

Final Order No. OGC/2000/01-0060 Date: 12/31/01  
FILED  
Agency for Workforce Innovation  
AGENCY CLERK  
Veronica Moss, Agency Clerk  
By: Veronica Moss

**BEFORE THE AGENCY FOR WORKFORCE INNOVATION**

In re: Request for a Declaratory  
Statement Resolving Questions  
About the Appeal Procedures that  
Apply to the Denial of Aiysha Hepburn's  
Request for Transportation Services

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Case No.: AWI/OGC # 2000-01-0075

**DECLARATORY STATEMENT**

The Agency for Workforce Innovation (the Agency), pursuant to section 120.565(3), Florida Statutes, and Florida Administrative Code Rule 28-105.003, renders this Declaratory Statement in response to the Petition for Declaratory Statement, identified above.

**BACKGROUND**

The petition for declaratory statement involves two federally funded programs, the administration of which is divided between two state agencies. The state agencies are the federal grant recipients and are administratively responsible for the State's implementation of the programs funded by such grants.

Temporary cash benefits to public assistance recipients are provided under the federal Temporary Assistance for Needy Families (TANF) program, as codified at 42 USCA §§ 601 et seq. The federal Department of Health and Human Services is the

federal grant agency. The applicable federal regulations for the TANF program are found in 20 Code of Federal Regulations (CFR) Part 645. The Florida Department of Children and Families is the responsible state agency.

As a condition of receipt of TANF benefits, unless exempt, individual recipients are required to engage in employment and training activities. Thus, the “welfare-to-work” (WTW) component of TANF.

The Workforce Investment Act (WIA) of 1998, Public Law 105-220, as codified at 29 USCA sections 2801 et seq., effective August 7, 1998, is the comprehensive federal workforce initiative. As with several other federally funded programs, the TANF employment and training requirements are conducted within the framework of WIA. The US Department of Labor (USDOL) is the federal grant agency. In addition to the law, the applicable federal regulations for WIA are contained in 20 Code of Federal Regulations (CFR) Part 652 et al. The responsible state agency is [Florida] Agency for Workforce Innovation (AWI).

A chief component of WIA is the One-stop system. The One-stop system is designed to provide the full continuum of employment and training services, regardless of funding source, under one roof. Among others, the entities responsible for the welfare-to-work programs are identified in 20 CFR 662.200 of the WIA regulations as required partners of the One-stop system.

Each state is authorized to design and implement its version of TANF and workforce programs, subject to federal guidelines.

## FINDINGS OF FACT

1. On September 26, 2001, Aiysha Hepburn, the petitioner, filed a Petition for Declaratory Statement, pursuant to section 120.565, Florida Statutes, and rule Chapter 28-105, Florida Administrative Code (FAC). Ms. Hepburn and AWI agreed to extend the time for responding to January 4, 2002.

2. Ms. Hepburn is a former recipient of TANF cash assistance.

3. As a condition to the receipt of TANF funds, each state is required to submit a plan containing its strategy for the family assistance program. (See 42 USCA section 602.)

4. Among other things, section 602 (a)(1) (A), requires that the state produce a written plan that includes the state's strategy for the employment, training and education of TANF recipients, consistent with section 607. This is the welfare-to-work (WtW) component of the TANF program.

5. As a TANF cash assistance recipient, Ms. Hepburn was subject to the work and employment requirements established in 42 USCA section 602 (a)(19).

6. In fulfillment of the work requirements, in January and February 2000, Ms. Hepburn participated in a welfare-to-work job-training program and received transitional services.

7. During January and February 2000, in the State of Florida, the employment and training services were delivered to TANF recipients through the "Work and Gain Economic Self-sufficiency [WAGES] Act," as codified in chapter 414, Florida Statutes (1999).

8. For the purpose of the administration of the WAGES program, the State was divided into service delivery areas, each with a local WAGES board. (See 414.028, Florida Statutes (1999).)

