



NEW JERSEY STATEWIDE INDEPENDENT LIVING COUNCIL
C/O PCIL, 3635 QUAKERBRIDGE ROAD, Suite 40, Hamilton, NJ 08619

Norman A. Smith
Chair

March 6, 2021

Dear Chair Vitale:

The New Jersey Statewide Independent Living Council (NJ SILC) is a federally-mandated council whose members are appointed by the governor. The NJ SILC membership is made up of people with disabilities, organizations working with people with disabilities, and other advocates. The NJ SILC writes and monitors the federally-mandated Statewide Independent Living Plan, and provides a forum for issues faced by all persons with disabilities in achieving independent living throughout their lifetimes

The NJ SILC is also authorized by federal law to conduct Systems Advocacy to promote increased independence of people with disabilities. It is through this authority that we offer the following policy analysis.

In the past year, the NJ SILC has identified a critical need for the following changes requiring legislative reforms, in order to remove a major disincentive to work and impediments to career advancement for people with disabilities, thereby allowing them to contribute their full potential to our state's economy; to be able to enjoy greater financial stability; and to lead independent lives. **S-3455 would make these reforms.**

These reforms are:

1. Expand Access to NJ WorkAbility, a Medicaid Buy-In (MBI) program for workers with disabilities in New Jersey whose incomes and resources exceed typical Medicaid limits. The federal statute on which NJ WorkAbility is based, the Ticket to Work and Work Incentives Improvement Act of 1999, gives states the latitude in the design of their MBI programs, with respect to employment status, income and asset limits, and other programmatic features. To achieve the following goals, the NJ SILC is recommending amendments to Subchapter 9 of N.J.A.C. 10:72, which governs eligibility requirements and the administration of NJ WorkAbility:

- a. Adding the allowance of a grace period of continued eligibility following a job loss. Twenty-one other states include grace periods of continued eligibility, ranging from two months to two years. Such protection from a sudden loss in Medicaid coverage following a job loss allows the unemployed individual to focus on finding a

new job, without the fear of losing Medicaid, personal care, and other supports which may indeed be necessary to return to work and continued independent living. We recommend a grace period of at least one year, which would also allow the unemployed to acquire new skills in order to qualify for new types of jobs in a changing and challenging labor market.

b. Removing the limit on Unearned Income from NJ WorkAbility's eligibility requirements. Twenty-five other states do not impose separate limits on Unearned Incomes on their MBI programs' enrollees. NJ WorkAbility's limit of 100% of the Federal Poverty Level (FPL, or \$1,064 per month for a single person in 2020) disqualifies from NJ WorkAbility a significant number of people with disabilities. Deemed Unearned Income includes:

- i. retirement, disability, or survivors' benefits based on parents' work records;
- ii. two-thirds of child supports, received from divorced parents;
- iii. any paid leave and unemployment benefits.

The expected prolonged period of unstable labor market conditions and high unemployment of people with disabilities following the COVID-19 outbreak add to the urgency for removing the limit on Unearned Income and for adding a provision of a grace period of continued eligibility for NJ WorkAbility following changes in employment status.

c. Excluding spousal earnings and resources from the individual's deemed levels for financial eligibility determination. Twenty-two other states only count the individuals' earnings and resources in financial eligibility determinations.

d. Removing the limit on Earned Income from NJ WorkAbility's eligibility requirements. MBI programs in eight other states do not have such limits. Removing the limit on Earned Income would allow workers with disabilities to reach their full earnings potentials, and to contribute more to the economy and the federal, state, and local governments' tax bases.

e. Expanding the age limit of eligible individuals from the current 16 to 64 years old, by removing the upper age limit altogether so that workers with disabilities who are 65 and older would become eligible for NJ WorkAbility. People now live longer than at the turn of the twentieth century, and more choose to continue to work longer. Twelve other states allow workers with disabilities, ages 65 and older, to be eligible for their MBI programs. Two more states are working to make this change in their MBI programs.

2. Removing the upper age limit of 70 from the eligibility requirements of the Personal Assistance Service Program (PASP), a State-funded program that provides up to 40 hours per week of personal care assistance to those with physical disabilities who work, seek educational advancement, or volunteer in the community for a minimum of 20 hours per month. We are recommending the amendment of N.J.A.C. 10:140 which governs the eligibility and administration of PASP so that individuals aged 70 and older can continue their engagement in the community.

The 1999 decision by the Supreme Court, *Olmstead v. L.C.*, upholds the right of people with disabilities of all ages to live, work, and participate in their community; it rejects unjustified institutional segregation and isolation which constitute discrimination

on the basis of disability. This landmark decision and the Americans with Disabilities Act provide a strong legal foundation to advocate for removing the upper age limits of NJ WorkAbility's and PASP's eligibility requirements.

The above recommendations for legislative reform on NJ WorkAbility would make it possible for New Jerseyans with disabilities to enjoy similar benefits from our MBI program as their counterparts in other states. At the same time, the public sector would enjoy higher tax revenues and reduced spending on public assistance and the administrative costs associated with processing Medicaid reapplications. Moreover, stable access to health insurance, continued community engagement and participation in the labor force, all have positive impacts on individuals' health outcomes, thus having the potential to reduce the public sector's expenditures on healthcare.

Finally, the above changes would make the Governor's "Employment First" Proclamation a reality, rather than just a slogan. To achieve this end, we recommend expediting all the necessary steps to expand access to NJ WorkAbility and PASP to ensure that people with disabilities can engage in their communities and can contribute to the economy to the maximum extent possible; can become more financially self-sufficient; and can realize their potential to lead independent lives.

I am readily reachable at NSmith@njsilc.org or by my work phone at 609-448-2998.

Respectfully submitted:

 His Mark

Norman A. Smith
Chair
NJ SILC