

**IN THE MATTER OF THE PROPOSED RULES
OF THE DEPARTMENT OF ECONOMIC SECURITY
GOVERNING GENERAL ASSISTANCE: REGISTRATION
FOR EMPLOYMENT SERVICES AND ALLOWANCES
UNDER MINNESOTA LAWS 1983 CHAPTER 312,
ARTICLE 8**

**STATEMENT OF NEED
AND REASONABLENESS**

3300. 4010 DEFINITIONS. This section provides definitions of terms used in the proposed rules. The definitions are needed to provide shorter forms of reference, to avoid unnecessary repetition of titles and explanations, and to minimize ambiguity.

3300. 4010 Subpart 1. Scope.

This subpart is necessary to specify the jurisdiction and applicability of the proposed rules. Since the department is required to adopt rules for a number of other statutes for which it has administrative responsibility, the specification of the coverage provided in this subpart is reasonable.

3300. 4010 Subpart 2. Commissioner

The term "commissioner" refers to the Commissioner of the Department of Economic Security or the Commissioner's designated agent. Thus "commissioner" standing alone always refers to the Commissioner of the Department of Economic Security or the Commissioner's designee. The definition permits a shorter reference to the Commissioner of the Department of Economic Security while preventing confusion as to the official indicated. This definition and use of the term "commissioner" are the same as used in other rules of the Department of Economic Security, and are reasonable.

3300. 4010 Subpart 3. Department

The term "department" refers to the Minnesota Department of Economic Security. Thus "department" standing alone always refers to the Department of Economic Security. This definition minimizes ambiguity, and permits a shorter reference to the Department of Economic Security.

3300.4010 Subpart 4. Full-time Student.

The phrase "full-time student" occurs a number of times in the legislation and in rules promulgated by the Department of Human Services. The need to specifically define the phrase has become apparent in administering the Employment Allowance Program since its inception. The definition is the same as defined by the Department of Human Services and minimizes ambiguity and is, therefore, reasonable.

3300.4010 Subpart 5. Good Cause.

The phrase "good cause" is used extensively in this as well as other welfare and entitlement legislation with considerable variances in definition. The term must be defined insofar as this law and proposed rules are concerned and to make the definition compatible with that used in other welfare programs including General Assistance. The definition is reasonable because it clearly relates to subject contained in the proposed rules and is well understood in General Assistance activities.

3300. 4010 Subpart 6. Local Agency.

The phrase "local agency" occurs many times in both the law (Laws 1983, Chapter 312, Article 8) and the proposed rules. The law and proposed rules contain a number of references to other agencies (job services, local law enforcement agencies, and employment administrators) which operate in the local community. While writing the proposed rules, a number of persons not intimately familiar with the nomenclature of the program wanted to know precisely which agency was the "local agency." The term needed to be defined to eliminate ambiguity with respect to the several agencies covered by the law and proposed rules. The definition is reasonable because it clearly indicates that the term "local agency" refers to the agency that has responsibility for the provision of welfare services in the local community. The definition is the same as that given in statute (Minnesota Statutes, Section 256D.02).

3300. 4010 Subpart 7. Recipient.

The term "recipient" refers to the person to be served under the proposed rules and needs to be defined specifically as it relates to the General Assistance program. The definition in the proposed rule clearly identifies the recipient and is consistent with the definition used in legislation and rules for the General Assistance program.

3300. 4020 PURPOSE.

This rule is necessary to clarify the criteria and procedures by which the Department of Economic Security carries out its statutory mandate to establish reasonable registration, reporting and suitable employment acceptance requirements for certain recipients of general assistance. This rule makes it clear that the status of individuals as recipients of general assistance does not preclude their participation in the full range of services provided by the Department of Economic Security.

3300. 4030 AVAILABLE FOR WORK

This rule is needed to clarify the phrase "available for work." Since availability is a major requirement of the law for receipt of general assistance or the employment allowance, and because findings of noncompliance

can be based on failure to be available for work, it is important that the meaning of "available for work" be clearly understood.

This rule provides that the conditions of being "available for work" will generally be satisfied if recipients demonstrate that they are unequivocally ready and willing to accept an offer of full-time suitable employment. This provision is reasonable and it is consistent with the underlying policy of the legislation that able recipients be available and willing to accept suitable employment. That there should be no unreasonable self-imposed restrictions on availability is consistent with the purpose of the law and, therefore, reasonable.

One of the purposes of this legislation is to provide the recipient employment rather than general assistance. When the employment is not immediately available, the recipient is provided general assistance or employment allowance. However, the recipients must be "available for work" to maintain their eligibility to receive general assistance or the allowance. The rule makes clear that recipients who are full-time students in post-secondary schools colleges, or universities, or certain vocational-technical programs are not available for work. The exception is recipients participating in vocational-technical training programs for economically disadvantaged persons under the Federal Job Training Partnership Act or the Work Incentive Program.