9. Within their respective areas, the local WAGES boards planned and coordinated the delivery of all services for public recipient; including education and training and the implementation of a grievance procedure.

10. Effective July 1, 2000, the Florida Legislature overhauled the State's workforce (employment, training and education) strategy with the enactment of Florida Laws, Chapter 2000-165, the Florida's Workforce Innovation Act of 2000, codified in Chapter 445, Florida Statutes.

11. The new state law created the Agency for Workforce Innovation (AWI), as of October 1, 2000, within the Department of Management Services. The mission of AWI is to provide statewide administration of the Florida workforce program, under the guidance of Workforce Florida, Inc. See sections 20.50 and 445.002, Florida Statutes (2000).

12. Workforce Florida, Inc., a not-for-profit organization, created pursuant to section 445.004, Florida Statutes, by the Legislature of the State of Florida, is the principal workforce policy organization. Section 445.004 of the Florida Statutes clearly expresses the legislative intent that Workforce Florida is not a unit or entity of state government.

13. As authorized in section 445.004 (11), Florida Statutes, Workforce Florida, Inc., in turn charters regional workforce boards (RWBs) for the purpose of

directing local workforce strategy, throughout the various regions into which the state is divided. (See 445.007, Florida Statutes and 20 CFR Part 661, Subpart C.)

14. Beginning July 1, 2000, the Miami-Dade/Monroe WAGES Coalition and the workforce development board were consolidated as required by WIA. The consolidated boards formed the South Florida Workforce Board as the regional workforce board defined in 20 CFR 661.300 and section 445.004 (6), Fla. Stats.

15. Pursuant to the consolidation agreement, the South Florida Workforce Board assumed the responsibilities of the WAGES program.

16. The South Florida Education and Training Consortium (SFETC) is a consortium of local governments organized pursuant to chapter 164, Florida Statute.

17. For WIA purposes, SFETC is the local "chief elected official" as that term is described in section 101 (6) of WIA and as used in 20 CFR part 661, subpart C.

18. SFECT is also the administrative entity for the South Florida Regional Workforce Board. See 20 CFR 662.200 and 662.400.

19. The South Florida Regional Workforce Board and SFETC formerly did business as the Training and Employment Council (TEC), collectively STETC/TEC.

20. While a TANF participant in the WAGES program, Ms. Hepburn requested supportive services, including an automobile for the purpose of providing transportation to and from work and to take her children to and from school.

21. By letter dated June 26, 2000, Ms. Hepburn submitted a written request to the WAGES Board; again requesting that the board provide her a car so as accommodate her pursuit of further education and employment.

22. By letters dated June 30 and July 12, 2000, Ms. Hepburn filed a written petition for a formal hearing of her request for transportation services.

23. Ms. Hepburn has not been provided an automobile nor has the South Florida Workforce Board scheduled the requested hearing.

### CONCLUSIONS OF LAW

24. TANF as applicable during the time of Ms. Hepburn's participation and presently, requires that each participating state submit a workforce plan. That part of the TANF statute reads:

#### (B) Special provisions

... (iii) The document shall set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. 42 USCA 602 (1)(B)(iii)

25. In recognition of the bifurcation of functions between DCF and AWI, the state plan as submitted to the federal grant agency identifies AWI as the state agency responsible for the delivery and the administration of the workforce activities and related support services, such as transitional transportation services that are authorized in section 445.031, Florida Statutes (2000). This also includes the implementation of a grievance procedure for complaints related to workforce activities.

26. The regulations applicable to the WIA during Ms. Hepburn's participation and presently (see 20 CFR 667.600), require, among other things:

a. That local procedures provide a process for dealing with grievances by participants affected by the local Workforce Investment System; and

b. An opportunity to appeal a local level to the State entity when:

(i) No decision is reached within 60 days; or

(ii) Either party is dissatisfied with the local hearing decision.

