



**Commonwealth of Massachusetts**  
*Executive Office of Health and Human Services*  
**Department of Transitional Assistance**  
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Field Operations Memo 2000-25 A  
August 23, 2000

To: Transitional Assistance Office Staff

From: Joyce Sampson, Assistant Commissioner for Field Operations

Re: *Smith v. McIntire* Lawsuit: 35-Hour-per-Week Extension Requirement

**Background**

A Superior Court judge in the *Smith v. McIntire* lawsuit has ruled that certain TAFDC regulations related to the 24-month extension process are unlawful. The regulations found invalid are 106 CMR 203.210(D)(1) and 106 CMR 203.210(E)(1). 106 CMR 203.210(D)(1) is the regulation that describes extension benefits as a "separate, short-term benefit" and 106 CMR 203.210(E)(1) contains the "35-hour rule" for recipients of extension benefits. Specifically, the Department may not require an individual granted an extension to work or perform work-related activities for a total of 35 hours a week.

**Purpose of This Memo**

The memo informs TAO Staff about:

- the impact of this lawsuit on all extension cases;
- guidelines for approving or denying extension requests;
- changes to the extension process; and
- new extension procedures.

**Impact on  
Extension Cases**

The court's decision states that the Department cannot consider the extension of benefits beyond the 24-month time limit as a separate, short-term program, and cannot establish additional requirements during an extension period that are not requirements during the initial 24-month period and conflict with Chapter 5, the Massachusetts Welfare Reform Law.

Since this ruling invalidates the "35-hour" rule, recipients of extension benefits are no longer required to complete a total of 35 hours of work and/or job search each month. **This means that no extension case can be terminated for failure to meet the "35-hour" rule.**

However, consistent with the Department's procedures for recipients in their final months of time-limited benefits, all recipients of extension benefits must be informed of the importance of finding *full-time* employment before their extension ends. Accordingly, the importance of Structured Job Search (SJS) should be stressed to all extension recipients as a means to find full-time work by the end of their extension period.

While enrollment in SJS is voluntary, any recipient of extension benefits must be informed that failure to participate in the SJS program *or a program which can reasonably be expected to lead to full-time employment before the end of the extension* may be viewed as a refusal to cooperate with the Department in work-related activities. (Certain ESP programs or programs funded under the Welfare-to-Work block grant may be appropriate substitutions for SJS.) The recipient must be reminded that a **refusal to cooperate** with the Department in work-related activities may result in the denial of future extension requests.

Reminder: Recipients who are employed part-time should also be encouraged to participate in the SJS program or a program which can reasonably be expected to lead to employment before the extension ends.

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## Examples

In December of 1999, *Transitions Update #10* explained the relationship between the Work Program Requirement and work-related activities. What follows are examples from that *Update*, modified to eliminate references to the 35-hour rule.

Q: What is the relationship between the 20-hour-per-week work program requirement and the requirement that an individual requesting an extension has cooperated with the Department in work-related activities? What is required of someone asking for an extension?

A: These are three separate and distinct requirements depending on an individual's situation.

- In most instances, an individual with a TAFDC work program requirement must work or perform community service (or a combination of work and community service) for 20 hours per week, absent good cause. 106 CMR 203.400 lists several other ways an individual can meet his or her work program requirement.
- In deciding whether to approve or deny an individual's *extension request*, what must be considered is not a strict **hour** requirement, but whether the individual has cooperated with the Department in **work-related activities**, and what steps he or she has been and is taking to find **full-time** employment and/or become self-sufficient. It is important to note that an individual working part-time should still be referred to Structured Job Search or Basic Job Search.
- In most instances, an individual *requesting or who has been granted an extension* beyond the 24-month time limit who has a TAFDC work program requirement must work or perform community service (or a combination of work and community service) for 20 hours per week and must also be referred and strongly encouraged to participate in job search or otherwise cooperate with the Department in work-related activities. 106 CMR 203.210 states that an individual granted an extension may also be required to participate in a vocational evaluation or a vocational program such as one offered by MRC.
- In most instances, an individual *requesting or who has been granted an extension* beyond the 24-month time limit who does not have a work program requirement must be referred and strongly encouraged to participate in job search or otherwise cooperate with the Department in work-related activities. 106 CMR 203.210 states that an individual granted an extension may also be required to participate in a vocational evaluation or a vocational program such as one offered by MRC.

