January 9, 2003

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SYLLABUS: 2003-003

1. In determining whether to grant an exemption from time limits on Ohio Works First benefits on the grounds that the time limit is a hardship, a state hearing officer or an administrative appeal hearing examiner acting under R.C. 5101.35 and R.C. 5101.80 is not required to consider only time limit hardship criteria developed by the county department of job and family services, but may consider also other factors that may reflect upon a reasonable understanding of the meaning of "the time limit is a hardship," as used in R.C. 5107.18(E). Such factors may include the failure of the County Department to meet its requirement to help the assistance group achieve self-sufficiency or individual circumstances encountered by the assistance group.

2. An assistance group that applies for a time limit hardship exemption remains subject to general Ohio Works First eligibility requirements. In making time limit hardship exemption determinations, a County Department is not empowered to change the general Ohio Works First eligibility requirements, but it may consider hardship criteria that it develops and other factors that reflect upon a reasonable understanding of the meaning of "the time limit is a hardship," as used in R.C. 5107.18(E).

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OPINION NO. 2003-003

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Dear Director Hayes:

We have received a request for an opinion regarding the manner in which state hearing officers and administrative appeal hearing examiners of the Ohio Department of Job and Family Services (ODJFS), acting under R.C. 5101.35, apply the time limit hardship exemption of R.C. 5107.18(E) in state hearings and administrative appeals arising from actions taken by a county department of job and family services (County Department) to implement the Ohio Works First Program (the Program). The following questions are presented:

> Under the authority of sections 5101.35 and 5101.80 of the Revised Code, may an ODJFS state hearing officer or administrative hearing examiner consider circumstances other than those listed by a County Department in determining whether the time limit is a hardship or is ODJFS bound by the criteria developed by the County Department? For example, in determining whether the time limit is a hardship for a particular assistance group, may a hearing officer or administrative appeal examiner consider whether the County Department met its requirement to help the assistance group achieve self-sufficiency or whether the assistance group may have individual circumstances not included on the County Department's list of hardship criteria? In addition, if a County Department does not adopt any hardship criteria, what standards would a hearing officer or administrative hearing examiner apply?
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> In determining whether the time limit is a hardship, may a County Department consider factors other than the Program eligibility requirements for assistance groups that have been established by ODJFS under section 5107.05 of the Revised Code and is an ODJFS state hearing officer or administrative appeal examiner bound by those additional eligibility factors established by a County Department?

In order to answer the questions at issue, it is necessary to understand the Ohio Works First Program, which is Ohio's current system for providing benefits to families that are in need.

See R.C. Chapter 5107. The Program was created in 1997 as a self-sufficiency and cash assistance program that replaced the Aid to Dependent Children Program. *See* 1997-1998 Ohio Laws, Part II, 3381 (Sub. H.B. 408, eff. Oct. 1, 1997). The Program was designed to implement changes in federal law that focus on moving people from welfare to work and impose time limits on the receipt of cash assistance. It is also known as temporary assistance for needy families. R.C. 5107.02(G).[1]

The Ohio Department of Job and Family Services is designated as the state agency responsible for administering and supervising the Program and for proposing and submitting to the United States Secretary of Health and Human Services a state plan for implementing the Program. R.C. 5101.80(B) and (C); *see also* 42 U.S.C.A. § 602 (West Group Supp. 2002). The state plan is binding on a County Department, and a County Department may not establish policies that are inconsistent with those established by ODJFS. R.C. 5101.80(B). To implement the Program, ODJFS must enter into a written partnership agreement with each board of county commissioners, providing for the administration and design of Ohio Works First within the county. R.C. 5101.21(B) and (C); *see also* R.C. 307.98; 1999 Op. Att'y Gen. No. 99-051.

The Ohio Works First Program provides for eligible families, known as "assistance groups," to receive cash assistance for limited periods of time. R.C. 5107.10; *see also* R.C. 5107.02(B); R.C. 5107.03. In order to participate in the Program, adults and minor heads of households must enter into written self-sufficiency contracts with County Departments, setting forth rights and responsibilities of the assistance group, including work responsibilities and other requirements "designed to assist the assistance group in achieving self-sufficiency and personal responsibility." R.C. 5107.14. Sanctions are provided for assistance group members who fail or refuse, without good cause, to comply with their contracts. R.C. 5107.16.