27. Pursuant to the requirements contained in the TANF statute at 42 USCA 602 (1)(B)(iii) and as directed in 20 CFR 667.600 of the WIA regulations, the Agency for Workforce Innovation has developed a grievance procedure.

28. Regarding the grievance process at the local level, the State's grievance procedure provides:

a. That under WIA, the One-Stop partners, service providers, participants (including WT and W-t-W), and other interested parties affected by the decisions or actions of a local Workforce/One-Stop System have the right to file a grievance and complaint. Proposed rule 60BB-1.004.

b. The RWB shall receive, review, and attempt to informally resolve the initial WIA, WT and W-t-W grievance and complaint. If the grievance and complaint cannot be resolved informally, then a hearing shall be held and a decision issued within the required sixty (60) calendar days from receipt of complaint or grievance. Proposed rule 60BB-1.004.

c. The local grievances and complaints shall be filed at the local level using the procedures established by the individual regional workforce board. Proposed rule 60BB-1.005

29. In pertinent part, the State grievance procedure allows the complainant to file an appeal with AWI if the RWB has: a ) conducted a hearing but the grievant or complainant is dissatisfied with or has been adversely affected by the Hearing Officer's decision; b ) not conducted a hearing within the sixty (60) calendar days from receipt of the grievance and complaint; or c ) conducted the hearing but has not issued a decision within the mandated sixty (60) calendar day timeframe, then the grievant or complainant may file an appeal with the Agency for Workforce Innovation (AWI). Proposed rule 60BB-1.006.

30. According to the State grievance procedure, the appeal must be filed with AWI within thirty (30) calendar days of receipt of the RWB Hearing Officer's decision or within thirty (30) calendar days after the required 60 calendar day timeframe for the RWB to act has elapsed. Proposed rule 60BB-1.006 (3).

31. As required by the TANF state plan and the WIA, the South Florida Workforce Board has also developed a grievance procedure.

32. The SFETC grievance procedure is available at [www.southfloridaworkforceboard.org](http://www.southfloridaworkforceboard.org).

33. Neither TANF nor WIA specifically authorizes the purchase of automobiles for participants. However, TANF and WIA provide that participants are to be provided supportive services, including transportation services, that will assist in training or employment. See 20 CFR 645.200(e)(1) and 20 CFR 663.800, respectively. In each case, the states and the local boards are authorized to develop policies regulating the distribution of supportive services.



34. At the time of Ms. Hepburn's participation in the WAGES program, the relevant statute regarding transportation services and benefits read:

**414.225 Transitional transportation.**--In order to assist former WAGES participants in maintaining and sustaining employment or educational opportunities, transportation may be provided, if funds are available, for up to 1 year after the participant is no longer in the program. **This does not constitute an entitlement to transitional transportation. If funds are not sufficient to provide services under this section, the department may limit or otherwise prioritize transportation services.**

(1) Transitional transportation must be job or education related.

(2) Transitional transportation may include expenses identified in s. 414.20, paid directly or by voucher, as well as a vehicle valued at not more than \$8,500 if the vehicle is needed for training, employment, or educational purposes. (Emphases supplied.)

35. Effective October 1, 2000, the Laws of Florida Chapter 2000-165, section 30, transferred and renumbered 414.225, to read as follows:

**445.031 Transitional transportation.**--In order to assist former recipients of temporary cash assistance in maintaining and sustaining employment or educational opportunities, transportation may be provided, if funds are available, for up to 2 years after the participant is no longer in the program. **This does not constitute an entitlement to transitional transportation. If funds are not sufficient to provide services under this section, regional workforce boards may limit or otherwise prioritize transportation services.**

(1) Transitional transportation must be job or education related.

(2) Transitional transportation may include expenses identified in s. 445.025, paid directly or by voucher, as well as a vehicle valued at not more than \$8,500 if the vehicle is needed for training, employment, or educational purposes. (Emphasis added.) **Note.--Former s. 414.225.**

36. The State of Florida has exercised its discretionary authority regarding the provision of transportation services by enacting legislation, which, in accordance with the federal regulations, allows the boards to develop local policy regarding the type of transportation services that will be provided.

