

## TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

CHAPTER 295.TEMPORARY ASSISTANCE FOR NEEDY FAMILIES.**22 VAC 40-295-10. Definitions.**

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

“Administrative disqualification hearing” or “ADH” means an impartial review by a hearing officer of an individual’s actions involving an alleged intentional program violation for the purpose of rendering a decision of guilty or not guilty of committing an intentional program violation.

“Adoption assistance” means a money payment or services provided to adoptive parents on behalf of a child with special needs.

“Affordable child care arrangements” means the cost of the child care is less than or equal to the payment amounts specified in the Virginia Department of Social Services Child [Day] Care Services policy (Volume VII, Section II, Chapter D, Revised February 2000).

“Application” means a ~~written~~ request for financial assistance received by the local social services agency in the format prescribed by the Virginia Department of Social Services.

“Appropriate child care” means child care arranged by the participant or, if the participant cannot arrange for the child's care, child care arranged by the local department of social services with a legally-operating provider.

“Assistance unit” means those persons who must participate together as a family unit.

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~~“Beginning date of assistance” means the date assistance begins.~~

~~“Board” means the State Board of Social Services.~~

~~“Caretaker” means the natural or adoptive parent or other relative (e.g., aunt, uncle, grandparent, etc.) with whom the children reside child resides who is responsible for supervision and care of the needy children child and is the individual to whom the assistance payment is made.~~

~~“Certification period” means the period of time within which an assistance unit is eligible to receive benefits.~~

~~“Child” means a child who is eligible for TANF and has not attained the age of eighteen 18 years, or if eighteen and in school, is expected to graduate by his nineteenth birthday regularly attending a secondary school or in the equivalent level of career and technical education, has not attained the age of 19 years and is reasonably expected to complete his senior year of school prior to attaining age 19.~~

~~“Department” means the Virginia Department of Social Services.~~

~~“Dependent child” means a child living in the home of a parent or relative. This includes children who have been emancipated.~~

~~“Determination of eligibility” means the screening procedure to determine the need for assistance and the amount of the monthly assistance payment.~~

~~“Disregard” means income or resources which are that is not considered when determining eligibility for the TANF program.~~

~~“Earned income” means income from wages, salary, commissions, or profit from activities in which an individual is engaged as self-employed. On-the-job training, tryout~~

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employment, and work experience are types of programs from which earnings are received by Job Training Partnership Act (JTPA) participants.

“Emancipated child” means a minor who has been released from parental care and responsibility by court order.

“Exempted resource in the TANF Program” means a resource that is not counted in determining eligibility for the TANF program.

“Former recipient” means an individual whose case has been closed and is not presently receiving an assistance payment through TANF.

“Gross earned and unearned income” means total income before application of any applicable disregards.

“Hearing officer” means an impartial representative of the Department of Social Services to whom requests for ~~administrative disqualification~~ hearings are assigned and by whom they are heard. The hearing officer has been delegated the authority by the Commissioner of the Department of Social Services to conduct and control hearings and to render decisions.

“Income” means all income, both earned and unearned, which is available or expected to be available to the assistance unit.

“Intentional program violation” or “IPV” means any action by an individual for the purpose of establishing or maintaining the family’s eligibility for TANF or TANF service or for increasing or preventing a reduction in the amount of the grant which is intentionally a false or misleading statement or misrepresentation, concealment or

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withholding of facts or any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

“Local agency” means any one of the local departments of social services.

“Lump sum ” means money received in the form of a nonrecurring ~~lump-sum~~ payment that is treated as income in the month of receipt.

“Minor” means any person who is under the age of 18.

“Otherwise eligible” means that the individual is not precluded from eligibility by some provision of law or regulation.

“Overpayment” means an assistance payment or the value of services provided by a local department of social services ~~which~~ that is greater than the amount to which the assistance unit is eligible to receive.

“Parent” means a mother or father, married or unmarried, natural or , following entry of an interlocutory order, ~~adoptive , following entry of an interlocutory order.~~

“Payee” means the person to whom the assistance payment is made payable. In most situations, the caretaker is the payee.

“Protective payee” means an appropriate individual to act for the caretaker in receiving and managing the assistance payment. The protective payee should be someone who is interested and concerned with the welfare of the caretaker and his children.

“Reasonable distance” means that the travel time from the child's home to the child care provider and the work site is generally no more than one hour, based on transportation available to the parent.

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“Recipient” means a person whose application for TANF or TANF-UP has been approved and is currently a member of an eligible assistance unit.

“Recoupment” means withholding all or part of an assistance payment to a current assistance unit for the purpose of repaying a prior overpayment.

“Recovery” means a voluntary or court ordered arrangement with a current or former assistance unit for repayment of an overpayment.

“Resource” means real and personal property, both liquid and nonliquid, including cash, bank accounts, lump sums, the cash value of bank accounts, the cash value of life insurance, trust funds, stocks, bonds, mutual funds, or any other financial instruments, which the assistance unit has the right, authority, or power to liquidate.

“Sanctioned caretaker” means a caretaker whose needs are removed from the grant and who is ineligible for an assistance payment.

“SSN” means social security number.

“Standard of assistance” means the dollar amount, based on the family size, which has been established by the State Board of Social Services to cover predetermined monthly maintenance needs.

“Temporary Assistance for Needy Families” or “TANF” means the program administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

“Unearned income” means income that is not earned. Types of unearned income received by participants in Job Training Partnership Act (JTPA) programs include stipends paid to enrollees in classroom training and remedial education programs.

