



RODERICK L. BREMBY
Commissioner

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

TELEPHONE
(860) 424-5053

TDD/TTY
1-800-842-4524

FAX
(860) 424-5057

EMAIL
commis.dss@ct.gov

MEMORANDUM

To: Individuals Who Commented on Regulation 10-04/DF
Rental Assistance Program

From: Roderick L. Bremby, Commissioner *RLB*
Department of Social Services
25 Sigourney Street
Hartford, CT 06106

Date: September 27, 2012

Re: Response to Comments on Regulation 10-04/DF

By way of this memorandum, the Department of Social Services (“the Department”) responds to the public comments it received regarding regulation 10-04/DF. The notice of intent for this regulation was published in the Connecticut Law Journal on May 8, 2012. A copy of the regulation with revisions based on the public comments and the Department’s own revisions is attached.

1. Section 17b-812-5. Notice, Application Process, Selection of Eligible Families and Issuance of Rental Assistance Certificates; Special Considerations

Comment: Subsections (d) and (e) do not reflect the current practice under the state’s administrative plan. The administrative plan requires that rental assistance certificates be used within ninety days of issuance and may be extended up to ninety additional days. The regulation provides a sixty day initial term and up to one hundred and twenty days in extensions. We suggest that the regulation align with the administrative plan.

Response: The Department agrees. Subsections (d) and (e) will be amended to reflect the ninety day initial term and the option for the department or its agent to extend the expiration date up to ninety additional days (one hundred eighty days total).

2. Section 17b-812-6. Computation of Rental Assistance Payments

Comment: Subdivision (d)(3) should clarify that deductions for annual unreimbursed medical expenses that exceed 3% of a family's income are limited to households with an elderly or disabled member.

Response: The Department agrees. Subdivision (d)(3) will be amended to read: "for households with a head of household or spouse who is an elderly or disabled person, annual unreimbursed medical expenses that exceed three per cent (3%) of the family's income;"

Comment: The regulation does not address the calculation for "mixed family" households where one or more household members is not a legal citizen of the United States. The state administrative plan addresses this issue and we believe it would be appropriate to address it in the regulation as well, perhaps under section 17b-812-6.

Response: The Department agrees that this distinction is appropriately addressed in the regulation and therefore will amend the regulation by adding definitions of "mixed family" and "eligible non-citizen" in section 17b-812-1, amending the definition of "eligible family" in section 17b-812-1 and adding a new subsection (f) to section 17b-812-6.

The definition of "eligible family" in section 17b-812-1 will be amended to read: "Eligible family" means a household consisting of one or more persons, with income that does not exceed fifty per cent (50%) of the median family income for the area of the state where the family lives, as determined by the commissioner. An eligible family shall include at least one citizen or eligible non-citizen;

The definition of "mixed family" in section 17b-812-1 will read: "Mixed family" means a household consisting of one or more persons who are citizens or eligible non-citizens and one or more persons who are ineligible non-citizens or who elect not to state that they have eligibility status;

The definition of "eligible non-citizen" in section 17b-812-1 will read: "Eligible non-citizen" means a person who meets the qualification requirements established in subsection (a) of 42 USC 1436a;

Subsection (f) of section 17b-812-6 will read: "The department shall offer pro-rated assistance to a mixed family. The department shall calculate pro-rated assistance by determining the amount of assistance payable if all family members were eligible and multiplying such amount by the percent of family members who are eligible."

3. Section 17b-812-9. Reexamination of Family Income

Comment: By deleting the word “substantial” in subsection (b), the regulation extends the client’s duty to report income changes between annual redeterminations to minor and insubstantial changes. By deleting the word “substantial,” the regulation will put many RAP certificate holders in violation of their reporting obligations if they fail to make weekly – or perhaps even daily – reports to DSS. The department should retain the word “substantial” to allow clients to make the claim that the wage variation was not substantial and to limit the department to applying the regulation only to substantial instances of non-reporting.

Response: Under the existing language of 17b-812-9(b), clients routinely fail to report substantial changes in income. By moving to a clearer standard of reporting, the Department is eliminating client confusion over when to report income changes. The proposed regulation provides the client thirty days to report changes, therefore the client will not be required to report daily or weekly changes in income. The Department has a responsibility to ensure that program participants meet income eligibility requirements. The Department declines to amend the proposed regulation.

4. Section 17b-812-12. Family obligations

Comment: The last sentence of subdivision (b)(5) should be revised to make clear that it refers to the rental payments to the landlord and not to the tenant’s eligibility for a RAP certificate. In addition, the subsection should recognize a good cause exception to the 90-day rule. The proposed language would automatically terminate “rental assistance” if the entire family is absent from the unit for 90 days, even if notice of the absence has been provided. There can be exceptional circumstances in which a family is away from a unit for a long period of time with full intention of returning. For example, a parent or other close family relative may become seriously ill and need care, and what was intended as a short visit may turn into a much longer one. The regulation should recognize the possibility of such emergencies. We suggest that the last sentence of subsection (b)(5) either be deleted entirely or be revised to read as follows: “If the entire family is absent from the unit for more than ninety consecutive days, the unit will be considered to be vacated, except where good cause for the extended absence is shown, and the rental assistance payments to the landlord will be terminated.”

Response: As section 17b-812-12 concerns the family’s obligations for participation in the program, it is appropriate that violations of the family obligations may result in the family’s termination from the program, not the termination of payments to the landlord. Therefore the Department declines to revise subsection (b)(5) by adding the phrase “payments to the landlord” as suggested.

