



State of Florida
Department of Children and Families

Rick Scott
Governor

David E. Wilkins
Secretary

DATE: October 28, 2011 **TRANSMITTAL NO.:** P-11-10-0016

TO: ACCESS Florida Operations Managers
ACCESS Florida Program Offices

FROM: Nathan Lewis, Chief, Program Policy

SUBJECT: Suspension of TCA Applicant Drug Testing - Revised

EFFECTIVE: **October 24, 2011**

This memorandum is to advise staff of the suspension of the policy to drug test TCA applicants and to provide instructions on how to process currently pending applications and currently sanctioned recipients. This memorandum rescinds Transmittal No. P-11-10-0014.

Background:

On October 24, 2011 the United States District Court for the Middle District of Florida issued a preliminary injunction against the Department in *Lebron v. Wilkins*, No. 11-01473. The October 24 Order: (1) enjoined the Department from “requiring Plaintiff to submit to a suspicionless drug test pursuant to Section 414.0652, Florida Statutes, as a condition for receipt of TANF benefits until this case is finally resolved on the merits”; and (2) denied Plaintiff’s motion for class certification “[u]pon the stipulation of the State that ‘it will apply such a ruling to all persons similarly situated to Plaintiff.’” The October 24 Order also stated that “the State’s exaction of consent to an otherwise unconstitutional search in exchange for TANF benefits would violate the doctrine of unconstitutional conditions.” In order to comply with this Order, and until the preliminary injunction is dissolved, the Department is hereby revising its procedures for TCA applicants.

New Procedures:

Effective immediately, eligibility staff will stop pending TCA applicants for completion of a drug test. The following actions must be taken for any currently pended applications as of this effective date:

- If pended for items other than the drug test, but have not yet been pended for a drug test:
 - Do not pend for a drug test and approve or deny based on pre-July 1, 2011 TCA policy.

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- If pended for an applicant drug test:
 - Approve benefits, if otherwise eligible, regardless of whether or not the applicant returns proof of completion of the test. Issue an auxiliary to reimburse for the cost of a positive or negative drug test, if proof of the expense is provided. Do not impose a penalty for any positive drug test received. Process the application based on pre-July 1, 2011 TCA policy.

- If pended for selection of a protective payee and a completed drug test:
 - Approve benefits, if otherwise eligible, regardless of whether or not the applicant returns proof of selection of a protective payee or completion of the drug test for the protective payee. Issue an auxiliary to reimburse for the cost of a positive or negative drug test, if proof of the expense is provided. Do not impose a penalty for any positive drug test received. Process the application based on pre-July 1, 2011 TCA policy.

The Department will generate an ad hoc report of current cases with an existing denial or pending status due to Section 414.0652, Florida Statutes. QA staff will take action to approve any TCA benefits previously denied, closed, or reduced due to Section 414.0652, Florida Statutes.

Retroactive benefits will be issued via auxiliaries back to the date the applicant was pended for a drug test, if otherwise eligible, or 30 days from the date of the original application, whichever is sooner. If the applicant was pended for and took a drug test they will be reimbursed for the cost of the drug test, even if they tested positive.

If an individual previously denied TCA due to the drug testing policy reapplies for TCA prior to QA staff taking action to reopen the case, take no action to reapprove the TCA benefit and notify QA staff of the reapplication.

Systems:

As of the evening of October 24, the language related to drug testing has been removed from web application. As of the evening of October 25, all programming and codes related to drug testing have been removed from the FLORIDA System.

Note, however, that because the Lebron case remains pending in federal court, all information relating to Section 414.0652, Florida Statutes, and the Department's implementation thereof, must be retained. Any otherwise applicable record and document retention policy is hereby suspended as it relates to information concerning Section 414.0652, Florida Statutes and the Department's implementation thereof.

E-Acknowledgement:

All ACCESS staff will be required to complete an e-acknowledgment that they have reviewed this transmittal and understand that drug-testing policy has been suspended. The acknowledgment will be located on the ACCESS Florida policy page located at http://eww.dcf.state.fl.us/~ess/policy/policy_index.shtml.

If there are policy questions, circuit/region offices may contact Gary D. Scott at (850) 717-4137.

cc: Director (Ann Berner)
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