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Governor

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Lieutenant Governor

*Gene*

**Commonwealth of Massachusetts**  
*Executive Office of Health and Human Services*  
**Department of Transitional Assistance**  
600 Washington Street • Boston, MA 02111

RONALD PRESTON  
Secretary

JOHN A. WAGNER  
Commissioner

**Field Operations Memo 2003-1**  
**January 6, 2003**

**To:** Transitional Assistance Office Staff

**From:** *CD* Cescia Derderian, Assistant Commissioner for Field Operations

**Re:** Thibault Settlement - TAFDC - Part I

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**Background** As a result of the Thibault Settlement Agreement, the Department has agreed to provide retroactive relief to certain current TAFDC recipients and a notice to certain former TAFDC recipients whose disability application had been previously denied by HealthPro for reasons other than failing to meet the requirements of the Initial Appointment for Medical Treatment (IAMT) letter. Those current and former recipients whose disability was denied by HealthPro for failing to meet the requirements of the IAMT letter were covered in the preliminary injunction, as explained in the Field Operations Memo 99-2 series.

Under the Thibault Settlement Agreement, the Department has also agreed to monitor all non-presumptive TAFDC disability exemption requests in six TAOs for a period of nine months. This process is explained in Field Operations Memo 2003-2, Thibault Settlement - TAFDC - Part II.

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**Purpose Of  
This Memo**

The purpose of this memo is to inform TAOs of:

- the process of identifying the population impacted by the settlement;
  - Central Office and TAO responsibilities; and
  - the notices that will be sent to current and former TAFDC recipients regarding the settlement.
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**Identifying  
the Thibault  
Settlement  
Population**

Central Office has identified current and former recipients whose disability application had been previously denied by HealthPro for reasons other than failing to meet the requirements of the IAMT letter. This population has been organized into the following groups:

- Current TAFDC AUs with a recipient who is
  - receiving SSI,
  - disabled (exempt due to a disability), or
  - not disabled (nonexempt or exempt for a reason other than disability).
- Former TAFDC applicants/recipients who are
  - closed, or
  - denied.

**AU Managers can view an alphabetical list of these TAFDC AUs identifying the above groups through BEACON Actuate Report Viewer.** The report is titled *Thibault Report* and is in the *Thibault* folder under *BEACON2* in BEACON Actuate Report Viewer.

**Active TAFDC  
AU with  
Grantee  
Receiving SSI**

This group contains active TAFDC AUs with a grantee who receives SSI and whose disability application had been previously denied by HealthPro. Central Office is reviewing the disability history of the SSI recipient to determine if any retroactive payment or time-clock adjustment is needed due to the settlement. Once this determination is made, Central Office will send a system-generated notice informing the grantee of his or her eligibility or ineligibility for retroactive benefits and/or time-clock adjustment. See Attachments A and B for these notices.

AU Managers do not need to take any action on these AUs. Central Office will create a BEACON narrative on these AUs to alert the AU Manager that a determination has been made based on the Thibault Settlement Agreement. If a recipient calls with questions, the AU Manager can review the Related Benefits window for any retroactive payments or the Time Limits window for clock adjustments.

**Active TAFDC  
AU with an AP  
Exempt Due to  
Disability**

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This group contains active TAFDC AUs with an AP who has a disability exemption and whose disability application had been previously denied by HealthPro. Disability Evaluation Services (DES) is reviewing the disability records of the disabled recipient to see if it has denied a disability application since the HealthPro denial.

**Note:** DES is the vendor that DTA currently contracts with to provide disability determination services. *A User's Guide* and BEACON refer to the vendor as the Professional Review Organization (PRO). By using the generic term PRO, *A User's Guide* and BEACON do not need to be changed if DTA contracts with different vendors.

- If DES *has since denied a disability application*, no further action is required on the AU. The AU does not meet the guidelines of the Thibault settlement. LOQC will send the Notice of Thibault Settlement Review which will inform the AU that they will not receive any additional benefits as a result of the Settlement. A copy of this notice will be sent to the AU Manager. See Attachment C for a copy of this notice.
- If DES *has not denied a disability application*, DES will review the recipient's current disability and compare it to the disability that HealthPro denied.
  - If the disabilities *are the same*, LOQC will review the case to see if a retroactive payment and/or time-clock adjustment is needed. LOQC will send the Notice of Thibault Settlement Review (Attachment C) to inform the AU of the review results. A copy of this notice will be sent to the AU Manager.
  - If the disabilities *are different*, the AU does not meet the guidelines of the Thibault Settlement. LOQC will send the Notice of Thibault Settlement Review (Attachment C) which will inform the AU that they will not receive any additional benefits as a result of the settlement. A copy of this notice will be sent to the AU Manager.

