



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report
Department of Social and Health
Services

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Cheryl Strange, Secretary
Department of Social and Health Services

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 17-033 at the Department of Social and Health Services.

The State Auditor's Office received an assertion of improper governmental activity at the Department. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

If you are a member of the media and have questions about this report, please contact Assistant Director for Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

cc: Governor Jay Inslee
Andrew Colvin, Public Disclosure/Ethics Administrator
Kate Reynolds, Executive Director, Executive Ethics Board
Jacque Hawkins-Jones, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and Results

Our Office received a whistleblower complaint asserting a Department of Social and Health Services (Department) WorkFirst employee (subject) is approving benefits for clients who do not qualify. The complaint additionally asserted that the subject is using state time and resources to conduct her tax business.

We found no reasonable cause to believe the subject used state time and resources to conduct her tax business.

We were unable to determine whether the subject improperly approved benefits.

We found reasonable cause to believe the subject used state resources for non-work-related activities.

About the Investigation

The subject works in the Department's Community Services Division, WorkFirst program. WorkFirst employees assist clients in obtaining benefits to help with expenses associated with obtaining and maintaining a job, such as: childcare, clothing and transportation. In order to receive benefits under the WorkFirst program, a client must also meet the income, resource and citizenship requirements for the Department's Temporary Assistance for Needy Families (TANF) program. Benefits are determined based on family size and income.

WorkFirst employees also assist clients with obtaining emergency financial assistance, referred to as Additional Requirement for Emergent Needs (AREN). This cash benefit is meant to help clients pay for housing and utilities if they are short on funds. To qualify for AREN, a client must have an emergent need, must be eligible for other Department benefits such as TANF, have a good reason why they do not have sufficient funds to cover the bill and have not received the total allowable AREN disbursement (\$750) within the last 12 months.

Benefits

We reviewed nine client cases identified as ones that the subject improperly approved for benefits. We requested the Department provide an expert to assist in our review. During his review, the expert found the subject worked on only six of the nine cases.

According to the expert, three cases were problematic. Two cases lacked thorough narration or documents to support the financial benefit, which the subject approved. The expert said he could not determine whether the clients were eligible for the benefit without the narration or documents in the clients' files.

In the third case, he found the subject approved benefits even though the client did not qualify for TANF, a requirement to receive AREN benefits. However, the subject's supervisor discovered this error before disbursement.

The expert said it is not unusual to find cases lacking in narration or documents and that the subject might benefit from training. According to the regional administrator, the subject has worked in her position for about 10 years.

When we spoke with the subject about these specific cases, she said she could not recall why she failed to write the narrative or include documents, but could recall that she had verified the information needed to approve the benefits.

The subject approved client benefits without providing proof that she substantiated the clients' eligibility. Because the subject failed to provide adequate documentation, we were unable to determine whether the clients were eligible to receive benefits and if an improper governmental action occurred.

Personal Use

We reviewed the subject's hard drive, network files and emails from May 1, 2016, through May 31, 2017. Regarding the subject's use of state resources for her tax business, we found no evidence on her computer that this occurred. However, we found she did use it for other non-work related purposes.

The subject used her state email address as if it was her personal email; including requesting non-state employees use it to contact her. The subject forwarded emails back and forth between her state email and her personal email. Attached to some emails were numerous court and immigration documents that included social security numbers and other confidential information belonging to non-state employees. Also attached were personal financial documents, phone bills, family letters and real estate information. The subject saved some of these documents to the Department's network.

During an interview, the subject explained that she forwarded banking information and phone bills from her personal email to her work email so she could have them available when she spoke with her bank and phone provider during her breaks and lunches. Regarding the other documents, she said she forwarded them in order to review and print, with the exception of the letters, which she said she wrote while at work. The subject said she was aware she could not access her personal email from work and considered her use of her work email for personal purposes "very brief," adding that it never disrupted her work. However, using the state computer and printer during breaks and lunches for personal purposes is still a use of state resources regardless of the time it is used.

Additionally, we found one email exchange between the subject and an employee of a non-profit organization in New York. The document was for a client of the non-profit, not a Department client.

The subject said she volunteered to translate documents for the non-profit and viewed her volunteer work as “networking” because the non-profit provided a great service to its community. She said she did not receive anything in return for her services and all of the work was done at home, on her own time. However, we found the subject received the document through her work email and did not forward it to her personal email. She replied with the attached translated document from her work email on the same day she received the request to translate.

A state ethics rule (WAC 292-110-010(3)(a)) requires all state employees to be responsible for the proper use of state resources. The rule permits the de minimis use of state resources if certain criteria are met, including the use does not support an outside organization or group.

We found the subject used her state email address for non-work-related activities, including an outside organization. Therefore, we found reasonable cause to believe an improper governmental action occurred.