Under Ohio law, participation in Ohio Works First is limited to a period of thirty-six months (which need not be consecutive), subject to certain exceptions. R.C. 5107.18(A). After ceasing to participate for at least twenty-four months, a family may reapply, if good cause exists, to participate for no longer than an additional twenty-four months. R.C. 5107.18(B).[2]

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[1] The Ohio Works First Program is Ohio's implementation of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, funded under the temporary assistance for needy families (TANF) block grant program established by Title IV–A of the Social Security Act. *See* 42 U.S.C.A. §§ 601, 602, 603, and 607 (West Group Supp. 2002); R.C. 5101.80(A)(3); R.C. 5101.821; R.C. Chapter 5107.

[2] With respect to the provision of benefits under a TANF program, federal law permits five years (sixty months) of participation as a lifetime limit. *See* 42 U.S.C.A. § 608(a)(7)(A) (West Group Supp. 2002); 45 C.F.R. § 264.1 (2001). Federal law states that the sixty-month limitation on benefits "shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part." 42 U.S.C.A. §

The statute that establishes time limits also authorizes exemptions. The matter at issue involves the provisions of R.C. 5107.18(E), as follows:

> *A county department of job and family services may exempt not more than twenty per cent* of the average monthly number of Ohio works first assistance groups from the time limit established by this section *on the grounds that the county department determines that the time limit is a hardship*. In the case of the time limit established by division (A) of this section, a county department may not exempt an assistance group until the group has exhausted its thirty-six months of cash assistance.

R.C. 5107.18(E) (emphasis added). Under this statute, a County Department is permitted to exempt "not more than twenty per cent of the average monthly number of Ohio works first assistance groups" from the time limit on receiving benefits "on the grounds that the county department determines that the time limit is a hardship." *Id.*; *see also* 12 Ohio Admin. Code 5101:1-23-011. A family may not be exempted until it has exhausted its thirty-six months of cash assistance. R.C. 5107.18(E).

When a family receives Ohio Works First cash assistance benefits on the basis of a hardship determination, the benefits count toward the five-year time limit on benefits imposed under federal law, and the family remains subject to Ohio Works First eligibility requirements. 12 Ohio Admin. Code 5101:1-23-01(B). The Ohio Department of Job and Family Services monitors the number of exemptions in each county and notifies a County Department if its percentage equals or exceeds eighteen per cent. R.C. 5107.18(F).[3]

608(a)(7)(E) (West Group Supp. 2002). R.C. 5107.18(G) prohibits state assistance that violates the federal time limit.

[3] Federal law permits a state plan for implementation of a TANF program to exempt a family from the five-year time limit, *see* note 2, *supra*, "by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty." 42 U.S.C.A. § 608(a)(7)(C)(i) (West Group Supp. 2002); 45 C.F.R. §§ 260.50 to 260.59 (2001); 45 C.F.R. § 264.1(c) (2001). The federal law imposes a twenty percent limitation on the number of exemptions that may be granted and provides for the reduction of payments to the state if that limitation is exceeded. The penalty may be avoided through the demonstration of reasonable cause, a corrective compliance plan, or federally recognized good cause domestic violence waivers. 42 U.S.C.A. §§ 608(a)(7)(C)(ii) and 609(a)(9) (West Group Supp. 2002); 45 C.F.R. §§ 262.1(a)(9), 262.5 to 262.6, and 264.1 to 264.3 (2001).

Under federal law, the limitations on exemptions do not become mandatory until persons have exhausted five years of eligibility, rather than the three years effective under Ohio law.

The basic issue here under consideration is whether time limit hardship criteria established by a County Department are the only criteria that may be considered in a state hearing or an administrative appeal of a hardship determination. To address this issue, it is necessary to examine the hearing and appeals procedures applicable to hardship determinations. By statute, ODJFS is required to "[a]fford a fair hearing in accordance with [R.C. 5101.35] to any applicant for, or participant or former participant of, a Title IV-A program," including the Ohio Works First Program. R.C. 5101.80(C)(6). The administrative hearing and appeals process relating to Ohio Works First is a two-step process. The first step is a state hearing and the second step is an administrative appeal.

A state hearing is granted pursuant to R.C. 5101.35 to a person appealing a decision of a County Department. The state hearing is conducted in accordance with rules adopted by ODJFS. R.C. 5101.35(B) and (F). Those rules provide for a state hearing to be held by a hearing officer, who makes findings of fact, conclusions of policy, and recommendations. 14 Ohio Admin. Code 5101:6-7-01(D).