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"Unsuitability of informal child care" means that the child care arrangement does not meet the requirements for relative care in the Virginia Department of Social Services Child Day Care Services policy.

**22 VAC 40-295-20. Specified relatives.**

The relative with whom the child is living who is designated as the caretaker must be a relative by blood, marriage, or adoption.

**22 VAC 40-295-30. Assistance unit.**

A. With respect to a dependent child ~~or minor parent~~, the assistance unit shall include, if living in the same household and otherwise eligible for assistance:

1. The natural or adoptive parent; and
2. The blood-related or adoptive brother or sister, including those emancipated.

B. The following child is not included in the assistance unit:

1. A child who is receiving Supplemental Security Income;
2. A child who is ineligible due to failure to meet alienage requirements;
3. A child whose social security number has not been provided or application has not been made for such social security number.
4. A child receiving an adoption assistance payment or a foster care maintenance payment. However, if excluding a child who is receiving an adoption assistance payment reduces the TANF benefit to the remaining family members, the child must be included.

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C. Income and resources of a child who is not required to be in the assistance unit due to the application of 22 VAC 40-295-30 B are not considered available to the assistance unit.

D. C. A caretaker who meets all other eligibility requirements must be considered eligible to receive TANF benefits for his own needs even though the only child living in the relative's caretaker's home is receiving foster care maintenance payments or Supplemental Security Income. In determining assistance for this assistance unit, the needs and income of the child who receives foster care maintenance payments or Supplemental Security Income must not be considered in determining the amount of the assistance payment.

D. A nonparent caretaker may receive assistance if he requests assistance and his countable income, when added to the countable income of the eligible children, does not exceed income limits.

**22 VAC 40-295-40. Minor children who are absent from the home.**

A child who is absent from the home for 30 60 consecutive days shall be ineligible for TANF, unless the absence is due to one of the following reasons: a good cause. When a child is placed in foster care, the period of temporary absence for purposes of TANF and TANF maintenance of effort shall not exceed 180 days unless a local department of social services determines that return of the child to the home would pose an unnecessary risk to the child's health, safety, or well-being and that a longer period of temporary absence is warranted.

1. Hospitalization;

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2. Education or training;

3. Vacation; or

4. A visit.

**22 VAC 40-295-50. Resource eligibility.**

A. Assistance units shall have countable resources equal to or less than \$2,000 to be eligible for TANF.

B. All resources shall be counted except for the following, which are exempt from consideration toward the resource limit:

1. The value of food coupons under the Food Stamp Program;

2. The value of foods donated under the United States Department of Agriculture Commodity Distribution Program;

3. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC §§ 4601 et seq.);

4. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended (42 USC §§ 3001 et seq.);

5. Grants or loans to undergraduate students for educational purposes, made or insured under any program administered by the United States Commissioner of Education;

6. The value of supplemental food assistance received under the Child Nutrition Act of 1966 (42 USC §§ 1771-1789);

7. Payments to VISTA volunteers under Title I, when the monetary value of such payments is less than minimum wage as determined by the director of the Action Office, and payments for services of reimbursement for out-of-pocket expenses made to

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individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and other programs pursuant to Titles II and III, of Public Law 93-113, the Domestic Volunteer Service Act of 1993 (42 USC §§ 4950 et seq.);

8. Real property;

9. The home in which the assistance unit lives and its contents;

10. Income producing farm and business equipment;

11. Burial plots;

12. Burial funds or funeral agreements;

13. The cash value of insurance policies;

14. Interest-bearing savings accounts not to exceed \$5,000 for the purpose of paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school or any college or university, or for making a down payment on a primary residence, or for establishing a business. Any funds withdrawn from the savings account established for these purposes, and interest earned on the account, shall be disregarded in determining eligibility. Any amount withdrawn from the account for any purpose other than these purposes shall be treated as a countable resource;

15. Funds distributed to, or held in trust for, members of any Indian tribe under Public Law 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, or 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income;

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~~16. The following types of distributions received from a Native Corporation under the Alaska Native Claims Settlement Act (Public Law 100-241; (43 USC §§ 1601 et seq.):~~

~~a. Cash (including stock issued or distributed by a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per year;~~

~~b. Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);~~

~~c. A partnership interest;~~

~~d. Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock);~~

~~e. An interest in a settlement trust;~~

~~17. Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Public Law 94-114);~~

~~18. Disregarded support payments which were sent to the recipient by the Virginia Department of Social Services or determined to be a disregard by the eligibility worker;~~

~~19. Tools and equipment belonging to a member of the assistance unit when such tools and equipment have been and will continue to be used for employment;~~

~~20. Federal major disaster and emergency assistance provided under the Disaster Relief and Emergency Assistance Amendments of 1988, and disaster assistance provided by state and local governments and disaster assistance organization (Public Law 100-707);~~

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~~21. Payments received by individuals of Japanese ancestry under the Civil Liberties Act of 1988, and by Aleuts under the Aleutian and Pribilof Island Restitution Act (Public Law 100-383; (50 USC Appx. §§ 1989 et seq.);~~

~~22. Agent Orange payments;~~

~~23. Payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426);~~

~~24. Funds received pursuant to the Maine Indians Claims Settlement Act of 1980 (Public Law 96-420; 25 USC §§ 1721 et seq.) and the Aroostook Band of Micmacs Settlement Act (Public Law 102-171; 25 USC § 1721 nt.);~~

~~25. Student financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act made available for attendance costs (Public Law 101-392; 20 USC § 2301 nt.);~~

