner, the practitioner shall provide a written determination that specifies why the practitioner disagrees with the applicant's treating health care practitioner's disability determination and present evidence that supports the opinion.

5. When an applicant or recipient has requested or a social services official has directed a determination pursuant to this section, no

assignment to work activities may be made until completion of such determination, unless the applicant or recipient agrees to a limited work assignment not inconsistent with the medical condition alleged by such person.

6. When an applicant or recipient receives notification of the examining medical professional's disability determination, he or she shall also be notified of his or her right to request a fair hearing within ten days of such notice. If such applicant timely requests a fair hearing, no assignment to work activities pursuant to this title may be made pending such hearing and determination unless the applicant or recipient agrees to a limited work assignment not inconsistent with the medical condition alleged by such person. [~~Provided, however, that if a social services district has reason to believe that such recipient or applicant does not actually suffer from a work limiting condition, the district shall provide the applicant or recipient with notice of potential sanctions pursuant to subdivision three of section three hundred forty-two of this title, and provided further that recipients will be subject to sanctions pursuant to subdivision three of section three hundred forty-two of this title if the district determines, based on clear medical evidence, that there is no basis for the individual's claim that he or she is unable to fully engage in work activities, and that the individual intentionally misrepresented his or her medical condition.~~

~~7. Any applicant or recipient determined to be work limited pursuant to this section may be assigned to work activities only in accordance with the limitations and protections set forth in paragraph (e) of subdivision five of section three hundred thirty-five-b of this title.~~]

7. Every local social services district shall ensure that applicants for or recipients of public assistance who have a disability are provided reasonable accommodations as required by 42 U.S.C. 12101 et seq., 29 U.S.C. 794, article fifteen of the executive law, or any other state or federal law, rule, or regulation.

§ 4. The section heading and subdivisions 1 and 2 of section 335 of the social services law, the section heading and subdivision 2 as amended by section 148 of part B of chapter 436 of the laws of 1997, and subdivision 1 as amended by chapter 214 of the laws of 1998, are amended to read as follows:

Assessments and employability plans for certain recipients [~~in households with dependent children~~] **of public assistance**. 1. Each social services official shall ensure that each recipient of public assistance who is [~~a member of a household with dependent children and is~~] eighteen years of age or older, or who is sixteen or seventeen years of age and is not attending secondary school and has not completed high school or a high school equivalency program, receives an assessment of employability based on his or her educational level, including literacy and English language proficiency, basic skills proficiency, **access to** child care**, any identified or known disability that limit a major life activity, necessary and reasonable accommodations required pursuant to subdivision six of section three hundred thirty-two-b of this title** and other supportive services needs[~~; and~~]**,** skills, prior work experience, training and vocational interests**, as well as the participant's work preferences**. This assessment shall include a review of family circumstances including a review of any special needs of a child. Such assessment shall be completed within [~~ninety~~] **thirty** days of the date on which such person is determined eligible for public assistance. An applicant for or recipient of public assistance may be assigned to work activities prior to completion of such assessment**, provided that such work activity takes**

into consideration any necessary and reasonable accommodations indicated by the health care practitioner's determination in accordance with subdivision three, or any other reasonable accommodation required in accordance with subdivisions two and six of section three hundred thirty-two-b of this title.

2. (a) Based on the assessment required by subdivision one of this section, the social services official, in consultation with the participant, shall develop an employability plan in writing which shall set forth the services that will be provided by the social services official, including but not limited to child care and other services and the activities in which the participant will take part, including child care and other services and shall set forth an employment goal for the participant and how their assigned work activities and services will help them achieve that goal. [~~To the extent possible, the~~] The employability plan shall reflect the preferences of the participant in a manner that is consistent with the results of the participant's assessment and the need of the social services district to meet federal and state work activity participation requirements, and, if such preferences cannot be accommodated, the reasons shall be specified in the employability plan. The employability plan shall also take into account the participant's supportive services needs, available program resources, local employment opportunities, and where the social services official is considering an educational activity assignment for such participant, the participant's liability for student loans, grants and scholarship awards. [~~The~~] A written copy of the employability plan shall be explained and provided to the participant. Any change to the participant's employability plan required by the social services official shall be provided in writing, discussed with the participant and shall be documented in writing. No less than once per year, the district shall be required to revisit the participant's employability plan and assess whether their assigned work activities and services are successfully assisting the individual in working toward or reaching their employment goal. If the district determines that the assigned work activities and services are not assisting the individual in working toward or meeting their employment goals based on their assessment and input from the participant, then the district shall reassign the participant to a new work activity that is better targeted toward reaching their employment goals. Provided however, if such individual is participating in an activity including but not limited to educational or job training where additional time is needed in the specific work activity for the participant to reach their employment goal, the participant shall remain in the particular work activity, and the work activity shall be reassessed at a later date.