AU Managers do not need to take any action on these AUs. If a recipient calls with questions, the AU Manager can review the copy of the Notice of Thibault Settlement Review which was sent by LOQC.

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**Active TAFDC  
AU with an AP  
Who Is Not  
Disabled**

This group contains active TAFDC AUs with an AP who is not disabled and whose disability application had been previously denied by HealthPro. The AP may be nonexempt or exempt for a reason other than disability. During the week of 1/6/03, Central Office will send the AU a notice informing the AP that he or she has 90 days to contact his or her AU Manager to resubmit a disability application, if the AP thinks he or she is still disabled. See Attachment D for a copy of this notice.

**Note:** If the AP does not bring a copy of the notice, the AU Manager can obtain the date of the notice through BEACON Actuate Report Viewer.

- If the AP *does not respond* to the notice, no further action is required.
- If the AP *responds after 90 days*, he or she will not be part of the Thibault Settlement and the regular disability process should be followed as outlined in *A User's Guide*, Chapter XIII-H.
- If the AP *responds within 90 days*, he or she must complete a new Disability Supplement and return it to the AU Manager. The AU Manager must write Thibault on the top of the supplement to identify it as a Thibault AU before forwarding to the PRO Disability Liaison who sends it to DES for review.

**Good Cause:** If an AP is subject to the Work Program requirement (non-presumptive TAFDC disability exemption) and is claiming that a disability prevents him or her from participating, the AP must provide the TAFDC-GCMS from a doctor to prevent a Work Program sanction. If good cause exists, the AP will be excused from the Work Program Requirements but the AU will continue to receive the reduced payment amount and time will still be counted towards the clock.

- If DES *denies* the disability application, DES will send the AU a disability denial letter. They will also send a copy to LOQC and the AU Manager. LOQC will send the Notice of Thibault Settlement Review (Attachment C) which will inform the AU that they will not receive any additional benefits as a result of the settlement. A copy of this notice will be sent to the AU Manager. The AU Manager must take the appropriate action to update BEACON (completing the disability windows, changing the exemption status, sending the TAFDC-6, etc.) following the disability procedures in *A User's Guide*, Chapter XIII-H.

**Active TAFDC  
AU with an AP  
Who Is Not  
Disabled  
(continued)**

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- If DES *approves* the disability application, DES will send the AU a disability approval letter. They will also send a copy to LOQC and the AU Manager. LOQC will take the appropriate action to update BEACON with the new, approved disability information (i.e., making the person exempt, completing the disability windows, etc.). DES will review the disability records of the disabled recipient to see if DES has denied a disability application since the HealthPro denial.
  - If DES *has since denied* a disability application, no further action is required on the AU. The AU does not meet the guidelines of the Thibault Settlement. LOQC will send the Notice of Thibault Settlement Review (Attachment C) which will inform the AU that they will not receive any additional benefits as a result of the settlement. A copy of this notice will be sent to the AU Manager.
  - If DES *has not denied* a disability application, DES will review the recipient's current disability and compare it to the disability that HealthPro denied.
    - If the disabilities *are the same*, LOQC will review the case to see if a retroactive payment and/or time-clock adjustment is needed. LOQC will send the Notice of Thibault Settlement Review (Attachment C) to inform the AU of the review results. A copy of this notice will be sent to the AU Manager.
    - If the disabilities *are different*, the AU does not meet the guidelines of the Thibault Settlement. LOQC will send the Notice of Thibault Settlement Review (Attachment C) which will inform the AU that they will not receive any additional benefits as a result of the settlement. A copy of this notice will be sent to the AU Manager.
  - ♦ AU Managers do not need to take any action on these AUs. If a recipient calls with questions, the AU Manager can review the copy of the notice sent by LOQC.
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**Closed/Denied  
TAFDC AUs**

This group contains closed and denied TAFDC AUs with an AP whose disability application had been previously denied by HealthPro. During the week of 1/6/03, Central Office will send the AU a letter giving them 90 days to go to their local TAO to reapply for TAFDC and a disability exemption, if a disability still exists. See Attachment E for a copy of this notice.