Following the action by the hearing officer, a hearing authority designated by the Chief of the Bureau of State Hearings reviews the findings, conclusions, and recommendations of the hearing officer and issues decisions under the authority of the Director of Job and Family Services. 14 Ohio Admin. Code 5101:6-7-01(A)(1); *see also* R.C. 5101.351. The hearing officer's findings of fact are binding upon the hearing authority. 14 Ohio Admin. Code at 5101:6-7-01(C)(1)(d). A decision reached in a state hearing is binding upon ODJFS and upon the County Department, unless it is reversed or modified on appeal. R.C. 5101.35(B).

An individual who disagrees with the decision reached in a state hearing may request an administrative appeal. R.C. 5101.35(C); *see* 14 Ohio Admin. Code 5101:6-8-01(A). The Office of Legal Services of ODJFS is in charge of the administrative appeal process. *Id.*

A state hearing decision may be administratively appealed only for designated reasons. The reasons that may be applicable to the denial of a hardship exemption are as follows:

(a) The decision is contrary to the weight of the evidence presented.

(b) A prejudicial error was committed in the course of the proceedings.

(c) The decision relies on an incorrect application of law or rule.

Ohio provisions addressing hardship under the federal time limit appear in 12 Ohio Admin. Code 5101:1-23-01(A) and (H) and 5101:1-23-011(B).

14 Ohio Admin. Code 5101:6-8-01(C)(1).[4]

An administrative appeal does not require a hearing. Rather, the Director of Job and Family Services or the Director's designee reviews the state hearing decision and previous administrative action. R.C. 5101.35(C). By rule, administrative appeals are assigned to and decided by impartial administrative appeal hearing examiners, who are attorneys assigned to the Office of Legal Services and delegated authority by the Director of Job and Family Services. 14 Ohio Admin. Code 5101:6-8-01(H).

An administrative appeal decision addresses the issues of fact and law raised in the appeal request. *Id*. at 5101:6-8-01(I). The administrative appeal process may not result in a determination more adverse to the individual than was contained in the initial decision being appealed. *Id*. at 5101:6-8-01(I)(6). The administrative appeal decision is the final decision of ODJFS and is binding unless it is reversed or modified on appeal to the court of common pleas. *Id*. at 5101:6-8-01(L); *see* R.C. 5101.35(C) and (E); R.C. 119.12; 14 Ohio Admin. Code 5101:6-9-01.[5]

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[4] Two additional reasons for appeal are authorized. Both relate to instances in which a statute expressly authorizes a County Department to adopt a model design, policies, or standards. The additional reasons for appeal are:

> (d) When a decision is regarding the prevention, retention and contingency program, the decision relies on an incorrect application of the following:
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> (i) On the ODHS model design, developed under section 5101.07 [was R.C. 5108.07 intended?] of the Revised Code, it [*sic*] the CDHS involved adopted it; or
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> (ii) On the CDHS's written statement of policies adopted under section 5108.08 of the Revised Code and any amendments the CDHS has adopted to the statement.
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> (e) The decision relies on an incorrect application of the CDHS standard of good cause when a decision is regarding an Ohio works first sanction for failure or refusal to comply in full with the provisions of the self-sufficiency contract, without good cause. The administrative appeal hearing examiner will only use the county's standard of good cause if they were provided by the CDHS.

14 Ohio Admin. Code 5101:6-8-01(C)(1); *see* R.C. 5107.16. Former R.C. 5108.08 has been transferred to R.C. 5108.06. *See* Am. Sub. H.B. 94, 124th Gen. A. (2001) (eff. June 6, 2001, with transfer eff. Sept. 5, 2001).

[5] A possible issue of concern regarding the implementation of the Program may arise from the fact that a County Department is limited to exempting on hardship grounds not more than

Let us turn now to the first question, which asks whether a state hearing officer or administrative appeal hearing examiner may consider circumstances other than those listed by a County Department in determining whether a time limit is a hardship. The statute providing for time limit hardship exemptions states that a limited number of exemptions may be granted "on the grounds that the county department determines that the time limit is a hardship." R.C. 5107.18(E). Thus, the responsibility for making the initial determination as to whether the time limit is a hardship is clearly placed upon the County Department.

