STATE OF NEW YORK

3840--A

2019-2020 Regular Sessions

IN SENATE

February 19, 2019

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to conciliation and non-compliance with public assistance employment; and to repeal 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 Section 341 of the social services law is REPEALED.

§ 2. Section 341-a of the social services law, as added by chapter 562 of the laws of 2015, is amended to read as follows:

§ [~~341-a~~] **341**. Re-engagement; conciliation; refusal to participate. 1. [~~The provisions of this section shall apply to persons who are residents of a city having a population of one million or more people.~~

~~2.~~] (a) Consistent with federal law and regulations and this title, if a participant has failed or refused to comply with the requirements of this title and the district has determined that he or she is not exempt from such requirements and has verified that appropriate child care, transportation, and accommodations for disability were in place at the time of such failure or refusal, the social services district shall issue a re-engagement notice in plain language indicating that such failure or refusal has taken place and of the right of such participant to avoid a pro-rata reduction in public assistance benefits through the re-engagement process. "Re-engagement process" shall mean the process through which a participant may avoid a pro-rata reduction in public assistance benefits by agreeing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities, by notifying the district that he or she has become exempt from the requirements of this

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

LBD04867-03-9

title, or by resolving the reasons for such failure or refusal at a conciliation conference. The notice shall indicate that the participant has ten days to request re-engagement with the district. The notice shall indicate the specific instance or instances of willful refusal or failure to comply without good cause with the requirements of this title and the necessary actions that must be taken to avoid a pro-rata reduction in public assistance benefits and the district has verified that appropriate child care, transportation and accommodations for disability were in place at the time of such failure or refusal.

(1) If a participant chooses to avoid a pro-rata reduction in public assistance benefits through a conciliation conference, it will be the responsibility of the participant to give reasons for such failure or refusal. The re-engagement notice shall also include an explanation in plain language of what would constitute good cause for non-compliance and examples of acceptable forms of evidence that may warrant an exemption from work activities, including evidence of domestic violence, and physical or mental health limitations that may be provided at the conciliation conference to demonstrate such good cause for failure to comply with the requirements of this title. Unless as part of the re-engagement process the participant does not agree to comply, has not become exempt or the district determines as a result of the conciliation conference that such failure or refusal was willful and without good cause, no further action shall be taken.

(2) If the participant does not contact the district within ten days of the re-engagement notice, the district shall make a finding of whether the alleged failure or refusal to comply was willful and without good cause and shall consider any evidence in the possession of the district indicating that the participant has good cause and if the participant is otherwise participating in work activities, there shall be no finding of willfulness without good cause based on a single appointment or infraction.

(b) If the district determines that such failure or refusal was willful and without good cause, and that the individual is not exempt from the requirements of this title, the district shall notify such participant in writing, in plain language and in a manner distinct from any previous notice, by issuing ten days notice of its intent to discontinue or reduce assistance. Such notice shall include the reasons for such determination, the specific instance or instances of willful refusal or failure to comply without good cause with the requirements of this title, shall verify that appropriate child care, transportation and accommodations for disability were in place at the time of such failure or refusal, and specify the necessary actions that must be taken to avoid a pro-rata reduction in public assistance benefits, including agreeing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities or notifying the district that he or she has become exempt from the requirements of this title and the right to a fair hearing relating to such discontinuance or reduction.

[~~3.~~] **2.** (a) The department shall establish in regulation a conciliation procedure for the resolution of disputes related to an individual's participation in programs pursuant to this title.

(b) The district shall contract with an independent entity, approved by the department, or shall use designated trained staff at the supervisory level who have no direct responsibility for the participant's case to mediate disputes in the conciliation conference.

(c) If a participant's dispute cannot be resolved through such conciliation procedure, an opportunity for a fair hearing shall be provided. No sanction relating to the subject dispute may be imposed during the re-engagement process.

[~~4.~~] **3.** When any participant required to participate in work activities fails to comply with the provisions of this title, the social services district shall take such actions as prescribed by appropriate federal law and regulation and this title.