~~26. Student financial assistance received under the Bureau of Indian Affairs student assistance programs;~~

~~27. All bona fide loans. The loan may be for any purpose and may be from a private individual as well as a commercial institution. The disregard is limited to the principal of a loan. A simple statement signed by both parties indicating that the payment is a loan and must be repaid is sufficient to verify that a loan is bona fide. Interest earned on the proceeds of a loan while held in a savings or checking account or other financial instrument shall be counted as income in the month received and as a resource thereafter. Purchases made with a loan are counted as resources;~~

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28. Earned income tax credit payments and refunds for the month of receipt and the month following;

29. Lump sums for the month of receipt;

30. Any resource that is specifically disregarded by federal or state law or regulation.

**22 VAC 40-295-60 22 VAC 40-295-50. Income eligibility.**

A. Income eligibility for all cases is based on a prospective determination that anticipates the countable income of the assistance unit. The assistance unit is income eligible if the net income of the assistance unit is less than the standard of assistance.

B. The following income of members of the assistance unit, a parent not included in the assistance unit, or anyone whose income is used in determining eligibility or the amount of TANF assistance, shall be disregarded:

1. Home produce of the assistance unit utilized for their own consumption;

2. The value of food [coupons benefits] under the Food Stamps program;

3. The value of foods donated under the United States Department of Agriculture Commodity Distribution Program, including those furnished through school meal programs;

4. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC §§ 4601 et seq.);

5. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended (42 USC §§ 3001 et seq.);

6. Grants or loans to any undergraduate students for educational purposes made or insured under any program administered by the United States Secretary of Education.

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Programs that are administered by the United States Secretary of Education include:

Pell Grant, Supplemental Education Opportunity Grant, Perkins Loan, Guaranteed Student Loan (including the Virginia Education Loan), PLUS Loan, Congressional Teacher Scholarship Program, College Scholarship Assistance Program, and the Virginia Transfer Grant Program;

7. Funds derived from the College Work Study Program;

8. A scholarship or grant obtained and used under conditions which preclude its use for current living costs;

9. Training allowance (transportation, books, required training expenses, and motivational allowance) provided by the Department of Rehabilitative Services (DRS) for persons participating in Rehabilitative Services Programs. This disregard is not applicable to the allowance provided by DRS to the family of the participating individual;

10. Any portion of an SSI payment or Auxiliary Grant;

11. Payments to VISTA Volunteers under Title I, when the monetary value of such payments is less than minimum wage as determined by the Director of the Action Office, and payments for services of reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and other programs pursuant to Titles II and III, of Public Law 93-13, the Domestic Volunteer Service Act of 1993 (42 USC §§ 4950 et seq.);

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12. The Veterans Administration educational amount for the caretaker 18 or older when used specifically for education purposes. Any additional money included in the benefit amount for dependents is to be counted as income to the assistance unit;

13. Foster care payments received by anyone in the assistance unit;

14. Unearned income received from Title IV, Part B (Job Corps) of the Job Training Partnership Act (JTPA) (29 USC §§ 1501 et seq.) by an eligible child is to be disregarded as an incentive payment. However, any payment received by any other Job Corps participant or any payment made on behalf of the participant's eligible child or children is to be counted as income to the assistance unit;

15. Income tax refunds including earned income tax credit advance payments and refunds;

16. Payments made under the Energy Assistance Program;

17. The value of supplemental food assistance received under the Child Nutrition Act of 1966 (42 USC §§ 1771-1789). This includes all school meals programs; the Women, Infants, and Children (WIC) program; and the Child Care Food program;

18. All federal, state, or local government rent and housing subsidies and utility payments;

19. Unearned income received by an eligible child under Title II, Parts A and B, and Title IV, Part A, of the Job Training Partnership Act (JTPA) (29 USC §§ 1501 et seq.);

20. Funds distributed to, or held in trust for, members of any Indian tribe under Public Laws 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, or 98-124. Additionally, interest

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and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income;

21. The following types of distributions received from a Native Corporation under the Alaska Native Claims Settlement Act (Public Law 100-241; 43 USC §§ 1601 et seq.):

a. Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per year;

b. Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

c. A partnership interest;

d. Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

e. An interest in a settlement trust.

22. Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Public Law 92-114);

23. The first \$50 of total child or spousal support payments received each month by an assistance unit;

24. Federal major disaster and emergency assistance provided under the Disaster Relief and Emergency Assistance Amendments of 1988 (42 USC § 5121 nt.), and disaster assistance provided by state and local governments and disaster assistance organizations (Public Law 100-707);

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25. Payments received by individuals of Japanese ancestry under the Civil Liberties Act of 1988, and by Aleuts under the Aleutian and Pribilof Islands Restitution Act (Public Law 100-383; 50 USC Appx. §§ 1989 et seq.);

26. Agent Orange payments;

27. Payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426; 42 USC § 2210 nt.);

28. Funds received pursuant to the Maine Indians Claims Settlement Act of 1980 (Public Law 96-420) and the Aroostook Band of Micmacs Settlement Act (Public Law 102-171; 25 USC § 1721);

29. Student financial assistance received under Title IV of the Higher Education Amendments of 1992 (Public Law 102-325);

30. Student financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act made available for attendance costs (Public Law 101-392; 20 USC § 2301 nt.);

31. Student financial assistance received under the Bureau of Indian Affairs student assistance programs;

32. All bona fide loans. The loan may be for any purpose and may be from a private individual as well as from a commercial institution. The disregard is limited to the principal of the loan. A simple statement signed by both parties indicating that the payment is a loan and must be repaid is sufficient to verify that a loan is bona fide. Interest earned on the proceeds of a loan while held in a savings or checking account or

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other financial instrument shall be counted as income only in the month received and as a resource thereafter. Purchases made with a loan are counted as resources;

33. Up to \$2,000 per year of income received by individual Indians, which are derived from leases or other uses of individually-owned trust or restricted lands shall be disregarded as income, and shall not be used to reduce or deny assistance or benefits to which the individual, or household, would otherwise be entitled to receive;

34. Nonrecurring monetary gifts for special occasions, such as birthdays, Christmas, graduations;

35. All other unearned income that is specifically disregarded in the calculation of TANF benefits by federal or state law or regulation.