The statute does not define "hardship" or set forth criteria to be considered in implementing R.C. 5107.18(E). It appears that the authority of ODJFS to adopt rules to implement the Program would permit it to adopt rules to define and direct the implementation of time limit hardship exemptions authorized by R.C. 5107.18(E). *See* R.C. 5107.05.[6]

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twenty percent of the average monthly number of Ohio Works First assistance groups. R.C. 5107.18(E); 12 Ohio Admin Code 5101:1-23-011. Because a state hearing officer, administrative appeal hearing examiner, or court may reach a conclusion different from that reached by the County Department and find hardship where it was not initially recognized, the County Department may be required to grant more hardship exemptions than it had originally envisioned and thus exceed the twenty percent limitation on exemptions. This possibility is also inherent under provisions of federal law that permit a state (following the sixty-month eligibility) to grant time limit exemptions for hardship, battering, or extreme cruelty, but impose a twenty percent limitation on the exemptions and impose penalties for violating that limitation. *See* note 3, *supra*. The existence of the hearing and appeals procedure creates the possibility that hardship exemptions granted pursuant to hearing and appeal may result in total exemptions in excess of twenty percent.

Ohio law does not address precisely how to deal with the possibility that hardship exemptions granted pursuant to hearing and appeal may exceed the twenty percent limitation. It might be argued that exemptions so granted are not required to come within the twenty percent limitation because they are granted through the appeals process and are not exemptions made by the County Department pursuant to R.C. 5107.18(E). *See* 12 Ohio Admin. Code 5101:1-23-011. They appear, nonetheless, to be exemptions granted by the state for purposes of federal law. *See* 45 C.F.R. §§ 264.1 (2001). In any event, the due process requirement of a meaningful hearing requires that an exemption be granted when hardship is determined pursuant to the hearing and appeals procedure, regardless of the twenty percent limitation of R.C. 5107.18(E). *See, e.g.*, U.S. Const. amends. V and XIV; Ohio Const. art. I, §§ 2 and 16; *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

[6] Federal law does not define the word "hardship," leaving that word to be "defined by the State." 45 C.F.R. § 264.1(c)(1) (2001). However, federal law does contain a definition of "[b]attered or subject to extreme cruelty," which is another grounds for a time limit exemption under federal law. 42 U.S.C.A. § 608(a)(7)(C)(iii) (West Group Supp. 2002); *see also* 42 C.F.R.

In the absence of a definition adopted by statute or rule, the term "hardship," as used in R.C. 5107.18(E), is given its common and ordinary meaning. *See* R.C. 1.42; *Beerman v. City of Kettering*, 14 Ohio Misc. 149, 156, 237 N.E.2d 644, 649 (C.P. Montgomery County 1965) (in zoning context, "[t]he term 'undue hardship' does not lend itself to precise definition, automatically resolving every case. However, it is to be given a reasonable construction"), *aff'd by ct. app., aff'd*, 13 Ohio St. 2d 149, 235 N.E.2d 231 (1968).

"Hardship" is a term that is used in numerous legal contexts and has a commonly understood meaning. The dictionary defines hardship as "a thing hard to bear; specific cause of discomfort or suffering, as poverty, pain, etc." *Webster's New World Dictionary* 637 (2nd college ed. 1978). In general, hardship means "privation, suffering, adversity." *Black's Law Dictionary* 717 (6th ed. 1990). As applied to zoning, hardship is grounds for a variance if the "zoning ordinance or restriction as applied to a particular property is unduly oppressive, arbitrary or confiscatory." *Id.*[7] In the zoning context, unnecessary hardship warrants a variance only if the hardship is unique to the particular property. *Fox v. Johnson*, 28 Ohio App. 2d 175, 181, 275 N.E.2d 637, 641-42 (Mahoning County 1971). Execution of an agency's order may be suspended pending determination of an appeal, if it appears to the court that "an unusual hardship to the appellant" would result from execution of the order. R.C. 119.12; *see Bob Krihwan Pontiac-GMC Truck, Inc. v. Gen. Motors Corp.*, 141 Ohio App. 3d 777, 782-83, 753 N.E.2d 864, 867-68 (Franklin County 2001).

Thus, in general terms, a determination regarding hardship requires examination of the unique characteristics of a particular situation. *See Beerman v. City of Kettering*, 14 Ohio Misc. at 157, 237 N.E.2d at 650 (in zoning context, "no one factor determines what is undue hardship but all relevant factors must be taken together in order to determine its existence or nonexistence"); *see also Olmstead v. L.C. by Zimring*, 527 U.S. 581, 606 n.16 (1999) (in context

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§ 264.1(c)(2) (2001). This definition has been incorporated by rule in Ohio to implement federal hardship provisions. 12 Ohio Admin. Code 5101:1-23-01(H)(1)(b). R.C. 5107.05 authorizes ODJFS to adopt rules governing "eligibility, program participation, and other applicant and participant requirements" in accordance with R.C. Chapter 119 and requires that the rules be consistent with federal law. R.C. 5107.05. R.C. 5107.05 also requires that the rules adopted by ODJFS specify, establish, or govern "[r]equirements for initial and continued eligibility for Ohio works first, including requirements regarding income, citizenship, age, residence, and assistance group composition" and "application and verification procedures." R.C. 5107.05(A)(3) and (4).