The provision that full-time students of post-secondary schools, colleges, and universities or certain vocational-technical programs are not "available for work" is reasonable because, in general, being a full-time student severely limits ones ability to actively seek and accept full-time employment. A policy that these full-time students are "available for work" while attending these institutions would mean that they could received general assistance or employment allowances for being full-time students. The effect of such a policy would be to make the general assistance or employment allowance a post-secondary scholarship program. This rule is reasonable because it ensures that such an undesirable result does not occur.

This rule gives an exception to recipients who are participating in a vocational-technical training program for the economically disadvantaged under the Job Training Partnership Act or the Work Incentive Program. This exception is reasonable because these vocational-technical training programs are usually of short duration and are geared toward providing trainees with the skills that are immediately transferable to a work situation. The exception granted to this category of recipients is reasonable, because it is consistent with the concept of providing recipients with short-term assistance to gain skills which will enhance their long-term employability. It is also consistent with Law 1983, Article 8, section 7 which allows state funds contributed for wages of eligible MEED applicants participating in job training programs to be used for a maximum of 52 weeks. For persons not participating in job training programs the maximum period for which state funds may be used by wages for an individual is 26 weeks. The policy implicit in this legislation encourages participation in short-term job training programs.

3300. 4040 REASONABLE REPORTING

This rule is necessary to clarify the phrase "reasonable reporting" since it is a requirement which must be met by recipients in order to receive general assistance or the employment allowance. The rule provides that the recipients must report to the office with which they are registered. The method, frequency and format of reporting will be prescribed by the department. Reporting may be in person, by telephone or by mail.

The reporting requirements are necessary to insure that eligibility criteria are maintained and to assist recipients with their job search. Required reporting is also necessary to assure that recipients are available for work. Failure to report could indicate that a recipient is unavailable for work.

This rule requires recipients to report to the office with which they are registered. This provision is reasonable since the requirements of job search, availability for work, and suitable employment all implicitly relate to conditions in the local labor market. Reporting to the office with which the recipient is registered suggests that the recipient is physically present and available for work in that area. Absence from the area renders fulfillment of the "availability" impossible and increases the probability that employment opportunities will be missed.

The employability development plan is prepared by the department in consultation with the recipient for the purpose of assisting the recipient to obtain suitable employment. This plan specifies the work search and reporting requirements for the recipient.

The use of an employability development plan provides the flexibility needed so that the services of the department can be designed to meet the specific needs of the recipient while taking into consideration the conditions of the local labor market area. If due to economic conditions within a labor market area the department finds that for a particular occupation, or group of recipients, job openings are so few that any search for openings would be fruitless for the recipient and burdensome to employers, then less frequent reporting will be required. If, on the other hand, the department finds that the existence of job openings within a labor market area are more plentiful, and active search for a job would likely be successful, the department could require more frequent reporting. These reporting requirements are reasonable since they allow the necessary flexibility to adjust the reporting schedule to meet the conditions of the labor market area, thus minimizing unfruitful searches while insuring a diligent, meaningful search for suitable employment.

The rule provides that the method of reporting by mail, telephone or in person will be prescribed by the department. This is necessary to give the department the flexibility to meet the varying needs across the state. Because of such factors as labor market conditions, availability of transportation, distance from departmental office, the department needs the

discretion to determine how recipients will report. Since these methods of reporting have been successfully utilized in the department's unemployment insurance program under similar circumstances, it is reasonable that they should be used here.

3300. 4050 JOB SEARCH REQUIREMENTS

This rule is necessary to clarify the meaning of the phrase "job search requirements" as used in Law 1983, Article 8, section 10, subdivision 1. The phrase "job search requirements" refers to conditions of the job search established in the employability development plan.

The employability development plan is prepared by the department in consultation with the recipient for the purpose of assisting the recipient to obtain suitable employment. The plan specifies the work search and reporting requirements of the recipient. The employability development plan provides guidance to the recipient regarding what will be expected of the recipient and what the recipient can expect of the department. The employability development plan is a joint product of the department and the recipient.

The job search requirements are specified in the employability development plan, which is individually designed to meet the needs of the individual recipient. The plan takes into consideration conditions of the local labor force, as well as the recipient's skills, knowledge, abilities and interests. The employability development plan also considers the recipient's educational level and previous connection with the labor force.

This approach to specifying the job search requirements is reasonable because it provides a flexible individualized approach to one's work search. Since the plan is prepared jointly by the department and the recipient, it provides an excellent opportunity for optimum assessment and consideration of the recipient's skills, knowledge and abilities under the conditions of the local market area.