C. When determining initial eligibility, or ongoing eligibility for non-VIEW participants, the following ~~earned income~~ is disregarded from the monthly earned income of each individual whose needs are included in the eligibility determination the assistance unit:

1. An amount equal to the standard deduction used in the Food Stamp program; and
2. Twenty percent of the remainder.

3-D. The earned income of ~~students~~ a student, who is not the head of household, under 18 years of age shall be disregarded.

D. E. When a ~~parent~~ person is excluded or removed from the assistance unit due to noncompliance with a TANF rule, ~~the parent's gross unearned and earned income must be counted in determining eligibility for the assistance unit and the amount of payment~~ all income of the person is considered available to the assistance unit to the same extent if the person were not excluded or removed from the assistance unit.

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E. F. For self-employment, the profit obtained through self-employment is gross income in determining TANF eligibility. Profit is the income minus expenses.

G. The income of a child who is not required to be in the assistance unit due to the application of 22 VAC 40-295-30 B is not considered available to the assistance unit.

H. The TANF payment shall be suspended if the amount of child support collected by the Division of Child Support Enforcement for two consecutive months, when treated like income, makes the family ineligible for TANF. The TANF case shall be closed if in the month of suspension the amount of child support collected by the Division of Child Support Enforcement, when treated like income, makes the family ineligible.

I. The monthly payment amount is equal to the standard of assistance minus the net income.

**~~22 VAC 40-295-70~~ 22 VAC 40-295-60. Beginning date of assistance and application processing.**

Application processing time frames and the beginning date of assistance shall be determined according to the standards set out in 7 CFR 273.2 (g) and (h). A. A decision on TANF eligibility shall be made by the thirtieth day following the date the application was filed.

B. The eligible assistance unit shall receive TANF benefits beginning with the date of application.

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**22 VAC 40-295-80. Certification periods 22 VAC 40-295-70. Redetermination of benefits.**

A. The local agency shall establish a definite period of time within which an assistance unit shall be eligible to receive benefits. At the expiration of each certification period, eligibility for TANF cash assistance ends. Further eligibility shall be established only upon a determination based upon a newly completed application, an interview, and necessary verifications. Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility.

B. Certification periods shall be determined in accordance with the Virginia Food Stamp Manual (7 CFR 273.9, 7 CFR 273.10, 7 CFR 273.12 and 7 CFR 273.13), except with the following:

1. Assistance units with a nonparent caretaker not receiving TANF with very stable income or assistance units that meet Food Stamp specifications for certification periods shall be certified for up to 12 months provided other assistance unit circumstances are expected to remain stable.

2. All other assistance units shall be certified for six months.

C. If an application is approved, the local agency shall provide the assistance unit with written notice of the amount of the benefits and the beginning and end dates of the certification period. The assistance unit shall also be advised of variations in the benefit level based on changes anticipated at the time of certification.

D. The local agency shall provide assistance units that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a

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notice of denial by the end of the current certification period if the assistance unit has complied with all recertification requirements.

E. The local agency shall provide assistance units that have received a notice of expiration at the time of certification, and have timely reapplied, with either a notice of eligibility or a notice of denial not later than thirty days after the date of the assistance unit's last TANF payment.

Where an individual has been determined eligible, eligibility will be reconsidered or redetermined:

1. When required on the basis of information the agency has obtained previously about anticipated changes in the individual's situation;
2. Promptly after a report is obtained that indicates changes in the individual's circumstances that may affect the amount of assistance to which he is entitled or that may make him ineligible; and
3. Periodically on all factors subject to change. All factors of eligibility will be redetermined at least every 12 months.

**22 VAC 40-295-90 22 VAC 40-295-80. Reporting changes.**

Recipient families are required to report changes in accordance with 7 CFR 273.12(a)(1)(i) through 7 CFR 273.12(a)(1)(iii), 7 CFR 273.12 (a)(1)(v), 7 CFR 273.12(a)(2) through 7 CFR 273.12(a)(3), 7 CFR 273.12(c), 7 CFR 273.12(c)(1)(i) through 7 CFR 273.12(c)(1)(iii), and 7 CFR 273.12(c)(2)(i) The eligible person who receives temporary assistance, or the person who is caring for or otherwise acting on behalf of such eligible person, shall report promptly to the local department of social

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services any event or circumstance that would cause such assistance to be changed in amount or terminated.

**22 VAC 40-295-100 22 VAC 40-295-90. Notice of adverse action.**

A. Prior to any action to reduce or terminate an assistance unit's TANF assistance, the agency shall provide a notice which meets the requirements of 7 CFR 273.13 (a) and (b) [of adverse action] before the adverse action is taken.

