

From: Moncure, Halliday  
Sent: Monday, December 7, 2020 2:07 PM  
To: Moncure, Halliday  
Subject: 12.7.2020 - HM notes WCFWF prep for potential litigation

12.7.2020 HM notes/prep to discuss WCFWF program and potential litigation with DHHS

lpm

SGH, Liz Ray, Beth Hamm, Molly Bogart

HM, BK

-heard from an advocate asking what is going on. Have not responded - don't want to contradict anything

HM prep notes:

1. Generally best to say as little as possible.
  - a. See notices re: conditional contract award.
  - b. No requirement to state anything re: letting rule lapse.
  
2. Whatever DHHS states must be true regarding why it determined not to proceed with program.
  - a. If DHHS is sued, will need to be consistent in defense/position re: bases for decision.
  
  - b. Likely will come in form of Dec. Judgment action and a claim under APA based on failure to act, per 5 MRS 11001(2). Seeking writ of mandamus - ?
    - i. Could likely file a MTD - lack of aggrieved status/lack of specific injury.
    - ii. Also did not timely file (w/in 6 mos) - but perhaps not b/c DHHS's actions led folks to believe that program would be implemented
  
  - c. If we get to merits, discovery (both document production and depositions) will reflect decision making.
  
  - d. Relevant time period is 10/1/2020 (when conditional K award issued to Fed Cap) and 12/4/2020;
    - i. Also may be other actions within that time period that reflect DHHS intention to implement the program - including defending RFP appeal (pre-hrng on 12/4)

If we get to the merits, probe will be what occurred after x time to change Dept's decision

3. Could say funding unavailable, if that is accurate.
  - a. Was \$\$ spent under this admin or LePage?
  - b. What is status of funding now? Is \$\$ there now to implement?
  - c. Ensure documentation reflects funding status;

d. Also any DHHS communications re same reflect lack of funding as reason not to implement.

-it IS in our budget - the \$\$\$. So probably not a good reason. No "accumulated balances" but there is \$\$\$ there

Beth-in part legal concerns, fear that wd not be able to resolve before rule lapsed, and it got a lot of focus - raises concerns in other parts of TANF

Beth-not given permission under LePage to implement the program. Complexity around operationalizing it was another concern. Also in midst of pandemic. Uptick in TANF cases. Even though we may have budgeted for it. Still concern about - depending on what we see for case load and TANF - supporting case load v. WCFWF program

HM - block grant \$ = flexibility

Beth - at that point in time had carry over funds from 17/18 block grants  
-get about 78M annually from TANF, block grant basis  
-for not implementing program for x years - as started to increase in other areas - those \$\$\$ were spent on other things. So that \$ is gone.

SGH - want to pursue alternatives to reaching people who need transportation

-don't want to give cars  
-another budget alternative that would do services in different way. Need to talk to Gov's office.  
part of budget - takes longer to pass

Beth said - recently used last of 18 block grant carryover

Molly - don't think changes will be welcome  
-also avoid cmte hearing process by doing via budget

HM - think legislative inquiries are separate and should be addressed on case by case basis.

-Beth - we DO have TANF funding  
-but specific dollars that were allocated in 17/18 are gone. Were used for other TANF programs

-HM - statute doesn't require cars. Why couldn't DHHS let proposed rule lapse, go back out w/ new rule and RFP that does not include cars?

SGH - would take time and \$\$\$ and where statute repeals in July 2022, does not make sense. Particularly during COVID

HM - that may be decent argument/rationale.

-do not use OAG as reason for not implementing rule. Could refer to comments and complexity and how DHHS not ready to implement.

- referred to PHN case, marijuana policy case, 11001(2) lack of aggrieved status

-DHHS will regroup and discuss bases for decision making. HM offered to review any written messages (likely won't be any) or discuss again the rationale. Again keep in mind that whatever is relayed to public must be true and supported by the record.

OAG to standby

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