37. At all times relevant hereto, the State law has provided the RWBs the option to implement the purchase of automobiles for participants; but without creating for the participants an entitlement to automobiles.

### CONCLUSIONS

38. Based upon the foregoing, the following responses are provided to the specific issues raised by Ms. Hepburn.

39. Ms. Hepburn has requested clarification regarding the application of 42 USC 602 (a)(1)(B)(iii), that provision reads [referring to the state plan]:

(iii) The document shall set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.

In response to Ms. Hepburns' questions in reference to the foregoing, the undersigned finds:

a. The statute does apply to any grievance Ms. Hepburn may have regarding her request for transportation services.

b. The grievance must first be filed at the level that caused the occurrence or non-occurrence that produced the grievance

c. A grievance must be filed within the time specified within the local grievance proceeding.

d. Once the local grievance process has been exhausted, an RWB's denial of transportation services may be appealed to the State by following the procedures set out in the grievance procedures of the State.

e. The grievance procedure of the State allows the complainant to appeal to AWI by filing with AWI within thirty (30) calendar days of receipt of the RWB decision or within thirty (30) calendar days after the required 60 calendar day timeframe for the RWB to act has elapsed.

40. Ms. Hepburn has asked for clarification as to whether 20 CFR 667.600 applies to the dispute she has with the board regarding transportation services. Section 667.600 of 20 CFR prescribes the local, state and federal grievance rights that must be made available to a WIA participant. Following are the findings of the undersigned in response to the questions presented by Ms. Hepburn.

a. Section 667.600 of 20 CFR is applicable to the dispute that Ms. Hepburn has with the RWB regarding the furnishing of transportation services.

b. Ms. Hepburn must initially pursue the issue via the local RWB.

c. As described in paragraphs 40 (d) and (e) herein, if the matter is not resolved at the local level, Ms. Hepburn can appeal this matter to AWI.

41. Ms. Hepburn has asked for clarification as to application of section 120.68, Florida Statutes, to her request for transportation services. This provision of the Florida Statutes provides for judicial review of "final agency action. The following responses are provided to the questions presented by Ms. Hepburn:

a. The decision at the local level becomes final if not appealed to the state by the complainant. See 20 CFR 667.600 (4) and 667. 610.

b. The decision at the local level informs the complainant of right to appeal to the State.

c. The final determination of the State (AWI) is subject to judicial appeal pursuant to section 120.68, Florida Statutes. Any final agency decision shall include a notice of right to judicial appeal, as well as the directions for filing said appeal.

d. The foregoing conclusion is based upon the finding of the undersigned that neither Workforce Florida, Inc., nor the local boards chartered by Workforce Florida as authorized in section 445.004 (11), Florida Statutes, are administrative agencies (of the state), as that term is defined in chapter 120, Florida Statutes. In fact, the legislation creating Workforce Florida, Inc., reads:

(1) There is created a not-for-profit corporation, to be known as "Workforce Florida, Inc.," which shall be registered, incorporated, organized, and operated in compliance with chapter 617, and which **shall not be a unit or entity of state government.** Workforce Florida, Inc., shall be administratively housed within the Agency for Workforce Innovation; however, Workforce Florida, Inc., shall not be subject to control, supervision, or direction by the Agency for Workforce Innovation in any manner. The Legislature determines, however, that public policy dictates that Workforce Florida, Inc., operate in the most open and accessible manner consistent with its public purpose. To this end, the Legislature specifically declares that Workforce Florida, Inc., its board, councils, and any advisory committees or similar groups created by Workforce Florida, Inc., are subject to the provisions of chapter 119 relating to public records, and those provisions of chapter 286 relating to public meetings.