[7] Ohio law governing township zoning permits a township board of zoning appeals to grant a variance that "will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done." R.C. 519.14(B). Much case law in this area is concerned with the meaning of "unnecessary hardship" and its application to specific fact situations. *Consol. Mgmt., Inc. v. City of Cleveland*, 6 Ohio St. 3d 238, 242 n.4, 452 N.E.2d 1287, 1291 n.4 (1983).

of reasonable accommodations for persons with disabilities, determination of undue hardship requires case-by-case analysis of various factors). Accordingly, a determination of "hardship" must be based on the facts of a particular case.

We are informed that, to carry out their responsibility of determining whether the time limit is a hardship with respect to particular participants, so as to justify exemption, some of the County Departments adopt lists of criteria to consider. There is no express statutory authority for the adoption of time limit hardship criteria by a County Department. *Compare, e.g.*, R.C. 5107.16(B) ("[e]ach county department of job and family services shall establish standards for the determination of good cause for failure or refusal to comply in full with a provision of a self-sufficiency contract"); R.C. 5107.287 ("[t]he county department of job and family services shall establish policies defining 'good cause for being absent from school' and specifying what constitutes a day of attendance for purposes of the learnfare program's school attendance requirement"). We are informed that the time limit hardship criteria are not adopted through any formal rulemaking proceeding and may be modified as frequently as monthly. It appears, accordingly, that such time limit hardship criteria are informal guidelines used by a County Department in the implementation of its statutory duties.

The standards by which a state hearing officer reviews a hardship determination made by a County Department are established by rule. *See* 14 Ohio Admin. Code 5101:6-7-01(C). The County Department has the responsibility of showing, by a preponderance of the evidence, that its action was in accordance with ODJFS rules. *Id.* at 5101:6-7-01(C)(1)(c). The hearing officer's conclusions of policy and recommendations must be based solely on published ODJFS regulations, "or local agency policy adopted pursuant to options authorized in state law, except when these regulations and policies are silent and reference to the Revised Code or other statutory source is necessary to resolve the issue." *Id.* at 5101:6-7-01(C)(2). The rule further requires: "The conclusions of policy shall cite and summarize relevant portions of departmental rules or program manuals, and other applicable regulations as necessary, and shall clearly demonstrate how they apply to the facts established." *Id.* at 5101:6-7-01(D)(3).

Thus, a hearing officer holding a hearing on a request for a hardship exemption may base conclusions of policy and recommendations on local agency policy only if such policy is "adopted pursuant to options authorized in state law." *Id.* at 5101:6-7-01(C)(2).[8] Otherwise,

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[8] When the General Assembly has intended to authorize a County Department to adopt policies pursuant to options authorized in state law, it has expressly so stated. Consider the prevention, retention, and contingency program, which is established pursuant to R.C. Chapter 5108 and included in the state plan providing for the Ohio Works First Program. *See* R.C. 5101.80; R.C. 5108.02; note 4, *supra*. Under that program, a County Department is given the option of adopting the model design developed by ODJFS or developing its own policies. R.C. 5108.06. To develop its own policies, a County Department must adopt a written statement of the policies governing the program, including eligibility requirements, assistance or services to be provided, and administrative requirements. The statement of policies may be amended to

conclusions of policy and recommendations must be based on published ODJFS regulations or, if they are silent, upon the Revised Code. *Id.*

As discussed above, the time limit hardship criteria established by a County Department are informal guidelines. They do not constitute local agency policy adopted pursuant to options authorized in state law. The state statute authorizes a County Department to determine whether the time limit is a hardship in a particular instance, but it does not set forth options under which the County Department may adopt policies that define the term "hardship" or adopt lists of criteria for determining whether hardship is caused by the statutory time limit.[9] Therefore, time

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modify, terminate, or establish new policies. The policies must be consistent with federal and state law, the state plan submitted to the United States Secretary of Health and Human Services, and amendments to the plan. *Id*. "If a county department develops its own policies, it shall provide the department [of job and family services] a written copy of the statement of policies and amendments it adopts to the statement." *Id*. It is specified by statute that, if such policies are adopted, they will form the basis for a decision under R.C. 5101.35. R.C. 5108.09. No similar express authority has been granted to a County Department to adopt policies with respect to hardship exemptions.