**Note:** If the applicant does not bring a copy of the letter, the AU Manager can view the date of the notice through BEACON Actuate Report Viewer.

- If the AU *does not respond* to the notice, no further action is required.
- If the AU *responds*, a new application for TAFDC benefits must be submitted. In addition, a new Disability Supplement must be completed for the disabled individual.

**Important:** If the AU responds within 90 days, under the terms of the settlement agreement the AU is **automatically eligible** for presumptive disability while awaiting the disability decision from DES, even if this is a second or subsequent disability application in a 60-month period. Therefore, the applicant is not subject to the Work Program requirement, the reduced payment amount or the 24 month clock.

- Once the decision is returned from DES, the AU Manager must follow the regular disability process according to procedures in *A User's Guide*, Chapter XIII-H.

**Note:** Under the terms of the settlement, the AU is not entitled to retroactive benefits.

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**Questions**

If you have any questions, please have your Hotline designee call the Policy Hotline at 617-348-8478.

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**SAMPLE NOTICE**

**2003-1  
Attachment A**

600 Washington St. Suite 1 LD  
Boston, MA 02111

Important Notice - Read Carefully  
Este Mensaje Es Importante - Lea Cuidadosamente

**Massachusetts Department of Transitional Assistance**

Mary Jones  
100 Main Street  
Malden, MA 02148

999-99-9999  
Malden TAO - DTA

01-06-2003

**RIGHTS YOU MAY HAVE UNDER A LAWSUIT SETTLEMENT**

Dear Mary Jones:

Because of a settlement of a lawsuit, *Thibault v. Wagner*, Suffolk Superior Court CA#97-04760C and 00-01113, the Department has looked again at the disability claim that was filed on 02/01/2001. As a result of this review:

We owe your family additional money. We will send you \$ 188.00 to cover the months from 02/01/2001 to 03/31/2001. If you would like to know how we decided on this amount, please contact your worker:

We counted certain months against your 24-month time limit that should not have been counted. We are now subtracting 2 months from your time-clock limit. The months you are disabled do not count against your 24-month time-clock. You now have 5 months left on your 24-month time clock.

The regulations used in reaching this decision are 106 CMR: 203.100, 203.530, 203.540, 203.545

If you have questions about this notice, you may call 617-999-9999 and ask for your worker Mary Smith or Recipient Services at 1-800-445-6604. For free legal help, you may call toll free: James Breslauer or Michael Raabe, Neighborhood Legal Services at 1-888-657-2889; Brian Flynn or Melanie Malherbe, Greater Boston Legal Services at 1-800-323-3205; or Greater Boston Legal Services at 617-371-134.

If you disagree with this decision, you have the right to a fair hearing. To ask for a hearing, complete the reverse side of this notice.

**SAMPLE NOTICE**

**2003-1  
Attachment B**

600 Washington St. Suite 1 LD  
Boston, MA 02111

Important Notice - Read Carefully  
Este Mensaje Es Importante - Lea Cuidadosamente

**Massachusetts Department of Transitional Assistance**

Mary Jones  
100 Main Street  
Malden, MA 02148

999-99-9999  
Malden TAO - DTA

01-06-2003

**RIGHTS YOU MAY HAVE UNDER A LAWSUIT SETTLEMENT**

Dear Mary Jones:

Because of a settlement of a lawsuit, *Thibault v. Wagner*, Suffolk Superior Court CA#97-04760C and 00-01113, the Department has looked again at the disability claim that was filed on 02/01/2001. As a result of this review:

Your family is not entitled to retroactive benefits under the lawsuit agreement because SSI benefits were received for the retroactive period and your family did not lose any TAFDC benefits.

We counted certain months against your 24-month time limit that should not have been counted. We are now subtracting 2 months from your time-clock limit. The months you are disabled do not count against your 24-month time clock. You now have 5 months left on your 24-month time clock.

The regulations used in reaching this decision are 106 CMR: 203.100, 203.530, 203.540, 203.545

If you have questions about this notice, you may call 617-999-9999 and ask for your worker Mary Smith or Recipient Services at 1-800-445-6604. For free legal help, you may call toll free: James Breslauer or Michael Raabe, Neighborhood Legal Services at 1-888-657-2889; Brian Flynn or Melanie Malherbe, Greater Boston Legal Services at 1-800-323-3205; or Greater Boston Legal Services at 617-371-134.