This rule is reasonable because it provides the best means for consideration of a number of factors - the recipient's skills, knowledge, abilities, work history, labor market area - important to the job search process, and it informs both the recipient and the department of the responsibilities and expectations of each.

3300. 4060 SUITABLE EMPLOYMENT

The phrase "suitable employment" means any employment which pays at least the applicable minimum wage, meets health and safety standards, and which the individual is physically and mentally able to perform. Suitable employment includes any job provided through the Minnesota Emergency Employment Development (MEED) Act, Minnesota Statutes, sections 268.671 to 268.686, which meet the above criteria.

The inclusion of MEED jobs in the definition of suitable employment is reasonable because the statute provides that a job provided through the MEED jobs program is suitable employment. In addition to employment through the MEED program, the definition of suitable employment includes any job which pays at least the applicable minimum wage, meets health and safety standards, and which the individual is physically and mentally able to perform.

This further refinement of the definition is necessary and reasonable because it expands the pool of jobs to include non-MEED jobs for which the Department provides placement services. Since the Department has the responsibility for paying employment allowances under Minnesota Statutes, sections 268.80 and 268.81, and has the ongoing responsibility of placing individuals in jobs for which they are best qualified, the suitable work provision is defined to provide the widest range of opportunities for placing recipients in "suitable employment." The refinement in the definition is reasonable because it removes the narrow construction of the phrase "suitable employment" that would prevail if the search for "suitable employment" were limited either to MEED or non-MEED jobs. To limit the search for "suitable employment" to either category of jobs would be unreasonable. The broader definition of "suitable employment" is reasonable because it provides employers, recipients, and society the benefits of maximally utilizing the skills of the largest number of workers possible under existing economic conditions.

3300. 4070 EMPLOYABILITY DEVELOPMENT PLAN

The phrase "employability development plan" means the strategy and document which assesses the recipient's work history, training, skills, knowledge and abilities as it relates to their ability to obtain employment and to direct the recipient's efforts to seeking and securing a job. This plan is the basis for the job search efforts and also serves as the monitoring device to assure reasonable efforts on the part of the recipient. Findings of noncompliance by the department will often be based upon performance or nonperformance measured against the employability development plan.

Inclusion of this phrase in the rules is reasonable because the statute provides for the assessment of work history and compliance with reasonable reporting and job search requirements as established by the commissioner. In order to enforce these requirements they must be clearly spelled out so that the recipient has no doubt as to what is required and the requirements are uniformly applied.

3300. 4080 NONCOMPLIANCE

This rule is necessary to explain the term "noncompliance". Since compliance with the work registration requirements of Minnesota Statutes, section 256D.111, subdivision 1 is a major condition for recipient's continued eligibility for general assistance, and therefore, eligibility for the employment allowance paid by the department, it is important that the meaning of this term be clearly explained. The term "noncompliance" means the failure

of a recipient to comply with the requirements of Minnesota Statutes, section 256D.111, subdivision 1. This definition is reasonable because it is based on the clear language of the statute that an adult general assistance recipient who is not employed must register with the department for employment services.

This rule provides the conditions under which determinations of "noncompliance" can be made. This rule specifies that a determination of "noncompliance" may be based on (a) failure to be available for work, (b) failure to comply with reasonable reporting or job search requirements, (c) failure to accept an offer of suitable employment, or (d) voluntary termination from suitable employment.

This portion of the rule is reasonable since it is based on the intent of the legislation that recipients should be available for work, comply with reasonable reporting and job search requirements, and accept suitable employment. The term "noncompliance" is further refined by adding the condition that voluntary termination from suitable employment may be a basis for a determination of "noncompliance." This clarification is a reasonable refinement of the statutory requirement that a recipient accept an offer of suitable employment. The purpose for having a recipient accept suitable work is to provide meaningful employment for the recipient, reduce the public assistance rolls, and provide both the recipient and society all the benefits and advantages that come when employment replaces unemployment. Voluntary termination is the antithesis of good faith acceptance of suitable employment. It is, therefore, inappropriate for a general assistance or employment allowance to be paid when a recipient either declines suitable employment or voluntarily terminates suitable employment. This refinement makes clear that voluntary termination of employment is the logical equivalent of failure to accept suitable employment in good faith.

This rule provides that hearings on the determination of "noncompliance" will be conducted in accordance with the Work Incentive Program (WIN) Hearing Rules of Practice. The Hearing Rules of Practice are incorporated by reference pursuant to Minnesota Statutes, section 14.07, subdivision 4. The use of the WIN hearing procedures for "noncompliance" determinations is reasonable because of the similarity of issues in WIN hearings and those addressed by this rule. The WIN hearing process has been used in this department for many years in cases of WIN registrants who have been notified that they are to be terminated from the WIN program for failure, without good cause, to accept suitable employment or to participate in the WIN program. In both instances cases involve issues of nonconformance with program requirements with the result that program benefits would be terminated if final determinations of "noncompliance" are made.