[9] In this regard, it is helpful to distinguish the role of a County Department in determining time limit hardships from its role in making certain other kinds of determinations. In R.C. 5107.16, a County Department is given responsibility for determining whether there is a good cause for a member of an assistance group to fail or refuse to comply with a provision of a self-sufficiency contract, and for imposing sanctions if there is not good cause. The County Department is expressly authorized to "establish standards for the determination of good cause." R.C. 5107.16(B). Further, the statute sets forth various criteria that are included as good cause, such as failure of the County Department to place the member in an activity or to provide necessary support services. *Id*. The statute also provides that, when a state hearing or administrative appeal is held regarding a sanction, a state hearing officer, an administrative appeal hearing examiner, or the Director of Job and Family Services "shall base the decision in the hearing or appeal on the county department's standards of good cause for failure or refusal to comply in full with a provision of a self-sufficiency contract, if the county department provides … a copy of the county department's good cause standards." R.C. 5107.16(C); *see also* 14 Ohio Admin. Code 5101:6-7-01(C)(2)(b). Standards for determining good cause under R.C. 5107.16 thus are adopted by a County Department in accordance with state law and are given a statutorily prescribed significance in the hearing and appeals process.

Another statute that expressly authorizes a County Department to establish standards is R.C. 5107.42. That statute authorizes a County Department to determine that a minor head of household or an adult has a temporary or permanent barrier to participation in a work activity and to assign that individual to one or more alternative work activities, placing a twenty percent limitation on the number of individuals who may be assigned to alternative work activities. R.C. 5107.42(B). A County Department is expressly authorized to "establish standards for

limit hardship criteria adopted by a County Department are not authorized local agency policy and are not sufficient under state law to provide a basis for the conclusions and recommendations of a hearing officer.

Further, existing state rules do not establish criteria for state time limit hardship exemptions. *See* 12 Ohio Admin. Code 5101:1-23-01. Therefore, there are no published ODJFS regulations to provide a basis for the conclusions and recommendations of a hearing officer regarding state hardship determinations.

Because there are no authorized local agency policies or ODJFS regulations governing state time limit hardship criteria, a state hearing officer must base conclusions of policy and recommendations upon provisions of the Revised Code and, in particular, upon the "hardship" language of R.C. 5107.18(E). As noted above, "hardship" is a term that has a commonly understood meaning. Application of the term to particular facts, however, requires the exercise of judgment. In this regard, it is appropriate for the state hearing officer, and upon appeal the administrative appeal hearing examiner, to consider, among the factors used to determine whether the time limit is a hardship, criteria established by a County Department, to the extent that the criteria are consistent with state and federal law. Thus, time limit hardship criteria established by a County Department may be among the factors that a state hearing officer or administrative appeal hearing examiner considers, but their existence does not restrict the consideration of other relevant factors.[10]

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determining whether a minor head of household or adult has a temporary or permanent barrier to participating in a work activity." *Id.* The statute sets forth examples of circumstances that a County Department may consider when it develops its standards--namely, domestic violence, participation in an alcohol or drug addiction program, and homelessness. *Id.*

These statutes thus expressly authorize a County Department to establish standards in certain circumstances. In contrast, there is no express statutory authority for a County Department to establish standards or criteria for determining time limit hardships under R.C. 5107.18(E) or for any such standards or criteria to be granted prescribed significance in the hearing and appeals process.

[10] It is also of interest that R.C. 5107.18 contains other provisions regarding determinations to be made by a County Department. Division (B) of R.C. 5107.18 permits an assistance group that has participated in the Ohio Works First Program for thirty-six months and has ceased to participate in Ohio Works First for at least twenty-four months to reapply to participate in the Program "if good cause exists as determined by the county department of job and family services," and to participate for up to twenty-four additional months. R.C. 5107.18(B). The statute thus gives the County Department the responsibility of making the initial determination as to whether good cause exists. The statute states that good cause "may include losing employment, inability to find employment, divorce, domestic violence considerations, and