[~~5.~~] **4.** Consistent with federal law and this title, a social services district shall provide to those participants whose failure to comply has continued for thirty days or longer a written reminder of the option to end a sanction by terminating the failure to comply as specified in subdivision [~~two~~] **one** of this section. Such notice shall advise that the participant may immediately terminate the sanction by either agreeing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities or notifying the district that he or she has become exempt from the requirements of this title.

[~~6.~~] **5.** Consistent with federal law and regulation and this title, no notice shall be issued as specified in subdivision [~~two~~] **one** of this section unless it has been determined that the individual is not exempt from the requirements of this title and has determined that appropriate child care, transportation and accommodations for disability were in place at the time of such failure or refusal to comply with the requirements of this title and no action shall be taken pursuant to this section for failure to participate in the program or refusal to accept employment if:

(a) child care for a child under age thirteen (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate or continue participation in activities pursuant to this title or accept employment and such care is not available and the social services district fails to provide such care;

(b) (1) the employment would result in the family of the participant experiencing a net loss of cash income; provided, however, a participant may not claim good cause under this paragraph if the social services district assures that the family will not experience a net loss of cash income by making a supplemental payment;

(2) net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the participant was receiving at the time the offer of employment is made; or

(c) the participant meets other grounds for good cause set forth by the department in its implementation plan for this title which, at a minimum, must describe what circumstances beyond the household's control will constitute "good cause".

§ 3. Section 342 of the social services law is REPEALED.

§ 4. Section 342-a of the social services law, as added by chapter 562 of the laws of 2015, is amended to read as follows:

§ [~~342-a~~] **342**. Noncompliance with the requirements of this title. 1. [~~The provisions of this section shall apply to persons who are residents of a city having a population of one million or more people.~~

~~2.~~] In accordance with the provisions of this section an individual who is required to participate in work activities shall be ineligible to receive public assistance if he or she fails to comply, without good cause, with the requirements of this title and the district has deter-

mined that he or she is not exempt from such requirements and has verified that appropriate child care, transportation, and accommodations for disability were in place at the time of such failure or refusal. Such ineligibility shall be for the amount and period specified in this section. Good cause for failing to comply with the requirements of this title shall be defined in department regulations, provided, however, that the parent or caretaker relative of a child under thirteen years of age shall not be subject to the ineligibility provisions of this section if the individual can demonstrate, in accordance with the regulations of the office of children and family services, that lack of available child care prevents such individual from complying with the work requirements of this title. The parent or caretaker relative shall be responsible for locating the child care needed to meet the work requirements; provided, however, that the relevant social services district shall provide a parent or caretaker relative who demonstrates an inability to obtain needed child care with a choice of two providers, at least one of which will be a regulated provider.

[~~3.~~] **2.** In the case of an applicant for or recipient of public assistance whom the district has determined is not exempt from the requirements of this title and who is a parent or caretaker of a dependent child, the public assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata until the individual is willing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities.

[~~4.~~] **3.** In the case of an individual who is a member of a household without dependent children whom the district has determined is not exempt from the requirements of this title and who is applying for or in receipt of safety net assistance, the public assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata until the failure or refusal to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities ceases.

[~~5.~~] **4.** A recipient of public assistance whom the district has determined is not exempt from the requirements of this title and who quits or reduces his **or her** hours of employment without good cause or due to any medical condition which may limit the individual's ability to participate in work activities shall be considered to have failed to comply with the requirements of this article and shall be subject to the provisions of this section.

[~~6.~~] **5.** A person described in paragraph (b) of subdivision seven of section one hundred fifty-nine of this chapter may not be sanctioned if his or her failure to comply with requirements of this title is related to his or her health status.

§ 5. Subdivision 6 of section 332-b of the social services law, as added by section 148 of part B of chapter 436 of the laws of 1997, is amended to read as follows:

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~~] two of section three hundred forty-two of this title, and provided further that recipients will be subject to sanctions pursuant to subdivision [~~three~~] two 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.

§ 6. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.