Department’s Plan of Resolution

Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) report on Whistleblower Case Number 17-033. The Department of Social and Health Services (DSHS) appreciates the assistance of the SAO by providing the Department with important facts from its investigation.

The report states the SAO found reasonable cause to substantiate one of the two allegations. According to the report:

1. The SAO found reasonable cause to believe the subject used her state email address for non-work-related activities, including an outside organization.

The Department has initiated an administrative investigation into the alleged misconduct. Upon completion of this investigation and in accordance with the Collective Bargaining Agreement between the State of Washington and the Washington Federation of State Employees Article 27 - DISCIPLINE, the Department will afford the employee an opportunity to respond to the Auditor's report, as well as to any additional investigation results. The Department will then make a final determination on whether misconduct by the employee occurred.

If the Department determines that the employee acted improperly and in violation of state law, the Collective Bargaining Agreement, and/or agency policies, the Department will take appropriate disciplinary action, which may include the employee's termination from employment. The Department will notify the State Auditor of the outcome of its review and resulting actions.

2. *The subject approved client benefits without providing proof that she substantiated the clients' eligibility. Because the subject failed to provide adequate documentation, we were unable to determine whether the clients were eligible to receive benefits and if an improper governmental action occurred.*

The Department has initiated an administrative investigation into the alleged misconduct. Upon completion of this investigation and in accordance with the Collective Bargaining Agreement between the State of Washington and the Washington Federation of State Employees Article 2 7 - DISCIPLINE, the Department will afford the employee an opportunity to respond to the Auditor's report, as well as to any additional investigation results. The Department will then make a final determination on whether misconduct by the employee occurred.

If the Department determines that the employee acted improperly and in violation of state law, the Collective Bargaining Agreement, and/or agency policies, the Department will take appropriate disciplinary action, which may include the employee's termination from employment. The Department will notify the State Auditor of the outcome of its review and resulting actions.

State Auditor's Office Concluding Remarks

We thank Department officials and personnel for their assistance and cooperation during the investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

Assertion 1

RCW 42.52.160(1) - Use of persons, money, or property for private gain.

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

WAC 292-110-010(1) and (3) - Use of state resources.

(1) Statement of principles. All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.

(3) Permitted personal use of state resources. This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

Assertion 2

RCW 74.04.660 - Family emergency assistance program—Extension of benefits during state of emergency.

The department shall establish a consolidated emergency assistance program for families with children. Assistance may be provided in accordance with this section.

(1) Benefits provided under this program shall be limited to one period of time, as determined by the department, within any consecutive twelve-month period.

(2) Benefits under this program shall be provided to alleviate emergent conditions resulting from insufficient income and resources to provide for: Food, shelter, clothing, medical care, or other necessary items, as defined by the department. Benefits may also be provided for family reconciliation services, family preservation services, home-based services, short-term substitute care in a licensed agency as defined in RCW 74.15.020, crisis nurseries, therapeutic child care, or other necessary services as defined by the department. Benefits shall be provided only in an amount sufficient to cover the cost of the specific need, subject to the limitations established in this section.

(3)(a) The department shall, by rule, establish assistance standards and eligibility criteria for this program in accordance with this section.

(b) Eligibility for benefits or services under this section does not automatically entitle a recipient to medical assistance.

WAC 388-436-0002 - If my family has an emergency, can I get help from DSHS to get or keep our housing or utilities?

DSHS has a program called additional requirements for emergent needs (AREN). If your family has an emergency and you need assistance to get or keep safe housing or utilities, you may be eligible. The special AREN payment is in addition to the regular monthly cash grant your family may already get.

(1) To get AREN, you must:

(a) Be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), or refugee cash assistance (RCA);

(b) Have an emergency housing or utility need;

(c) Have a good reason that you do not have enough money to pay your housing or utility costs; and

(d) Have not previously received the AREN maximum limit of seven hundred fifty dollars in a 12-month period. We will count all AREN payments received in a 12-month period by any adult in your TANF assistance unit, for any assistance unit, when we calculate your AREN limit.

(2) To get AREN, you must be eligible for TANF, SFA, or RCA. This means you must:

(a) Get benefits through TANF, SFA, or RCA. For RCA you must also be pregnant or have an eligible child; or

(b) Apply for TANF, SFA, and RCA, and meet all eligibility criteria including:

(i) The maximum earned income limit under WAC 388-478-0035;

(ii) The requirement that your unearned income not exceed the grant payment standard;

(iii) The requirement that your countable income as defined under WAC 388-450-0162 must be below the payment standard in WAC 388-478-0020 when you have both earned income and unearned income;

(iv) The resource limits under chapter 388-470 WAC;

(v) The program summary rules for either TANF (WAC 388-400-0005); SFA (WAC 388-400-0010); or RCA (WAC 388-400-0030); and

(vi) The requirement that you must be pregnant or have an eligible child.