Even if a County Department establishes general criteria for granting exemptions from time limits--such as, for example, persons who are within a month of completing a training program or caregivers of children under three months of age--the general meaning of "hardship" requires that there be an overall review of the circumstances of a particular case to determine whether there is a demonstration of time limit hardship that does not fit within a specified category. Thus, the unique personal circumstances of an assistance group may merit a finding that time limit hardship exists even if the circumstances do not meet criteria established by a County Department.[11]

Federal statutory language expressly permits a state program "to serve all political subdivisions in the State (not necessarily in a uniform manner)." 42 U.S.C.A. § 602(a)(1)(A)(i) (West Group Supp. 2002). The same federal statute also requires of the state plan submission: "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 U.S.C.A. § 602(a)(1)(B)(iii) (West Group Supp. 2002). Ohio Const. art. II, § 26 requires that laws of a general nature have a uniform operation

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unique personal circumstances." *Id.*; *see also* 12 Ohio Admin. Code 5101:1-23-01(B)(2). It would make sense that these factors, which are used to determine whether there is good cause to reapply for additional participation in Ohio Works First, might also be relevant to a determination as to whether the time limit is a hardship so that a time limit exemption may be granted. The statute does not expressly so provide; however, criteria of this nature might come within the general meaning of the term "hardship" as used in R.C. 5107.18(E). *See also* R.C. 5107.26 (authorizing a County Department to determine whether a member or recipient terminated employment with just cause and specifying circumstances that constitute just cause). *See generally* R.C. 5107.24(B)(2)(c) and (d) (authorizing ODJFS, a County Department, or a public children services agency to make certain determinations regarding residence of a pregnant minor, minor parent, or minor parent's child).

[11] A similar analysis would apply to the determination of good cause to reapply to participate in Ohio Works First pursuant to R.C. 5107.18(B), as outlined in note 10, *supra*. That provision permits certain assistance groups to reapply to participate in Ohio Works First "if good cause exists as determined by the county department of job and family services." R.C. 5107.18(B). The statute contains a list of criteria that may be used to demonstrate good cause, but it does not expressly authorize the County Department to adopt criteria, to establish standards, or to adopt local agency policy for determining good cause. Accordingly, any criteria that a County Department might adopt in such regard are merely informal guidelines, and a state hearing officer or administrative appeal hearing examiner is not limited to considering only those criteria. *See* 12 Ohio Admin. Code 5101:1-23-01(B)(2) (including among criteria that demonstrate good cause "any other reason the CDJFS [County Department] determines to be good cause for participating in OWF beyond the thirty-six month limit").

throughout the state, and laws providing for the public support are considered to be laws of a general nature. *State v. Bargus*, 53 Ohio St. 94, 41 N.E. 245 (1895).

We have been asked whether, in determining if the time limit is a hardship for a particular assistance group, a hearing officer or administrative appeal hearing examiner may consider whether the County Department met its requirement to help the assistance group achieve self-sufficiency or whether the assistance group may have individual circumstances not included on the County Department's list of hardship criteria. Again, the answer is that factors other than those on the County Department's list of time limit hardship criteria may be considered in accordance with the procedures and standards established for the operation of hearings and appeals.

We have also been asked what standards a hearing officer or administrative appeal hearing examiner will apply if a County Department does not adopt any time limit hardship criteria. It is a basic principle of administrative law that a legislative body may not delegate discretionary functions to an administrative body without providing both "an intelligible principle to which the administrative officer or body must conform" and "a procedure whereby exercise of the discretion can be reviewed effectively." *Mankins v. Paxton*, 142 Ohio App. 3d 1, 14, 753 N.E.2d 918, 929 (Franklin County 2001) (citing *Blue Cross v. Ratchford*, 64 Ohio St. 2d 256, 416 N.E.2d 614 (1980)). While an administrative body may be given authority to apply the law to various sets of facts or circumstances, the legislature must provide a sufficiently clear statement of legislative policy, and also such standards as are practical, to provide the administrative body with direction. *See, e.g., Blue Cross v. Ratchford*, 64 Ohio St. 2d 256, 259-60, 416 N.E.2d 614, 617-18 (1980).

Even as it is presumed that statutes are constitutional, it is presumed that the General Assembly has provided an intelligible principle for the implementation of hardship exemptions to the time limits imposed under the Ohio Works First Program. *Mankins v. Paxton*, 142 Ohio App. 3d at 14, 753 N.E. 2d at 928-29. Under existing statutes, that principle is based on the use of the language, "the time limit is a hardship," in R.C. 5107.18(E). Absent the adoption of rules by ODJFS, the language of the statute provides the standard to be applied in determining whether an exemption is to be granted under R.C. 5107.18(E). Any factors that are relevant to that standard may be considered, in accordance with the procedures and standards established for the operation of hearings and appeals.