While the Department believes that extremely few reasons would cause an entire family to be absent from a unit for more than ninety consecutive days, the Department acknowledges that some exceptional absences may be justified. In circumstances where the family complies with

the thirty day notice requirement and good cause can be shown on or before the ninetieth day, the Department may disregard the presumption of vacancy for up to sixty additional days.

Subsection (b)(5) will be amended to read: “A family shall notify the department or its agent in writing before any planned absence of thirty days or more, or on or before the thirtieth consecutive day of any unplanned absence. If the entire family is absent from the unit for more than ninety consecutive days, the department shall consider the unit vacated and shall terminate rental assistance, unless the family has notified the department or its agent on or before the thirtieth day of any absence and can show good cause for the extended absence on or before the ninetieth day of any absence. If the family shows good cause, the department or its agent may permit the family to be absent for up to sixty additional days before considering the unit to be vacated;”

Comment: In subdivision (b)(6), the phrase “except when impracticable,” or a similar phrase, should be inserted at the beginning of the subsection. A tenant facing eviction, for example, will not know when he or she will be moving out and may not be able to give 30 days’ notice.

Response: Subdivision (b)(6) pertains to when the tenant is moving out of the dwelling or terminating the lease. It does not encompass situations where the landlord is terminating the lease or evicting the tenant. In addition, a tenant is required to immediately notify and forward to the department or its agent a copy of any notice to quit pursuant to subdivision (b)(12) of section 17b-812-12. The Department declines to amend the proposed regulation.

Comment: Subdivision (b)(14) is contrary to Connecticut law that generally makes the landlord, not the tenant, responsible for making repairs. It is also unnecessary, since subdivision (c)(7) is a more accurate statement of the law. Subdivision (c)(7) is based on 47a-11(f) of the Connecticut General Statutes and is framed as a duty not to willfully or negligently damage the dwelling unit. In contrast, subdivision (b)(14) requires the tenant to “correct any violations” of the HUD housing quality standards caused by a family member or guest, which presumably would require the tenant to actually arrange for the repairs. This also appears to be inconsistent with 24 CFR 982.401, the requirements of which seem to be directed to landlords rather than tenants. We therefore think that subdivision (b)(14) should be deleted.

Response: The Department agrees and will delete subdivision (b)(14).

5. Section 17b-812-14. Notice, Appeals and Hearings

Comment: This section provides the fair hearing required by P.A. 09-118, while eliminating the informal conference under the existing regulation. In contrast, public housing grievance procedures make provision for both an informal conference and a formal grievance hearing. We do not object to the Department’s proposal to require all grievances to go directly to fair hearing. We do think, however, that it would be desirable to include a statement that “Nothing in this section shall preclude the client and the Department from resolving the matter on an informal basis prior to the hearing.”

Response: The Department believes that the administrative hearing process established in subsection (h) of section 17b-812 of the Connecticut General Statutes should be fully implemented and followed at this time. The Department declines to amend the proposed regulation.

Comment: Subsections (a) and (c) of this section appear to limit the breadth of the right to request a fair hearing, contrary to subsection 17b-812(h) and section 17b-60 of the Connecticut General Statutes. Subsection (a) requires notice to an applicant of a decision “to deny assistance” and notice to a participant of “changing the terms of assistance or discontinuing assistance.” Subsection (c) requires continuation of assistance pending hearing on appeals “denying or discontinuing” assistance. The phrase “changing the terms” of assistance, which appears in subsection (a), is deleted in subsection (c). In contrast, C.G.S. 17b-812(h), on which this regulation must be based, says broadly that “Any person aggrieved by a decision of the commissioner or the commissioner’s agent pursuant to the program under this section shall have the right to a hearing in accordance with the provisions of chapter 54.” It is not limited to decisions terminating or reducing assistance. Similarly, C.G.S. 17b-60, dealing with fair hearings in general, says that “An aggrieved person authorized by law to request a fair hearing on a decision of the Commissioner of Social Services or the conservator of any such person on his behalf may make application for such hearing.” We believe that broader language must be used.

Response: The Department agrees and will revise subsections (a) and (c) of section 17b-812-14 to reflect the commenter’s suggestion.

Subsection (a) will be amended to read: “The department or its agent shall give program applicants prompt written notice of a decision to deny assistance to an applicant, and shall give program participants written notice of a decision to change the terms of assistance or to discontinue assistance to a participant. Such notice of decision shall: (1) contain a brief statement of the reasons for the decision; (2) state that any person aggrieved by a decision of the commissioner or the commissioner’s agent pursuant to the program may request an administrative hearing in accordance with the provisions of section 17b-60 of the Connecticut General Statutes; and (3) describe how to request an administrative hearing. A notice of decision changing the terms of assistance or discontinuing assistance shall be issued not less than thirty days prior to the effective date of the proposed action.”

Subsection (c) will be amended to read: “(c) If an aggrieved participant requests an administrative hearing due to a decision to deny assistance, change the terms of assistance or discontinue assistance, the department shall continue to provide rental assistance payments as provided in the participant’s rental assistance certificate until a decision has been issued following such hearing, provided: (1) the request for an administrative hearing is faxed or postmarked not later than ten days from the date printed on the notice of decision issued by the department or its agent; (2) the program has sufficient funds to provide such assistance; and (3) the decision under review is not one that affects all program applicants or participants equally. If an aggrieved participant requests an administrative hearing but the participant’s grievance is not due to a decision to deny assistance, change the terms of assistance or discontinue assistance, the department shall continue to provide rental assistance payments as provided in the rental assistance certificate until a decision has been issued following such hearing.”