B. The notice [of adverse action] shall be issued at least 10 days before the date upon which the action [to reduce or terminate assistance] would become effective [if the change is to reduce or terminate the assistance]. [If a recipient requests a hearing before the effective date of such action, his assistance may not be reduced or terminated until a decision is rendered after a hearing unless the recipient requests that he not receive continued assistance pending a hearing decision. If the effective date of the action falls on a weekend or holiday, and a request for a hearing is received the day after the weekend or holiday, the hearing request shall be considered to have been made prior to the effective date of the action.]

[C. The notice of adverse action shall explain in easily understandable language:

1. the proposed action;
2. the reason for the proposed action;
3. the assistance unit's right to request a hearing;
4. the telephone number of the office, to include a toll-free number or a number where collect calls will be accepted for recipients outside the local calling area;
5. the availability of continued benefits;

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6. the liability of the assistance unit for any overpayments received while awaiting a hearing if the hearing officer's decision is adverse to the assistance unit;

7. the availability of an individual or organization that provides free legal representation, if such a service is available.]

[C.1.D.1.] The local agency may notify an assistance unit that its benefits will be reduced or terminated no later than the date the assistance unit receives, or would have received, its payment, if any of the following conditions are met:

a. The assistance unit reports the information that results in the reduction or termination, and the agency can determine the payment or ineligibility based solely on the information provided by the assistance unit;

b. The agency determines, based on reliable information, that all members of an assistance unit have died;

c. The agency determines, based on reliable information, that all members of an assistance unit have moved from the locality; or

d. The assistance unit voluntarily requests that its participation be terminated.

2. The assistance unit retains its rights to a fair hearing, and if a hearing request is received prior to the effective date of any proposed change in benefit status, the assistance unit appealing such change shall have the right to continued direct payment of TANF benefits pending final administrative action on such appeal.

[DE]. Individual notices of adverse action shall not be provided when:

1. The agency initiates a mass change that affects the entire caseload or significant portions of the caseload; or

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2. The assistance unit's monthly payment varies from month to month to take into account changes that were anticipated at the time of application or redetermination, and the assistance unit was so notified in writing at that time.

**22 VAC 40-295-110 22 VAC 40-295-100. Mass changes.**

Mass changes in federal benefits shall be processed by following procedures at 7 CFR 273.12(e)(3). When the agency makes a mass change in eligibility or benefits, it shall notify all assistance units whose benefits are reduced or terminated as follows:

1. The agency shall inform the assistance unit of:

a. The general nature of the change;

b. Examples of the change's effect on assistance unit payment levels;

c. The month in which the change will take effect;

d. The assistance unit's right to a fair hearing;

e. The assistance unit's right to continue benefits and under what circumstances benefits will be continued pending a fair hearing;

f. General information on whom to contact for additional information; and

g. The liability the assistance unit will incur for any overpayment if the fair hearing is adverse.

2. The agency shall notify the assistance unit of the mass change by the date the assistance unit is scheduled to receive the benefit that has been received.

**22 VAC 40-295-120. Hearing requests. 22 VAC 40-295-110. Hearings.**

A. Every applicant or recipient shall have the right to request a hearing either orally or in writing before a hearing officer. An opportunity for a hearing shall be granted to any

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applicant who requests a hearing because his claim for financial assistance is denied, or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance, or termination of assistance, or determination that a protective, vendor, or two-party payment should be made or continued. A hearing need not be granted when either state or federal law required automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation. A hearing may be requested by a clear expression, oral or written, by any member of an assistance unit or its authorized representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired.

[B. An applicant or recipient shall be allowed to request a hearing on any agency action or loss of assistance for up to 30 days after receipt of the notice of adverse action if the proposed action is effective within the next 30 days. If the proposed action is effective more than 30 days following receipt of this notice, an appeal may be filed until the effective date. In addition, an assistance unit may at any time request a hearing to dispute its current level of assistance. Within 90 days of the receipt of a request for a hearing, the hearing shall be conducted, a decision reached, and the applicant or recipient shall be notified of the decision.]

[B.C.] The applicant or recipient shall be afforded all rights as specified in this section.

[C.D.] Every applicant or recipient shall be informed in writing at the time of application and at the time of any action affecting his claim:

1. Of his right to a hearing,

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2. Of the method by which he may obtain a hearing;

3. That he may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or he may represent himself.

[D.E.] The hearing shall be conducted at a reasonable time, date, and place, and adequate preliminary written notice shall be given.

[E.F.] When the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary.

[F.G.] The hearing shall include consideration of:

1. An agency action, or failure to act with reasonable promptness, on a claim for financial assistance, which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance;

2. An agency decision regarding:

a. Eligibility for financial assistance in both initial and subsequent determinations;

b. Amount of financial assistance or change in payments; or

c. The manner or form of payment, including restricted or protective payments.

[G.H.] The claimant, or his representative, shall have adequate opportunity to:

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1. Examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;
2. At his option, present his case himself or with the aid of an authorized representative;
3. Bring witnesses;
4. Establish all pertinent facts and circumstances;
5. Advance any arguments without undue interference;
6. Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

[H.I.] [~~Recommendations or decisions~~ Decisions] of the hearing officer shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the ~~recommendation or decision~~ of the hearing officer shall constitute the exclusive record and shall be available to the claimant at a place accessible to him or his representative at a reasonable time.

[I.J.] Decisions by the hearing officer shall:

1. In the event of an evidentiary hearing, consist of a memorandum decision summarizing the facts and identifying the regulations supporting the decision;
2. In the event of a de novo hearing, specify the reasons for the decision and identify the supporting evidence and regulations.