Examples  
(continued)

While the circumstances of each individual case must be considered independently, in general the following guidelines should apply:

Current Recipients

- A current recipient requesting an extension who is meeting his or her 20-hour-per-week work program requirement but has not followed through with referrals to SJS or other work-related activities would not be considered to have cooperated with the Department in work-related activities.
- A current recipient requesting an extension who is meeting his or her 20-hour-per-week work program requirement and also fully participating in SJS or in other work-related activities would be considered to have cooperated with the Department in work-related activities.
- A current recipient requesting an extension who does not have a work requirement and who has not fully participated in SJS or in other work-related activities would not be considered to have cooperated with the Department in work-related activities.
- A current recipient requesting an extension who has no work requirement but has fully participated in SJS or in other work-related activities would be considered to have cooperated with the Department in work-related activities.

Former Recipients Reapplying and Requesting an Extension

- A former recipient requesting an extension who is not working but participating fully in SJS or another activity approved by the Department for several weeks would be considered to have cooperated with the Department in work-related activities.
  - A former recipient requesting an extension who is working 20 hours per week and also participating fully in SJS or another activity approved by the Department for several weeks would be considered to have cooperated with the Department in work-related activities.
  - A former recipient requesting an extension who is neither working nor participating in SJS, or another activity approved by the Department, has failed to cooperate with the Department in work-related activities.
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**Two Types of  
Extension Cases**

An approved extension will fall into one of two groups:

- Work-program-required for 20 hours of activity per week as well as cooperating with the Department in work-related activities; or
- Nonexempt, not work-program-required but cooperating with the Department in work-related activities.

NOTE: In most instances, an applicant/recipient working full-time at or above minimum wage is considered to be cooperating with the Department in work-related activities.

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**Impact on the  
Extension  
Process**

In light of the court decision:

- the “35-hour” rule to determine continuing eligibility for an extension has been eliminated;
  - extensions are granted on the basis of meeting TAFDC eligibility requirements;
  - extensions are granted on the basis of cooperating with the Department in work-related activities and other extension criteria found in 106 CMR 203.210(B)(2)(a) through (e);
  - any extension granted will last no more than two months; and
  - the 24-Month Extension Plan (*24-EXP*)(Attachment A), and the Extension Agreement (*24EXAGR*)(Attachment B) form have been revised.
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**Processing  
Extension  
Requests for  
Current  
Recipients: AU  
Manager  
Responsibilities**

A current recipient applying for an extension must have his or her request processed as follows:

- complete an extension request form;
  - refer the recipient to a program which helps him or her in getting full-time employment and demonstrates cooperation with the Department in work-related activities, if appropriate;
  - tell the recipient that he or she must cooperate with the Department in work-related activities (e.g., job search) as well as meet all other TAFDC program rules (e.g., 20 hours per week of work program requirement activities) to be considered eligible for an extension;
  - tell the recipient that no extension will last more than two months;
  - submit the extension request for review to the Supervisor who in turn submits it to the TAO Director for review; and
  - if the extension request is approved, the TAO Director generates an approval letter from the ETNA system (see the *PC User's Guide*, Volume 7 for further instructions) telling the recipient that his or her extension has been approved for up to two months; or
  - if the extension request is denied, the TAO Director generates a denial letter from the ETNA system telling the recipient that the extension has been denied and the reason for denial and on the same day tells the AU Manager to close the TAFDC case using AR 29.
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**Processing  
Extension  
Requests for  
Former  
Recipients: AU  
Manager  
Responsibilities**

Any former recipient who reapplies for an extension must have his or her request processed as follows:

- complete a TAFDC application form and an extension request form;
- refer the applicant to a program which helps in getting full-time employment and demonstrates cooperation with the Department in work-related activities;
- tell the former recipient that he or she must cooperate with the Department in work-related activities (e.g., job search) as well as meet all other TAFDC program rules (e.g., 20 hours per week of work program requirement activities) to be considered eligible for an extension;
- tell the former recipient that participating fully in SJS or another activity approved by the Department for several weeks would be considered to be cooperating with the Department in work-related activities;
- tell the former recipient that any extension will last no more than two months;
- submit the extension request for review by the TAO Director;
- if on day 26, a decision has not been made about the extension request and the former recipient meets TAFDC eligibility rules, approve the application for TAFDC and establish the case using either *Program Code 2 or 6* in block 44 of the PACES Input Document (PID); and
- if the extension request is subsequently approved, the TAO Director generates an approval letter from the ETNA system telling the recipient of the approval of the extension for up to two months from the date of the extension approval; or
- if the extension request is subsequently denied, the TAO Director generates a denial letter from the ETNA system telling the recipient that the extension has been denied and the reason for denial and on the same day tells the AU Manager to close the TAFDC case using AR 29.

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**Systems Impact**

The following are changes to Systems because of the recent ruling:

- PACES: Program Code 4 should not be used to establish any extension approved case. Action Reason 68 should not be used to close any extension case.
  - ETNA: TAO Directors should not choose the reason "04 - Your hours of employment fell below 35 hours per week, and/or the hourly wage fell below the minimum wage."
  - BEACON: Refer to Field Operations Memo 99-10 O for current BEACON procedures.
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**Field Operations  
Memo 2000-25 B**

Shortly, notices will be sent to former recipients impacted by this recent court decision. Instructions for processing requests of these recipients denied or terminated for not meeting the "35-hour" rule are being finalized and will be issued shortly.

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**Final Instructions**

Effective immediately, all current supplies of the 24-Month Extension Plan (24-EXP)(11/98), and the Extension Agreement (24EXAGR)(11/98) in the Transitional Assistance Offices must be destroyed. The revised 24-Month Extension Plan (24-EXP)(Rev. 8/2000)(Attachment A), and the Extension Agreement (24EXAGR)(Rev. 8/2000)(Attachment B) form must be copied and used until supplies are sent from Schrafft's.

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**Questions**

If Transitional Assistance Office Directors have questions about a specific extension case they should contact their Regional Director or their central office review contact.

Policy-related questions should be referred by your Hotline designee to the Policy Hotline at (617) 348-8478. Systems-related questions should be referred to Customer Services at 617-348-5290.

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Massachusetts Department of Transitional Assis-  
**Extension Plan**

\_\_\_\_\_  
Recipient Name

\_\_\_\_\_  
SSN

\_\_\_\_\_  
Other Parent Name

\_\_\_\_\_  
SSN

I have had the TAFDC Time-Limit Extension rules explained to me and I am aware that my eligibility for additional extensions will be affected if I fail to meet the activities on this Extension Plan without Good Cause.

Extension End Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Attachment A

Month 1	What Activity will you do?	Issues	
		<input type="checkbox"/> Child Care Needed	<input type="checkbox"/> Transportation Needed
_____ Recipient Signature		_____ Other Parent Signature	_____ TAO Worker Signature
_____ Date		_____ Date	_____ Date

Month 2	Activity for this Month	Results of <b>Prior</b> Month Activity	
_____ Recipient Signature		_____ Other Parent Signature	_____ TAO Worker Signature
_____ Date		_____ Date	_____ Date



Massachusetts Department of Transitional Assistance

**Extension Agreement**

TAO \_\_\_\_\_

\_\_\_\_\_  
Recipient Name

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Other Parent Name

\_\_\_\_\_  
Social Security Number

I understand that during the extension period I am required to cooperate with the Department in work-related activities in order to find a full-time job.

I understand that this extension period will end on \_\_\_\_\_  
Date

I understand that during this extension period I must:

- meet with my Transitional Assistance Worker every month to discuss my progress;
- not reject offers of employment, reduce my hours of employment or quit a job without good cause;
- meet all TAFDC program requirements, including the twenty hour TAFDC work requirement, if applicable to me; and
- if I am working, submit earnings verifications from the previous four-week period every month.

In addition, I understand that I must cooperate with the Department in work-related activities, I understand that the Department may refer me to work-related activities to help me find a full-time job. These activities may include:

- attending job search programs;
- completing a vocational evaluation;
- taking a subsidized job; and/or
- enrolling in a vocational rehabilitation program.

I understand the Department may review and revise its decision to grant this extension.

\_\_\_\_\_  
Recipient Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Other Parent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
TAO Worker Signature

\_\_\_\_\_  
Date