It is necessary to incorporate the Hearing Rules of Practice by Reference because its verbatim inclusion herein would result in unnecessary expense and inconvenience.

This rule provides that following a finding of "noncompliance" the Commissioner will certify in writing to the local agency that a recipient has failed to comply with the requirements of Minnesota Statutes, section 256D.111, subdivision 1. Notification to the local agency by the Commissioner is required pursuant to Minnesota Statutes, section 10, subdivision 4. The rule reasonably provides that a copy of the written certification to the local agency be provided to the recipient.

3300. 4090 NOT ABLE TO SUCCESSFULLY PERFORM A JOB

This rule is necessary to explain the conditions under which an individual will be considered "not able to successfully perform a job." Minnesota Statutes, section 268.80 requires the Commissioner to promptly determine a person's ability to successfully perform a job available through the program. This prompt determination is to be made by the department within three business days after receiving an application.

Initial determinations that individuals are able to perform a job successfully will result in some errors, leading to the placement of some individuals who will not be able to successfully perform a job. For this reason, a determination of "not able to successfully perform a job" must go beyond the initial decision and sample on-the-job behavior. This rule reasonably provides that a determination of "not able to successfully perform a job" will be made after an individual has been placed in a suitable job and normal corrective steps used to improve the individual's performance. This provision is necessary to insure that individuals hired through the MEED program are given the same opportunities for corrective measures as other employees, under similar circumstance, who are not associated with the MEED program. It is reasonable that a determination of "not able to successfully perform a job" be made only after an individual has had the opportunity to work in a job and received the benefit of normal corrective measures.

The second condition under which an individual will be considered "not able to successfully perform a job" is by presenting medical evidence from a licensed medical authority that such individual is unable to carry out the required tasks of a job. The provision requiring medical evidence that an individual is temporarily or permanently unable to perform a job is both reasonable and necessary. It is necessary to minimize the perception or reality that one can easily or fraudulently subvert the statutory requirements pertaining to availability for work, complying with reasonable job search and reporting requirements, and accepting offers of suitable employment.

3300. 4100 UNLIKELY TO SECURE A JOB

This rule is necessary to explain the circumstances in which a recipient is considered to be "unlikely to secure a job." Minnesota Statutes, section 268.80 requires the commissioner to determine that a person is not likely to secure a job and upon that determination refer the person to the appropriate local agency.

This rule is reasonable and specifically sets forth the two conditions under which an individual is unlikely to secure a job. The first specifies that the individual is unable to meet the qualifications of any of the jobs available through the Minnesota Emergency Employment Development Program. The second condition is that the available jobs are outside the normal commuting distance or capabilities of the person being considered. Both of these conditions would render an individual unable to compete or perform successfully and, therefore, the rule is reasonable.

3300. 4110 APPLICATION PROCESS

This rule is necessary to clarify the procedures through which the Department of Economic Security and employment administrators provide services available in the Minnesota Emergency Employment Development job program. This rule defines "application process" as to a procedure through which an individual makes a formal request to the Commissioner for services under the Minnesota Emergency Employment Development Program. This definition is reasonable because it is consistent with the statutory language which provides that an individual may apply to the Commissioner for service, under the MEED Program.

The rule provides that individuals found eligible will be referred to an employment administrator for program services. This aspect of the rule is necessary because MEED services are provided not only by the department, but by other employment administrators as well. The referral will be written and will include the address of the employment administrator to which the applicant is referred. This provision is reasonable because it provides both the applicant and the department with a permanent record of the transaction.

3300. 4120 ALLOWANCE

This rule clarifies that the "allowance" referred to in statute is the employment allowance paid to individuals who satisfy the GA eligibility standards in Minnesota Statutes, section 256D.01 to 256D.21 and are accepted for participation in the MEED program.

This rule clarifies the schedule for allowance payments to recipients referred by the local agency, as well as, for qualifying individuals who were not referred to the local agency. Initial allowance payments will be made within ten working days following the date of receipt of the application by the Department, but in no case before the expiration of the one month grant from the local agency. This provision is necessary to give the department adequate time to evaluate the application and process the initial payment. The restriction prohibiting the initial payment until after the expiration date of the period covered by the one month grant from the local agency is reasonable because it reduces the probability of overpayments during this period. The rule makes clear that subsequent payments will be on a monthly schedule. This schedule is reasonable because it is essentially identical to the monthly schedule of payments of general assistance grants by local agencies.