[J.K.] The claimant shall be notified of the decision in writing.

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[K.L.] When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the Department of Social Services shall promptly make corrective payments retroactively to the date the incorrect action was taken.

**22 VAC 40-295-130 22 VAC 40-295-120. Collection of overpayments.**

A. A local department of social services shall promptly recoup or recover any overpayment from a current adult recipient of TANF including overpayments which that are the result of assistance paid pending an appeal hearing decision in which the adverse action taken by the agency is upheld by the hearing authority. All overpayments which were made to former recipients which are less than \$35 shall be waived after the local agency has notified the former recipient in writing that an overpayment has occurred which must be repaid and the former recipient fails to respond to the initial request for repayment. No further action to collect the overpayment is to be taken. In cases where an overpayment to a former recipient is \$35 or more, the agency may elect to forego collection activity if, after reasonable efforts, it is determined that further action to collect the overpayment would not be cost-effective. To ensure reasonable efforts have been made to collect the overpayment, the agency must have documentary evidence that they cannot locate the former recipient, or determine that the former recipient has no means by which to repay the overpayment, or secure a written statement from the former recipient that they refuse to repay the overpayment. The agency must maintain information for three years concerning former recipients who received an overpayment, including overpayments which are less than \$35, and must

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~~initiate recoupment procedures should one or more of those individuals again be found eligible to receive assistance~~ If it is not cost effective to attempt recovery of an overpayment, the agency may elect not to attempt recovery of an overpayment from an individual not receiving aid where the overpayment amount is less than \$125. Where the overpayment amount owed by an individual no longer receiving aid is \$125 or more, the agency can determine when it is no longer cost effective to continue overpayment recovery efforts, provided it has made reasonable efforts to recover the overpayment from the individual. Reasonable efforts must include notification of the amount of and reason for the overpayment and that repayment is required. Local departments of social services must also maintain information regarding uncollected overpayments to enable the agency to recover those overpayments if the individual subsequently becomes a recipient. In cases involving fraud, the agency must make every effort to recover the overpayment, regardless of the amount.

B. ~~Repayment for overpayments based on intentional misrepresentation shall be twenty percent of the monthly TANF benefits, but no less than ten dollars monthly~~ result in the assistance unit retaining, for any payment month, from the combined aid and income, not less than 90% of the amount payable to an assistance unit of the same size with no income.

C. ~~For all other overpayments, repayment shall be ten percent of the monthly TANF benefits.~~

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**22 VAC 40-295-140. Overpayments based on an intentional program violation.**

In instances where the overpayment is based on an alleged intentional program violation, the case shall be referred to the attorney for the Commonwealth for review. In situations involving an intentional program violation, the agency may forego collection of an overpayment to a recipient or former recipient in cases where the overpayment is being referred for possible prosecution or for administrative disqualification, and the local agency determines that collection action will prejudice the case.

**22 VAC 40-295-150 22 VAC 40-295-130. Protective payee.**

When a caretaker is excluded or removed from the assistance unit due to noncompliance with a TANF rule, a protective payee must be appointed to receive and manage the financial assistance payment unless the local agency determines that such appointment is unnecessary to achieve the purposes of the TANF program or cannot, after reasonable efforts, locate an appropriate individual to act as a protective payee. At least every six months, the local agency must review the way in which the protective payee's responsibilities are being carried out. In situations where the local agency cannot, after reasonable efforts, locate an appropriate individual to act as a protective payee, the sanctioned caretaker may continue to receive the assistance payment on behalf of the remaining assistance unit members. The final authority for determining that reasonable efforts to locate a protective payee have been made rests with the superintendent or director of each locality or may be delegated as deemed appropriate.

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**22 VAC 40-295-160 22 VAC 40-295-140. Intentional program violation (IPV).**

A. The agency shall ensure and document that a clear and full explanation is given to the applicant or recipient of :

1. The eligibility requirements for the type of assistance he is requesting or receiving; of

2. His responsibility to give complete and accurate information related to his eligibility and to report promptly and fully any changes in his circumstances ; and of the

provisions of the law with respect to giving false information knowingly or deliberately withholding information that would affect his eligibility for services or assistance or the amount thereof ; and

3. The penalties for knowingly falsifying or deliberately withholding such information.

The worker shall explain fully what types of changes in his circumstances would have an effect on the grant or services.

B. The local agency shall conduct an investigation of an allegation that an individual has committed an IPV, regardless of the TANF payment status. A determination as to

whether an IPV has occurred shall be based on careful consideration of the particular

circumstances. A determination shall be made that an IPV has been committed must be based on clear and convincing evidence that there has been a deliberate

misrepresentation on the part of the applicant or recipient. Consideration should be

given to: (i) whether the correct or unreported information was, in fact, known to the

applicant or recipient and (ii) whether the applicant or recipient understood the eligibility and reporting requirements.

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C. An individual may be charged with an IPV even if the individual's application for assistance was denied. It is not required that an overpayment actually exist for there to be a determination of IPV.

D. The local agency is required to proceed against any individual alleged to have committed an IPV by referring the matter to the appropriate authorities for criminal action in a federal or state court or through an administrative disqualification hearing (ADH).

E. The local agency may refer a case for prosecution or initiate an ADH regardless of the current eligibility of the individual.

F. E. The local agency must coordinate its actions with any corresponding actions being taken against the individual under the Food Stamp Program if the factual issues involved arise out of the same or related circumstances.