If you disagree with this decision, you have the right to a fair hearing. To ask for a hearing, complete the reverse side of this notice.





**Notice of Thibault  
Settlement Review**

TAO Address
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\_\_\_\_\_  
Name (Grantee)

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Name (Other Parent)

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Address City ZIP

Because of a settlement of a lawsuit, *Thibault v. Wagner*, Suffolk Superior Court CA# 97-04760C and 00-01113, the Department has had the Disability Evaluation Services (DES) look again at the disability claim filed on \_\_\_\_\_. If you have recently made a disability application you will get a separate notice about that application.

**As a result of this review, the box(es) checked below apply to you:**

- You are not entitled to retroactive benefits under the lawsuit agreement because DES has denied your current disability application.
- You are not entitled to retroactive relief under the lawsuit agreement because after you filed the disability claim on \_\_\_\_\_, DES denied a later disability application.
- You are not entitled to retroactive benefits under the lawsuit agreement because the disability claimed on \_\_\_\_\_ is not the same as the current disability.
- You are entitled to retroactive benefits under the lawsuit. You will receive the following:

**Additional Payment**

We owe your family additional money. We will send you \$\_\_\_\_\_ to cover the months of \_\_\_\_\_. If you would like to know how we decided on this amount, please contact your worker.

**Time Clock**

We counted certain months against your 24-month time limit that should not have been counted. We are now subtracting \_\_\_\_\_ months from your time clock limit. The months you are disabled do not count against your 24-month time clock. You now have \_\_\_\_\_ months left on your 24-month time clock.

**New Benefit Amount**

We will raise the amount of TAFDC benefits you get each month. You will get a separate notice with your new TAFDC benefit amount.

The regulations used in reaching this decision are 106 CMR 203.100, 203.530, 203.540, 203.545.

If you have questions about this notice, you may call your worker or Recipient Services at 1-800-445-6604. For free legal help you may call toll free: James Breslauer or Michael Raabe, Neighborhood Legal Services at 1-888-657-2889 or Brian Flynn or Melanie Malherbe, Greater Boston Legal Services at 1-800-323-3205 or Greater Boston Legal Services at 617-371-1234, or your local legal services office.

If you disagree with this decision or the decision on your disability claim, you have the right to a fair hearing. To ask for a hearing, complete the reverse side of this notice.

\_\_\_\_\_  
DTA Worker Signature

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Date



**Notice of Request for a Fair Hearing**

Massachusetts Department of Transitional Assistance

Division of Hearings

P.O. Box 167, Boston, Massachusetts 02112-0167

**YOUR RIGHT TO APPEAL:** If you disagree with any action or inaction taken by the Department of Transitional Assistance (DTA), you have the right to appeal and receive a fair hearing before an independent referee. DTA must receive your request for a fair hearing no later than 90 days from the date on this notice. Exceptions to the 90-day time limit are: (1) you have 30 days from the date of mailing of the notice by the Department of Revenue to request a hearing regarding the intercept of your state tax refund, (2) you may appeal the amount of your Food Stamp (FS) benefits at any time during your FS certification period, if you think you are not receiving the correct amount, (3) you have up to 120 days if DTA fails to act on your request for services, and (4) you have up to 120 days to appeal alleged coercive action or otherwise improper conduct or up to one year under certain specified circumstances.

**HOW TO APPEAL:** If you wish to request a fair hearing, send this page with the bottom section completed to: DTA, Division of Hearings (DOH), P.O. Box 167, Boston, Massachusetts 02112 or fax to (617) 348-5311. Please keep the copy for your own records.

**IF YOU ARE CURRENTLY RECEIVING ASSISTANCE, READ THIS BLOCK:** Your benefits will be continued until a decision is made on your appeal if DOH receives your appeal request within 10 days from the date on this notice. If you are appealing a FS issue, and your FS certification period ends before your appeal is decided, you will continue to receive the same FS benefits only until the end of your certification period. If you receive assistance during your appeal, but lose your appeal, DTA can recover from you the assistance to which you were not entitled. If you receive TAFDC time-limited benefits during an appeal, which you then lose, the months for which you have received assistance will count toward your time-limited benefits. If you do not wish to continue to receive assistance during your appeal, check Box A below. If you do not receive benefits during your appeal, and you win your appeal, DTA will promptly correct any underpayment.