42. Ms. Hepburn seeks clarification as to the applicability of section 120.569, Florida Statutes (2000) to this matter. Section 120.569 of the Florida Statutes requires agencies to provide written notice of any decision that affects substantial interests and the

opportunity to request a hearing concerning the decision. According to the petition for declaratory statement, Ms. Hepburn has not received any written notice or explanation of SFETC's/TEC's refusal. As to the questions regarding 120.569, the following findings are made.

a. In that regional workforce boards (i.e., SFETC/TEC) are not state agencies, section 120.569 does not apply to their decisions. Thus, the notice required of the RWBs is to be determined by the applicable federal laws and regulations.

b. If Ms. Hepburn appeals a decision of the RWB to the State, the final agency action of the state will include the required notice of the right of Ms. Hepburn to file a judicial appeal. Pursuant to 20 CFR 667.610, Ms. Hepburn is afforded the alternative of appealing the final decision of the state agency to the Secretary of USDOL.

43. Finally, Ms. Hepburn seeks clarification that the Agency's April 12, 2001, "Final Guidance," applies to the dispute she has with TEC over the transportation services. The Final Guidance to which Ms. Hepburn refers is the AWI grievance and complaint procedures governing those aspects of the employment and training programs and services for which AWI has responsibility.

a. The answer to the question is yes, the Final Agency Guidance does apply to the present dispute that Ms. Hepburn has with the South Florida Workforce Board. Although not yet promulgated as a rule, the procedures reflect the federal standards and are in the process of being promulgated. Thus, they are applicable. In this particular case, the state grievance procedure requires that in as much as the dispute originated at the local level, the RWB is responsible for processing the initial complaint.

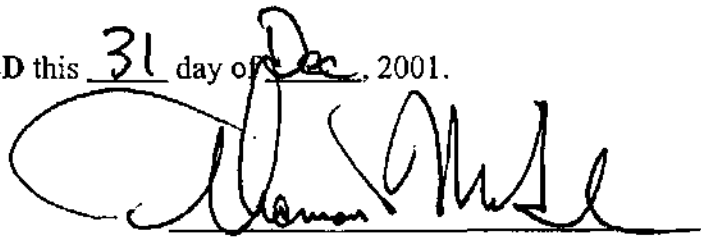
b. As provided in their grievance proceedings, SFETC's/TEC's decision on the grievance must be in writing and must include a notice of her right to appeal its decision to the State.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that the Petition for Declaratory Statement is granted. Therefore, Ms. Hepburn has a right to formal hearing conducted by the South Florida Regional Workforce Board. The hearing shall be conducted pursuant to the Grievance Procedures of the board.<sup>1</sup> Any decision of the South Florida Regional Workforce Board can be appealed to AWI.

The South Florida Regional Workforce Board has agreed that Ms. Hepburn is entitled to a formal hearing regarding her request for an automobile. The Board has agreed to conduct that hearing and issue a decision within 60 days from the date of this order. The Board shall contact the attorney representing Ms. Hepburn to arrange for the hearing. If that decision is not issued within the allotted time, unless otherwise agreed by the parties, Ms. Hepburn may then file her appeal with AWI.

DONE AND ORDERED this 31 day of Dec, 2001.



Tom McGurk, Director  
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<sup>1</sup> The grievance procedures refer to complaints against the Service Provider. In this instance, the South Florida Workforce Board is the service provider.

**RIGHT TO APPEAL**

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(D), FLORIDA RULES OF APPEAL ACCOMPANIED WITH THE APPROPRIATE FILING FEE AND WITH VERONICA MOSS, AGENCY CLERK FOR THE AGENCY FOR WORKFORCE INNOVATION, WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent via US mail to Troy E. Elder and Lizel Gonzalez, Legal Services of Greater Miami, Inc. 300 Biscayne Blvd., Suite # 500, Miami, Florida 33137, this 31<sup>st</sup> day of December, 2001.



Veronica Moss, Clerk  
Agency for Workforce Innovation