G. F. The local agency shall confer with the appropriate legal authorities to determine the types of cases that will be accepted for prosecution and cases of alleged IPV . Cases found to have committed an IPV (i) by a court of appropriate jurisdiction; (ii) pursuant to an administrative disqualification hearing; or (iii) by waiving rights to an administrative disqualification hearing will be referred for prosecution in accordance with the agreement established between the legal authority and the local agency. This agreement shall include information on how and under what circumstances cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for possible prosecution, such as minimum amount of overpayment which that resulted from the IPV. The local agency is encouraged to refer for

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prosecution those individuals suspected of committing an IPV where large amounts of overpaid benefits are involved or more than one act of IPV is suspected.

H. G. An individual found to have committed an IPV by (i) by a court of appropriate jurisdiction; (ii) pursuant to an administrative disqualification hearing; or (iii) by waiving his right to an administrative disqualification hearing shall be ineligible to participate in the TANF program for the time periods specified in subsection I H of this section.

I. H. The time periods are as follows:

1. Twelve Six months for the first offense;
2. Twenty-four Twelve months for the second offense; and
3. Permanently for the third offense.

J. I. The disqualification penalty imposed on an individual in one state or locality shall be used in determining the appropriate disqualification penalty.

K. Only J. The individual found guilty of committing an IPV shall be disqualified. The local agency shall not take the individual's needs into account when determining the assistance unit's need and the amount of assistance. However, any resources and income of the disqualified individual will be considered available to the assistance unit.

L. K. The period of disqualification shall begin no later than the first day of the second month which follows the date the local agency receives a signed ADH waiver from the recipient or the date of a hearing officer's or court's decision of guilty or the date on the notice of ADH decision by the hearing officer that the recipient is guilty. The disqualification period will be imposed without regard to eligibility or ineligibility of the individual and will run uninterrupted until it expires.

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M. L. The disqualification penalty shall be in addition to, and cannot substitute for, any other sanctions or penalties which may be imposed by law for the same offense.

N. M. The disqualification penalty cannot substitute for other sanctions under the TANF program.

O. N. Any period for which a disqualification period is imposed shall remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction. In no event shall the duration of the period for which such penalty is imposed be subject to review in a fair hearing.

P. O. The local agency shall provide all applicants with a written notice of the disqualification penalties for IPV at the time of application.

Q. P. In order to request an ADH, the local agency shall ensure that a prehearing investigation has occurred and that the evidence supports the charge of intentional program violation. There must be clear and convincing evidence which demonstrates the individual committed or intended to commit an IPV. Examples of evidence include:

1. Written verification of unreported income or resources received by the individual;

2. Verification that the individual understands his reporting responsibilities by signature on the application/redetermination form or some other form;

3. An application, monthly report or change report submitted during the period the IPV is alleged to have occurred that omits the information in question; and

4. Documented contacts with the individual during the period the IPV is alleged to have occurred in which the individual failed to report the information in question.

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R. Q. Prior to submitting the request for an ADH to the state hearing authority, the local agency shall provide written notification to the individual suspected of an intentional program violation that the individual can waive his right to an ADH by signing a waiver request and returning it to the local agency within 10 days from the date notification is sent to the individual in order to avoid submission of the request for an ADH.

S. R. If a signed waiver is received, no ADH is conducted and the disqualification period is imposed in accordance with federal regulations.

T. S. If a case is referred for an ADH, it shall not be simultaneously referred for prosecution. Cases dismissed in court or individuals acquitted by the court shall not be referred for an ADH unless the individual is found to have committed an IPV.

U. T. The local agency shall request an ADH be scheduled by submitting a written request to the state hearing authority. The form must include the following information:

1. Identifying information;
2. Summary of the allegation or allegations;
3. Summary of the evidence; and
4. Copies of documents supporting the allegation or allegations.

The referral is to be signed and dated by the supervisor or local agency director.

V. U. The local agency may combine a fair hearing and an ADH into a single hearing if the factual issues arise out of the same or related circumstances provided that the individual receives prior notice of the consolidation.

W. Upon receipt of the request for an ADH from the local agency, the state hearing authority will forward the request to the appropriate regional hearing officer.

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X. V. The hearing officer will schedule a date for the ADH and provide written notice to the individual suspected of committing an IPV at least 30 days in advance of the date the ADH has been scheduled. The notice shall contain at a minimum:

1. The date, time, and place of the hearing;
2. The charge(s) against the individual;
3. A summary of the evidence, and how and where the evidence can be examined;
4. A statement that the decision will be based solely on information provided by the department of social services if the individual fails to appear at the hearing;
5. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
6. A statement that a determination of intentional program violation will result in a disqualification period, and a statement of which penalty is applicable to the case scheduled for a hearing;
7. A listing of the individual's rights. The assistance unit or its representative must be given adequate opportunity to:
  - a. Examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;
  - b. At his option, present his case himself or with the aid of an authorized representative;
  - c. Bring witnesses;
  - d. Establish all pertinent facts and circumstances;

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e. Advance any arguments without undue interference;

f. Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

8. If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

~~W.~~ W. The time and place of the ADH shall be arranged so that the hearing is accessible to the individual suspected of committing an IPV. The individual may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. The ADH shall not be postponed for more than a total of 30 days and the state hearing authority may limit the number of postponements.

~~X.~~ X. The ADH can be held even if the individual fails to appear. The individual has 10 days after the date of the scheduled ADH to present reasons indicating a good cause failure to appear.

~~Y.~~ Y. Even though the individual is not ~~represented~~ present, the hearing officer shall carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence.