(3) If you do not get or do not want to get TANF, SFA or RCA, you cannot get AREN to help with housing or utility costs. We will look to see if you are eligible for diversion cash assistance (DCA) under WAC 388-432-0005.

(4) To get AREN, you must have an emergency housing or utility need. You may get AREN to help pay to:

(a) Prevent eviction or foreclosure;

(b) Get housing if you are homeless or need to leave your home because of domestic violence;

(c) Hook up or prevent a shut off of utilities related to your health and safety. We consider the following utilities to be needed for health and safety:

(i) Electricity or fuel for heating, lighting, or cooking;

(ii) Water;

(iii) Sewer; and

(iv) Basic local telephone service if it is necessary for your basic health and safety. If you receive TANF or SFA, the Washington telephone assistance program (WTAP) may be used to help you pay for basic local telephone service.

(d) Repair damage or defect to your home when it causes a risk to your health or safety:

(i) If you own the home, we may approve AREN for the least expensive method of ending the risk to your health or safety;

(ii) If you do not own the home, you must ask the landlord in writing to fix the damage according to the Residential Landlord-Tenant Act at chapter 59.18 RCW. If the landlord refuses to fix the damage or defect, we may pay for the repair or pay to move you to a different place whichever cost is lower.

(e) If you receive TANF or SFA, WorkFirst support services under WAC 388-310-0800 may be used to help you relocate to new housing to get a job, keep a job, or participate in WorkFirst activities. Non-housing expenses that are not covered under AREN may be paid under WorkFirst support services. This includes expenses such as car repair, diapers, or clothing.

(5) To get AREN, you must have a good reason for not having enough money to pay for your housing or utility costs. You must prove that you:

(a) Did not have money available that you normally use to pay your rent and utilities due to an emergency situation that reduced your income (such as a long-term illness or injury);

(b) Had to use your money to pay for necessary or emergency expenses. Examples of necessary or emergency expenses include:

(i) Basic health and safety needs for shelter, food and clothing;

(ii) Medical care;

(iii) Dental care needed to get a job or because of pain;

(iv) Emergency child care;

(v) Emergency expenses due to a natural disaster, accident, or injury;
and

(vi) Other reasonable and necessary expenses.

(c) Are currently homeless; or

(d) Had your family's cash grant reduced or suspended when we budgeted your expected income for the month, but the income will not be available to pay for the need when the payment is due. You must make attempts to negotiate later payments with your landlord or utility company before you can get AREN.

(6) In addition to having a good reason for not having enough money to pay for your costs, you must also explain how you will afford to pay for the on-going need in the future. We may deny AREN if your expenses exceed your income (if you are living beyond your means). We may approve AREN to help you get into housing you can afford.

(7) If you meet the above requirements, we decide the amount we will pay based on the following criteria.

(a) AREN payments may be made up to a maximum of seven hundred fifty dollars in a in a 12-month period.

(b) The number of AREN payments you can receive is not limited, as long as the total amount received by all adults in the assistance unit for any assistance unit, does not exceed the seven hundred fifty dollar limit in a 12-month period. If you or another adult in your assistance unit have already received the limit, you may not be eligible to receive additional payments.

(c) We will determine if any adult TANF/SFA recipient living in your household has already received the AREN limit.

(d) We have the discretion to approve an AREN payment above the seven hundred fifty dollar limit when your health and safety are in imminent danger.

(e) The amount of AREN is in addition to the amount of your monthly TANF, SFA, or RCA cash grant.

(f) We will decide the lowest amount we must pay to end your housing or utility emergency. We will contact your landlord, utility company, or other vendor for information to make this decision. We may take any of the following steps when deciding the lowest amount to pay:

(i) We may ask you to arrange a payment plan with your landlord or utility company. This could include us making a partial payment, and you setting up a plan for you to repay the remaining amount you owe over a period of time.

(ii) We may have you use some of the money you have available in cash, checking, or savings to help pay for the expense. We will look at the money you have available as well as your bills when we decide how much we will pay.

(iii) We may consider income that is excluded or disregarded for cash assistance benefit calculations, such as SSI, as available to meet your emergency housing need.

(iv) We may consider money other individuals such as family or friends voluntarily give you. We will not count loans of money that you must repay to friends or family members.

(v) We may consider money from a nonneedy caretaker relative that lives in the home.

(vi) We may look at what other community resources you currently have to help you with your need.

(g) The seven hundred fifty dollar limit applies to the following people even if they leave the assistance unit:

(i) Adults; and

(ii) Minor parents that get AREN when no adults are in the assistance unit.

(8) We pay AREN directly to the landlord, mortgage company, utility, or other vendor.

(9) We may assign you a protective payee for your monthly grant under WAC 388-460-0020.