



National Center for Youth Law

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POLICY BRIEF

More Child Support for Children in the TAP Program

CHILD SUPPORT COLLECTIONS SHOULD BE DISREGARDED FOR CHILDREN IN THE TEMPORARY ASSISTANCE PROGRAM (TAP) THEREBY INCREASING THE INCOME OF THESE CHILDREN. THESE CHILDREN BY DEFINITION, LACK A PARENT WITH THE ABILITY TO INCREASE HOUSEHOLD INCOME THROUGH EARNINGS.

As part of the 2006-07 budget the California Legislature created the Temporary Assistance Program (TAP). TAP is intended to provide an option for current and future CalWORKs recipients who are exempt from program work requirements to receive equivalent benefits in a solely state-funded program and thereby improve the State's TANF work participation rate. Unlike the CalWORKs program, federal law precludes the State from retaining child support collections for reimbursement of TAP benefits. However, TAP provides an opportunity to use child support collections to increase the income to children in families who, because of limitations on their parents' ability to work, are restricted in their ability to increase their income through earnings. The entire amount of child support collected for a TAP recipient should be paid directly to children and disregarded as income in determining TAP benefits. California is not required to share recovered child support collections with the federal government in the TAP program and, therefore, the child support can be disregarded and largely funded with the resulting windfall to the State. Thus, TAP provides a unique opportunity to begin using child support payments to improve the well-being of children in families who cannot increase their income through earnings.

The California Temporary Assistance Program

The TAP program was created for the stated purpose of providing cash assistance and other benefits to eligible families without any federal restrictions or requirements and without any adverse impacts on recipients.ⁱ The TAP program will provide benefits to volunteer current and future CalWORKs recipients who meet the exemption criteria for work participation activities and are not single parents who have a child under the age of one year.ⁱⁱ The TAP program is voluntary and is funded with State General Fund and not TANF or TANF maintenance of effort (MOE) funds.ⁱⁱⁱ The principal benefit of the current TAP program construct is that it will allow the State to remove families who, as a long-term state policy, have been found to be exempt from CalWORKs work participation requirements from being counted in the new federal work participation rates.^{iv} This move will assist the State in avoiding significant potential federal penalties for failing to meet increased TANF work participation requirements.

The Collection and Distribution of Child Support: An Overview^v

Under PRWORA each state must operate a child support enforcement program that meets federal requirements in order to be eligible to receive TANF block grant funds.^{vi} Federal law requires a state to provide child support enforcement services for both TANF assistance and nonassistance families that choose to receive the services.^{vii} Once a child support order has been established and a collection from a noncustodial parent made, federal law establishes a complex scheme for the distribution of the collections.^{viii} In determining who is entitled to the distribution there are two related sets of rules: the assignment rules which specify who has legal claim on the child support payments made by the noncustodial parent; and, the distribution rules which determine the order in which child support is paid consistent with the assignment rules.^{ix} For the purposes of the distribution of child support payments, the Act defines assistance from the State as TANF assistance or assistance that was paid under an AFDC state plan in effect on August 21, 1996.^x

1. Distribution of child support while the family receives assistance.

Before a family may be eligible for TANF assistance benefits it must agree to assign to the State the right to collect child support for both the period the family receives assistance and for child support which accrued before the family received assistance.^{xi} Arrearages that the family accrued before receiving assistance are called preassistance arrearages and those that are paid to the family while receiving assistance are called permanently assigned arrearages. For the period that the family receives assistance the State may retain any current child support payment and any arrearages that it collects which do not exceed the amount of the total of assistance paid.^{xii}

2. Distribution of child support after the family receives assistance.

The distribution scheme for families that leave assistance, known as former assistance, is far more complicated. When a family leaves TANF assistance States must keep track of six categories of arrearages that are determined by the family's assistance status when the arrearage accrued, the amount of the unreimbursed public assistance balance, the date of the assignment of support rights as well as the date the TANF case closed, and whether the family received assistance before or after October 1, 1997.^{xiii} In former assistance cases, if a collection is from an IRS tax refund intercept, it will be paid to the State rather than the family, up to the cumulative amount of the unreimbursed assistance. Any other current support payment is first distributed to the family and any balance is allocated to any arrearages and distributed depending on the category of the arrearage.^{xiv}

3. Distribution of child support for families that never received assistance.

The distribution scheme for families that have never received TANF assistance is much simpler: the State must distribute all collections, current and arrearages, to the family.^{xv}

4. Child Support Pass Through and Disregard

Prior to PRWORA States were required to pass through and disregard as countable income for AFDC grant amount calculations the first \$50 of current child support payments to the family.^{xvi} This provision was repealed as a requirement of PRWORA but California retained under state authority a pass through and disregard of the first \$50 of any current child support paid on behalf of the family.^{xvii} A state is free to pass through and disregard any amount of child support collections. However, the pass through must be paid out of the State share of collections, not out of any of the federal share.^{xviii}

The Treatment of Child Support Collections in TAP

Federal law specifies that only TANF benefits are assistance for the purposes of distribution of child support.^{xix} Therefore, because TAP is not a TANF benefit, any current child support that is collected from a noncustodial parent on behalf of a TAP recipient must be paid directly to the recipient family and cannot be retained by the state as reimbursement for the TAP benefits.^{xx}

Because current child support must be paid directly to the family and not retained by the State a determination must be made whether the child support will be countable income for determining the TAP benefit amount. If the child support is countable income then there must be a method for the family to report the income and for the income to be deducted from the TAP grant.