~~Z.~~ Z. If the household member is found to have committed an IPV but a hearing officer later determines there was good cause for not appearing, the previous decision is no longer valid and a new ADH shall be conducted. The hearing officer who conducted the

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original hearing may conduct the new hearing. The good cause decision shall be entered into the hearing record by the hearing officer.

CC. A pending ADH shall not affect the individual's right to participate in the TANF program. The local agency may not disqualify an individual until the hearing officer finds that the individual has committed an IPV. This does not preclude, however, the local agency from reducing, suspending, or terminating assistance for other reasons.

DD. AA. The ADH is attended by persons directly concerned with the issue at hand.

This normally means a representative of the local agency and the individual alleged to have committed the IPV.

EE. BB. The hearing officer shall:

1. Identify those present for the record;
2. Advise the individual that he may refuse to answer questions during the hearing and that anything said or signed by the individual concerning the charge or charges may be used against him in a court of law;
3. Explain the purpose of the ADH, the procedure, and how and by whom a decision will be reached and communicated, and the option of either the individual or the local agency to request state board review of the hearing officer's decision;
4. Consider all relevant issues. Even if the individual is not present, the hearing officer is to carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence;
5. Request, receive and make part of the record all evidence determined necessary to render a decision;

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6. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and

7. Advise the local agency to obtain a medical assessment at local agency expense if the hearing officer considers it necessary.

FF. CC. The individual alleged to have committed an IPV shall be given adequate opportunity to:

1. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH. The contents of the case file, including the application form and documents of verification used by the local agency to establish the alleged IPV, shall be made available;

2. Present his own case or with the aid of an authorized representative;

3. Bring witnesses;

4. Establish all pertinent facts and circumstances;

5. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses; and

6. Advance arguments without any undue influence.

GG. DD. The hearing officer is responsible for rendering a decision based on clear and convincing evidence from the facts as presented in the hearing. The hearing officer must substantiate his decision by identifying supporting evidence and applicable regulations.

HH. EE. The hearing officer shall prepare a written report of the hearing which shall include findings, conclusions, decisions and appropriate recommendations. The

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decision shall specify the reasons for the decision, identify the supporting evidence, identify pertinent TANF regulations and respond to reasoned arguments made by the individual or representative.

~~FF.~~ FF. The hearing officer shall notify the individual of the decision in writing and of the individual's right to request state board review of the decision.

~~GG.~~ GG. If the individual is found guilty of committing an IPV, the written decision shall advise the individual that disqualification shall occur.

~~HH.~~ HH. The determination of IPV by the hearing officer cannot be reversed by a subsequent fair hearing.

~~II.~~ II. Upon receipt of the notice of a decision from the hearing officer finding the individual guilty of an IPV, the local agency shall inform the individual of the reason for the disqualification and the date the disqualification will take effect.

**22 VAC 40-295-170 22 VAC 40-295-150. TANF-Emergency Assistance (TANF-EA).**

A. A family shall be eligible for TANF-EA if all of the following conditions are met:

1. The assistance meets TANF requirements specified in ~~§ 63.1-105~~ § 63.2-614 of the Code of Virginia.
2. The emergency assistance is necessary to avoid destitution of the child or to provide living arrangements for him in a home.
3. The child's need is the result of a ~~natural~~ disaster or a fire.
4. For current TANF recipients, disaster-related needs can be met through TANF-EA in addition to the regular TANF money payment. The TANF-EA payment does not affect the regular TANF money payment. A TANF-EA payment may not be issued, however,

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to replace money lost by the recipient or for the loss of earnings. The period of ineligibility specified below shall not apply to TANF recipients that receive TANF-EA.

B. The amount of assistance provided shall be up to the maximum TANF amount for four months that the family would otherwise be eligible to receive \$500 per emergency occurrence. The amount of the payment is based on immediate needs of the applicant.

C. If an assistance unit receives a TANF-EA and is not otherwise receiving TANF, all assistance unit members shall be ineligible for TANF for 1.33 times the number of days for which assistance is granted, beginning with the date that the TANF-EA is issued.

**22 VAC 40-295-180 22 VAC 40-295-160. Availability of child care and sanctioning for failure to engage in work.**

The local department of social services shall not sanction a single custodial parent caring for a child under age six for failure to engage in required work if he demonstrates an inability to obtain needed child care for one or more of the following reasons:

1. Appropriate child care within a reasonable distance from the home or under other arrangements is unavailable;

2. Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

3. Appropriate and affordable formal child care arrangements are unavailable.

**22 VAC 40-295-170. Pilot projects.**

The Department of Social Services shall have the authority to implement pilot projects that may have program rules different than those contained in this regulation]; provided, however, that such rules shall not result in a reduction in assistance received by

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applicants or recipients and may not deprive them of rights set forth in 22 VAC 40-295-80, 22 VAC 40-295-90, 22 VAC 40-295-100, or 22 VAC 40-295-110.] Such program rules shall be made available to all program participants in the area in which the pilot is implemented. Pilot projects shall be evaluated for cost effectiveness, client impact, and the achievement of outcomes that support the long-term success of TANF recipients. [For purposes of applying this section, the pilot project may not include more restrictive eligibility rules than those contained in this regulation. Pilot projects may be implemented for no longer than two years.]

DOCUMENT INCORPORATED BY REFERENCE

Virginia Department of Social Services Child [Day] Care Services Policy, Volume VII, Section II, Chapter D, Revised February 2000.

I certify that this regulation is full, true, and correctly dated.

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Debra Price Andrews, Chair  
State Board of Social Services  
March 10, 2004