Accordingly, it may be concluded generally that, in determining whether to grant an exemption from time limits on Ohio Works First benefits on the grounds that the time limit is a hardship, a state hearing officer or an administrative appeal hearing examiner acting under R.C. 5101.35 and R.C. 5101.80 is not required to consider only time limit hardship criteria developed by the County Department, but may also consider other factors that may reflect upon a reasonable understanding of the meaning of "the time limit is a hardship," as used in R.C. 5107.18(E). Such factors may include the failure of the County Department to meet its requirement to help the assistance group achieve self-sufficiency or individual circumstances encountered by the assistance group.

Let us turn now to the remaining question, which asks if a County Department, in determining whether the time limit is a hardship, may consider factors other than the Ohio Works First eligibility requirements for assistance groups that have been established by ODJFS under R.C. 5107.05, and whether an ODJFS state hearing examiner or administrative appeal hearing examiner is bound by those additional eligibility factors. With respect to the determination of eligibility to participate in the Program, R.C. 5107.05 authorizes the Director of Job and Family Services to adopt rules in accordance with R.C. Chapter 119. The rules must be consistent with federal and state law and with the state plan submitted to the United States Secretary of Health and Human Services. R.C. 5107.05. The rules must establish "[r]equirements for initial and continued eligibility for Ohio works first, including requirements regarding income, citizenship, age, residence, and assistance group composition." R.C. 5107.05(A)(3). Federal law requires that the state have objective criteria to determine eligibility. 42 U.S.C. § 602(a)(1)(B)(iii) (West Group Supp. 2002).

The hardship exemption authorized by R.C. 5107.18(E) by its terms permits exemption "from the time limit" on participation in the Program. It does not provide for exemptions from the eligibility requirements. Therefore, to receive an exemption from the time limit, a participant must first meet the eligibility requirements, and this requirement appears in ODJFS rules. *See* 12 Ohio Admin. Code 5101:1-23-01(B) ("[w]hen an assistance group is receiving OWF [Ohio Works First] cash assistance due to … a state hardship … extension …, the assistance group is in receipt of OWF and as such is subject to all OWF eligibility requirements"); *see also* 12 Ohio Admin. Code 5101:1-23-01(H)(3) ("[a]n assistance group receiving OWF cash assistance benefits beyond the federal sixty-month limit … is in receipt of OWF, and as such is subject to all OWF eligibility requirements").

In determining whether to grant an exemption, a County Department is directed to consider whether the time limit is a hardship. Under R.C. 5107.18(E), that is the only reason for which an exemption may be granted. Accordingly, a County Department may consider only criteria that impact upon the issue of time limit as a hardship. The County Department has no authority to consider other factors or to impose additional eligibility requirements. A County Department is not empowered to establish Ohio Works First policies that conflict with those established by ODJFS. R.C. 5101.80(B).

To summarize, an assistance group that applies for a time limit hardship exemption remains subject to general Ohio Works First eligibility requirements. In making time limit hardship exemption determinations, a County Department is not empowered to change the general Ohio Works First eligibility requirements, but it may consider time limit hardship criteria that it develops and other factors that reflect upon a reasonable understanding of the meaning of "the time limit is a hardship," as used in R.C. 5107.18(E).

Therefore, it is my opinion, and you are advised, as follows:

1. In determining whether to grant an exemption from time limits on Ohio Works First benefits on the grounds that the time limit is a hardship, a

state hearing officer or an administrative appeal hearing examiner acting under R.C. 5101.35 and R.C. 5101.80 is not required to consider only time limit hardship criteria developed by the county department of job and family services, but may consider also other factors that may reflect upon a reasonable understanding of the meaning of "the time limit is a hardship," as used in R.C. 5107.18(E). Such factors may include the failure of the County Department to meet its requirement to help the assistance group achieve self-sufficiency or individual circumstances encountered by the assistance group.

2. An assistance group that applies for a time limit hardship exemption remains subject to general Ohio Works First eligibility requirements. In making time limit hardship exemption determinations, a County Department is not empowered to change the general Ohio Works First eligibility requirements, but it may consider time limit hardship criteria

that it develops and other factors that reflect upon a reasonable understanding of the meaning of "the time limit is a hardship," as used in R.C. 5107.18(E).

Respectfully,

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