This federal requirement creates significant complexities for the treatment of child support in TAP which can adversely impact recipient children and families. Unfortunately for many assistance recipients, child support is often sporadic and comes in inconsistent amounts based on both the ability and the willingness of the noncustodial parent to make the child support payments. Thus, for example, a family may regularly receive a child support payment for several months and report the receipt of the payments which is deducted from the grant amount. However, if a child support payment is missed the family not only fails to receive the child support but also has their benefits reduced and is left to subsist on only the grant amount that was based on an assumed but unrealized child support payment. Unlike the current process for CalWORKs recipients, a TAP recipient will not be assured of receiving a full monthly grant amount. This unreliability of income will cause additional and significant financial hardships for these families who have already been found to be excluded from work requirements and would be violative of the legislative directive that the program be implemented without any adverse impact on recipients.^{xxi}

Research Supports That Child Support that is Passed Through To Families and Fully Disregarded Assists Families and Improves Child Support Collections

An extensive evaluation of the W-2 Child Support Demonstration Project in Wisconsin provides evidence that when all of the child support is passed through to families receiving TANF cash assistance and disregarded as income both families and the child support program benefit from the policy. As part of Wisconsin's W-2 program created in 1997 custodial parents participating in the program had any child support paid on behalf of their

children passed through to them and disregarded in the calculation of their W-2 cash payments. Studies evaluating the demonstration project found:

- Fathers were more likely to pay child support; and, when they paid child support, they made higher payments.^{xxii}
- Mothers were more likely to receive child support and received more child support payments.^{xxiii}
- Rates of paternity establishment increased.^{xxiv}
- Costs for increased collections and distribution were relatively small overall with a cost savings to the state.^{xxv}

All Child Support Collected on Behalf of TAP Recipient Families should be Disregarded as Countable Income in Determining the TAP Benefit Amount

There are several advantages for both children and the State if child support payments that federal law requires be paid directly to the family are disregarded in the TAP program:

- **Income increases for children in families that are otherwise limited in their ability to increase their income through earnings.** Families that participate in the TAP program have been exempted from work participation requirements because they have been found to be in circumstances that preclude them from working. These families do not have the ability of otherwise increasing their family income through earnings and the earned income disregard. Thus, a disregard of child support allows them to increase income to the children in the families.
- **TAP generates a windfall savings for the state.** Unlike TANF benefits, the state is not required to share 50% of the child support collections with the federal government since all of the TAP benefits are paid with state General Fund.^{xxvi} For example, for a CalWORKs recipient that is paid \$100 in child support, the support is distributed by paying \$50 to the federal government and \$50 to the family in the form of a disregard. Under TAP, the State would retain the \$50 that would otherwise be paid to the federal government. If all of the received child support were passed through to the family the family would receive the \$50 instead of the federal government.^{xxvii}
- **Simplifies the administration of TAP and child support programs .** Since any child support collected on behalf of a TAP family must be paid directly to the family and not returned to the state, an administratively complex system for the reporting and consideration of income would need to be created for TAP cases. A full pass through and disregard of the child support would eliminate the need for a costly and complex reporting process.

CONCLUSION

Before the TAP program is implemented the State should provide for the disregard of child support payments to children and families in the TAP program which will allow recipient families who are otherwise unable to increase their income through earnings to do so through the receipt of child support. It will improve the lives of children, simplify program administration and reduce costs.

Notes

ⁱ Assem. Bill No. 1808 (2005-2006 Reg. Sess.) § 29.2. adding Welf. & Inst. Code § 11320.32.

ⁱⁱ *Id.* at 11320.32(a).

ⁱⁱⁱ *Id.* at 11320.32(d).

^{iv} On February 8, 2006 President Bush signed the Deficit Reduction Act of 2005 (Pub. L. 109-171). The Act reauthorized the TANF block grant at the same level of funding through fiscal year 2010 and made some significant changes to the work participation provisions. Under the DRA Congress retained the work participation requirements as they existed for fiscal year 2002 (50% for all families and 90% for two-parent families). However, it made two significant changes. First, Congress recalibrated the caseload reduction credit so that states only receive credit for additional caseload reductions after fiscal year 2005, effective October 1, 2006. Pub. L. No. 109-171, § 7102(a)(1), (d), 120 Stat. 136, 137 (2006). Based on existing caseloads and current trends the amount of the potential benefit of the caseload reduction credit in California is extremely minimized. Second, the all families rate and the two-parent work participation rates are based on all families that receive assistance in either a TANF-funded program or a separate state program counting toward TANF MOE requirements. Pub. L. No. 109-171, § 7102(a)(1), (d), 120 Stat. 136, 137 (2006). This will significantly increase the number of families that will be included in the denominator for determining California's work participation rates. According to the Department of Social Services an additional 90,000 all family cases and 37,000 two-parent cases were added to the denominator for determining work participation rates. DSS estimates that the work participation rate for FFY 2007 considering the impact of DRA and implementing regulations to be just over 23% with only a 2.7% credit for caseload reduction.