**WHEN THE HEARING WILL BE HELD:** You will be given at least 10 days notice prior to the fair hearing of the date, time and place of the hearing to permit you time to prepare your case. Fair hearings on EA shelter benefits are expedited; you will be given at least two days notice prior to the fair hearing of its date, time and place. If you wish to have a fair hearing scheduled sooner, check Box B below. If you have good cause for not being able to attend the fair hearing, please contact DOH at (617) 348-5321 or 1-800-882-2017 (TTY (617) 348-5337 or 1-800-532-6238) for the hearing impaired), before the hearing date, so that your hearing can be rescheduled. Failure to appear at the fair hearing without good cause may result in the dismissal of your appeal, except for the first scheduled hearing involving any aspect of the FS Program where good cause for rescheduling need not be demonstrated.

**YOUR RIGHT TO BE ASSISTED AT THE HEARING:** If you cannot speak English or understand it well or if you are hearing impaired and wish to have DOH provide an interpreter, please write that on this appeal request or call DOH at (617) 348-5321 or 1-800-882-2017, at least a week before the hearing. At the hearing, you may be accompanied by an interpreter, attorney, or other representative at your expense. You may wish to contact a local legal services office or community agency for assistance. Information about local legal services offices and other services provided by community agencies in your area can be obtained by contacting your local office. These agencies may provide advice or representation at no cost.

You or your representative may subpoena witnesses, present evidence and cross-examine witnesses. The referee must make a decision on all evidence presented at the fair hearing. You or your representative will be permitted to see your case file before the hearing. If you want to review your case file, schedule an appointment with your worker before the hearing.

**NONDISCRIMINATION NOTICE FOR CLIENTS:** Under federal and state-law the Massachusetts DTA does not discriminate on the basis of race, color, sex, sexual orientation, national origin, religion, creed, age or disability. If you have any questions or concerns, we encourage you to contact the Director of Equal Opportunity, DTA, 600 Washington Street, Room 4039, Boston MA 02111, Tel. (617) 348-8490, (TTY (617) 348-5599 for the hearing impaired).

I, \_\_\_\_\_, hereby request a fair hearing before a referee of DOH.

- A. I do not wish to continue receiving the disputed amount of assistance during the appeal process.
- B. I request an expedited hearing.

The reason I wish to request a fair hearing is \_\_\_\_\_

Your Name (Print) \_\_\_\_\_ SSN \_\_\_\_\_

Address \_\_\_\_\_ Telephone ( ) \_\_\_\_\_

City/ZIP \_\_\_\_\_ Date \_\_\_\_\_

Your Signature \_\_\_\_\_

My authorized representative is: Name \_\_\_\_\_ Title \_\_\_\_\_

Address \_\_\_\_\_ City/ZIP \_\_\_\_\_

Telephone ( ) \_\_\_\_\_

**SAMPLE NOTICE**

**2003-1  
Attachment D**

600 Washington St. Suite 1 LD  
Boston, MA 02112

Important Notice - Read Carefully  
Este Mensaje Es Importante - Lea Cuidadosamente

**Massachusetts Department of Transitional Assistance**

Mary Jones  
100 Main Street  
Malden, MA 02148

999-99-9999  
Malden TAO - DTA

01-06-2003

**RIGHTS YOU MAY HAVE UNDER A LAWSUIT SETTLEMENT**

Dear Mary Jones:

You may have some new rights under a settlement of a lawsuit. If you think you are disabled, you can reapply for a disability exemption. If you are found disabled, you may be eligible to get benefits going back to when you applied for a disability exemption the last time.

If you want to reapply for a disability exemption, please sign your name below and bring or mail this form to your worker before **04-07-2003**.

If you have any questions about this notice, please call 617-999-9999 and ask for your worker Mary Smith or Recipient Services at: 1-800-445-6604.

You may also call the Legal Services lawyers who filed this lawsuit: Jim Breslauer, Neighborhood Legal Services at 978-686-6900 or toll free at 888-657-2889; or Greater Boston Legal Services at 617-371-1234 or toll free at 800-323-3205. If you call, say you want help under the TAFDC disability lawsuit.

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I think I am disabled. I want the Department to review my disability again.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Social Security Number : \_\_\_\_\_