(b) Where an assessment indicates that a participant who is not subject to the education requirements of subdivision four of section three hundred thirty-six-a of this title has not attained a basic literacy level, the social services official shall encourage and may require the participant to enter a program to achieve basic literacy or high school equivalency or to enter such educational programs in combination with other training activities consistent with the employability plan.

§ 5. Section 335-a of the social services law is REPEALED.

§ 6. Subdivisions 5 and 6 of section 335-b of the social services law, as added by section 148 of part B of chapter 436 of the laws of 1997, are amended to read as follows:

5. (a) Each parent or caretaker of a child, when such parent or caretaker is receiving public assistance, must be engaged in work as established by the social services district in accordance with the provisions

of its local plan filed pursuant to section three hundred thirty-three of this title.

(b) Each social services official shall ensure that each parent or caretaker of a child, when such parent or caretaker is receiving benefits under the federal temporary assistance for needy families program, is required to be engaged in work as soon as practicable, but no later than twenty-four months (whether or not consecutive) from initial receipt of such assistance.

(c) Each social services official shall ensure that each parent or caretaker of a child, when such parent or caretaker is receiving public assistance, is engaged in work as soon as practicable.

(d) Each social services official shall ensure that each adult member of a household without dependents, when such household is receiving public assistance is engaged in work as soon as practicable.

(e) Notwithstanding any other requirement of this section, individuals in receipt of public assistance and who are **determined to have a disability and categorized as either** work limited **or disabled but able to fully engage in work activities** in accordance with section three hundred thirty-two-b of this title shall **not** be assigned to work activities in accordance with this title [~~only if~~] **unless** such assignment[~~:~~

~~(i)~~] is consistent with the individual's treatment plan [~~and is determined to~~] **developed by the social services district based on findings established by the individual's treating health care practitioner that made the disability determination pursuant to subdivision three of section three hundred thirty-two-b of this title. Such treatment plan shall** be appropriate [~~by the social services official who is satisfied that~~] **and consistent with limitations prescribed by the treating health care practitioner in order for** such person [~~is~~] **to be** able to perform the work assigned and [~~that~~] such assignment will assist the individual's transition to self-sufficiency. In the event that such assignment is not part of the individual's treatment plan, the individual shall be deemed to be engaged in work as defined in this [~~subsection~~] **subdivision** if he or she is complying with the requirements of his or her treatment plan.

[~~(ii) where no treatment plan exists, is consistent with the individual's mental and physical limitations.~~

~~(f)~~] The social services district shall communicate **any limitations or necessary accommodations** to the person supervising the work assignment of [~~a work limited recipient any limitations of the recipient~~] **an individual determined to have a disability and categorized as either work limited or disabled but able to fully engage in work activities in accordance with section three hundred thirty-two-b of this title**.

[~~6. Recipients of safety net assistance who are exempt or work limited pursuant to this title shall be determined to be engaged in work as defined by department regulation.~~]

§ 7. Paragraphs (d) and (f) of subdivision 1 of section 336 of the social services law, paragraph (d) as amended by section 148 of part B of chapter 436 of the laws of 1997, and paragraph (f) as amended by chapter 275 of the laws of 2017, are amended to read as follows:

(d) work experience in the public sector or non-profit sector, [~~(including work associated with refurbishing publicly assisted housing) if sufficient private sector employment is not available~~] **that provides an individual with an opportunity to acquire the general skills, knowledge, and work habits necessary to improve both the employability of the individual and their ability to obtain employment. Such programs providing work experience shall focus on providing a continuum of educa-**

tion and occupational training, including applicable and beneficial certifications and/or licensures, which will link to subsequent employment. When possible, education and occupational training shall be focused toward employment opportunities in emerging and expanding fields within a relative geographic location. Such programs shall also focus on executive function deficits as defined in subdivision eight of section three hundred thirty of this title, and provide targeted education and skills development opportunities to assist individuals in overcoming such deficiencies;

(f) job search and job readiness assistance, provided that job search is an active and continuing effort to secure employment configured by the local social services official; and such social services district may work in cooperation with the department of labor to provide workforce guidance and information in accordance with section ten-c of the labor law. However, recipients determined to have a disability pursuant to subdivision two of section three hundred thirty-two-b of this title, shall be limited to participate in such work activity for a period not to exceed six weeks in any one calendar year, unless the district has made a specific finding through the individual's assessment as part of their employability plan, that additional time is needed for such individual to find gainful employment;

§ 8. This act shall take effect on the one hundred eightieth day after it shall have become a law.