^v The DRA provides new state flexibility to pass through more child support dollars to children who receive or formerly received TANF assistance. *See, More Child Support Dollars to Kids: Using New State Flexibility in Child Support Pass-Through and Distribution Rules to Benefit Government and Families.* Center for Law and Social Policy and Policy Studies, Inc. (July 2006.) However, since TAP is not funded with TANF funds those provisions are not directly relevant to this discussion.

^{vi} 42 U.S.C. § 602.

^{vii} 42 U.S.C. §§ 654(4)(A)(i)-(ii).

^{viii} 42 U.S.C. § 657.

^{ix} 42 U.S.C. § 608(a)(3); 42 U.S.C. § 675.

^x 42 U.S.C. § 657(c)(1).

^{xi} 42 U.S.C. § 657; Welf. & Inst. Code § 11477.

^{xii} 42 U.S.C. § 657 (a)(1).

^{xiii} The six categories of arrearages are: 1) permanently assigned, 2) temporarily assigned, 3) conditionally assigned, 4) never assigned, 5) unassigned during assistance, and 6) unassigned preassistance. Action Transmittal OCSE-AT-97-17 (October 21, 1997.)

^{xiv} 42 U.S.C. § 657 (a)(2)(B); Welf. & Inst. Code § 11477(a)(4). For a full discussion of the distribution for former assistance families *see* federal Action Transmittal OCSE-AT-98-24 (August 19, 1998) and Action Transmittal OCSE-AT-97-17 (October 21, 1997).

^{xv} 42 U.S.C. § 657(a)(1)(B).

^{xvi} 42 U.S.C. § 657 (a)(1) (1996).

^{xvii} Welf. & Inst. Code § 11475.3; Family Code § 17504.

^{xviii} Under the DRA, effective October 1, 2008, if a State passes through a child support payment and disregards it as countable income the federal government will waive its share of collections, up to \$100 per month for one

child and \$200 per month for two or more children. Pub. L. No. 109-171, § 7301(b)(1)(B)(i), 120 Stat. 142 (2006).

^{xix} 42 U.S.C. § 657(c).

^{xx} As a condition of eligibility for assistance, including TAP, an applicant must assign his or her right to child support to the State. Welf. & Inst. Code § 11477. However, because federal law precludes the retention of child support payments in nonTANF programs there is no existing mechanism for recovering the child support payments.

^{xxi} Welf. & Inst. Code § 11320.32.

^{xxii} Meyer, Daniel and Maria Cancian. 2001. *W-2 Child Support Evaluation, Phase 1: Final Report, Vol. 1, Effects of the Experiment*. Madison, WI: Institute for Research on Poverty, University of Wisconsin-Madison.

^{xxiii} *Id.*

^{xxiv} *Id.*

^{xxv} Meyer, Daniel and Maria Cancian. 2003. *W-2 Child Support Evaluation, Phase 2: Final Report*. Madison, WI: Institute for Research on Poverty, University of Wisconsin-Madison; Caspar, Emma and Steven Cook. 2006. *Child Support Demonstration Evaluation Cost-Benefit Analysis, September 1997-December 2004*. Madison, WI: Institute for Research on Poverty, University of Wisconsin-Madison.

^{xxvi} In adopting final TANF regulations the federal Department of Health and Human Services cautioned states about creating separate state programs in order to divert the federal share of child support collections and that any significant pattern of diversion would be used to deny the state specified types of penalty relief and work participation credits. However, states would be given an opportunity to prove the diversion was a result of state policies and objectives unrelated to the goal of diversion. 64 Fed. Reg. 17719, 17728 (April 12, 1999). Increasing the financial security for TAP families and simplifying and reducing administrative costs to the State demonstrates an important State policy unrelated to diverting the federal share of child support payments for only state gain.

^{xxvii} Of the CalWORKs assistance cases in FY 2004 which actually received a child support collection the average annual payment (including both current support and arrearages) was \$2,220, or an average of \$185 per month. Department of Child Support Services, Comparative Data for Managing Program Performance, FFY 2004, Table 4.3.1 (February 2005.) Thus, excluding arrears collections which would be retained by the State in any event, the example of a \$100 per month current child support payment is probably very close to the average current child support payment for assistance recipients. Only 30 percent of all CalWORKs assistance recipients receive any child support payment on their behalf in a year. *Id.* at Table 4.10.1.

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