

OREGON DISABILITIES COMMISSION – EMPLOYED PERSONS WITH DISABILITIES SUBCOMMITTEE

Monday • October 19, 2009 • 11:30 A.M. – 1:30 P.M.

Conference Room 166 • DHS Building • 500 Summer Street NE Salem, Oregon 97301

MEMBERS PRESENT:

Judith Cunio

Bill Lynch

Tina Treasure

Sara Kendall

Brian Delashmutt

Ruth McEwen

Damon Terzaghi (by phone) Norm Kohler (by phone)

MEMBERS EXCUSED:

Doug Stone

Jan Campbell

Mike Oliver

Ron Heagy

Eugene Rada

Tim Baxter

STAFF PRESENT:

Karen Mainzer, Intergovernmental Relations Liaison

Max Brown, Commission Coordinator

MEMBER OF THE PUBLIC:

Joan Claypool, STEPS Project Coordinator

AGENDA ITEMS:

CALL ALL TO ORDER

- Introductions
- Review and Approve Agenda and Minutes
- Update on Action Items from Last Meeting

DISCUSSION: PROSPECTUS ON THE 12-MONTH SPEND DOWN RULE

REVIEW OF OTHER STATES AND FEDERAL LAW

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**AGENDA FOR NEXT MEETING AND 2010 MEETING
SCHEDULING
OTHER ITEMS
ADJOURN**

CALL TO ORDER

Bill Lynch called the meeting to order at 11:35 a.m.

Subcommittee members and Commission staff introduced themselves. Tina Treasure introduced Joan Claypool to the subcommittee.

The subcommittee unanimously approved the agenda and the minutes for the September 21, 2009, meeting.

Bill went over action items from the previous meeting: Tim Baxter's prospectus, the work that Damon Terzaghi, Sara Kendall, and Max Brown did to compile information on other states' asset portability rules, and Max's informing the subcommittee when Seniors and People with Disabilities (SPD) holds employee trainings or informational presentations on the Employed Persons with Disabilities (EPD) program.

DISCUSSION: PROSPECTUS ON THE 12-MONTH SPEND DOWN RULE

The subcommittee reviewed the prospectus prepared by Tim Baxter. The subcommittee reviewed the terms "Approved Account" and "Employment and Independence Expenses" (EIEs). An Approved Account is a resource used for future disability-related expenses that increase one's independence and employment potential, and can also include retirement accounts such as an IRA. EIEs are expenditures that can be reasonably expected to enhance one's independence and employment potential.

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Bill Lynch asked whether asset portability after employment would be possible under Medicaid law. On this matter, Damon Terzaghi explained that Medicaid requires equal asset rules for people in Medicaid and people applying for Medicaid. As such, a Medicaid Buy-In program is theoretically open to all individuals eligible for Medicaid. If language is written so that assets collected from work while in the Medicaid Buy-In program are excluded, then it applies to all Medicaid beneficiaries. Such a change would require a state plan amendment, according to Damon.

On Tim's considerations, Bill asked the group where they came down on three issues:

- Whether the reason a person stops working (ie., voluntary or involuntary) should be considered in allowing post-employment preservation of funds in Approved Accounts.
- Whether retirement funds should be treated differently from EIEs.
- Whether as an alternative to an indefinite post-work preservation of funds, a period of longer than 12 months should be considered since some individuals with disabilities may experience longer breaks in employment.

On the first issue, the group discussed the whether a voluntary decision to stop working would be politically feasible. Ruth McEwen was not sure it would be politically feasible. Brian DeLashmutt suggested that it could be feasible and Bill added that these are more non-liquid assets because it is not cash that can be accessed as easily as a savings account (EIEs have restrictions in current law). The subcommittee thought that it would work toward preservation of funds regardless of the reason for ending employment.

On the second issue, the group acknowledged the distinction between EIEs and retirement funds, but thought that an orientation to keeping retirement assets and assets for EIEs in the future would be the right course.

On the third issue, the group determined that this should not be answered at this point. It should be considered if an indefinite preservation of funds is not feasible.

REVIEW OF OTHER STATES AND FEDERAL LAW

Bill Lynch again acknowledged that retention of assets after employment is a possibility in federal law, as Damon Terzaghi explained.

Included in the meeting packet were examples of four states' laws or rules: Connecticut, Illinois, Vermont, and New Hampshire.

Sara Kendall indicated that New Hampshire's rules ended up being as restrictive if not more restrictive than Oregon's rules. However, she discussed how Connecticut's legislation is a cornerstone for other states, such as Vermont and Illinois, on the allowance of individuals to keep certain assets if they otherwise qualify for Medicaid after they leave work.

On this score, Sara discussed how Vermont and Connecticut have unlimited asset portability for life – including retirement. And Sara reported that 12 states claim to have asset portability, yet all but Vermont and Connecticut have some restrictions on this portability.

Tina Treasure raised the issue of income, and Damon agreed this is an issue. Tina explained that if an individual is earning income sufficient to save for retirement and EIEs, and they are employed for a few years, then they would be entitled to Social Security Disability Income (SSDI) when they leave work (or just Social Security Benefits (SSB) if they are eligible because of their age). Tina argued that their Social Security income would likely make them ineligible for Medicaid on income alone. Why, then, would asset protection make a difference if they do not qualify on the basis of income?

Damon agreed that states have not tried to develop rules on income exceptions and it was uncertain if the Centers for Medicare and Medicaid Services (CMS) would allow a state to do this. However, California passed a bill to exempt Social Security disability benefits and income if a person loses employment for up to 26 weeks. This has not been approved by CMS yet.

Action Item: Sara and Damon will get information on the California law.

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Action Item: Max Brown can work with department's Research and Analysis sources to try getting information on EPD participant income and resources. With these data, it may be possible to determine how many individuals would not qualify for Medicaid because their SSDI would push them over income.

AGENDA FOR NEXT MEETING AND 2010 SCHEDULING

Max Brown reminded the group that SPD will be at the next meeting to discuss asset portability and the protection of assets. He asked for input so as to give SPD some preparation for the meeting. Bill Lynch and Tina Treasure thought that any data on EPD participants to determine if they would qualify for Medicaid after they left work on income criteria would be important. Max suggested that SPD may also discuss some possibilities for protecting assets through trusts once someone leaves the program, although one of Dale Marande's staff could speak more specifically to that which is currently available.

Action Item: Max will contact representatives from SPD as soon as an agenda for the asset portability topic is set.

Max asked the subcommittee if it could meet on December 21st, and if the group could meet (with the exceptions of holidays) on the third Monday of each month in 2010, from 1:00 p.m. to 3:00 p.m. The group agreed, and the meeting on December 21st will be from 1:00 to 3:00 pm. Max got approval from Bill Lynch, Tina Treasure, and Ruth McEwen to move the commission's executive committee meeting from 10 am to 12 pm that day.

Action Item: Max will schedule a room for the December meeting, and schedule rooms that meet the date and time criteria for 2010.

OTHER ITEMS

None.

The next meeting will be November 16, 2009, from 10 a.m. to 12 p.m.

Meeting Adjourned: 1:22 p.m.