State Notes

TOPICS OF LEGISLATIVE INTEREST

Fall 2011

The Family Independence Program (FIP): 48-Month and 60-Month Time Limits

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Summary

When Governor Snyder's recommended fiscal year (FY) 2011-12 budget was introduced in February 2011, it included a 48-month lifetime limit on Family Independence Program (FIP) assistance. The Legislature concurred with the proposed policy change with the passage of Public Act (P.A.) 63 of 2011, which included the annual Department of Human Services (DHS) budget. The time limit was already part of the Social Welfare Act, as it had been introduced under the Granholm Administration, along with a sunset clause that would have prevented its implementation when it was due to go into effect on October 1, 2011.

Additional policy and legislative changes have occurred since the enactment of P.A. 63. Public Acts 131 and 132 of 2011 eliminated the sunset clause and defined temporary and permanent exemptions to the work requirement. The Department of Human Services also eliminated the "hardship exemption" that was permitted for up to 20.0% of the caseload under the Federal Temporary Assistance for Needy Families (TANF) block grant. The Center for Civil Justice filed a lawsuit on behalf of three FIP recipients against DHS Director Maura Corrigan in the U.S. District Court in Detroit on September 30, 2011, seeking a temporary restraining order and preliminary injunction to prevent the changes from going into effect. United States District Judge Paul Borman granted the injunction on October 4, 2011.

This article provides an overview of the new FIP policy as implemented, highlighting changes to policy as well as changes from the Governor's proposal. Also included are updated caseload information and a revised projected fiscal impact.

Background on the Family Independence Program

- The Department of Human Services describes FIP as temporary cash assistance for low-income families with minor children. As of August 2011, the average monthly caseload was 80,024 households, or 216,946 individuals.

- Funding for FIP primarily comes from the Federal TANF block grant and the State General Fund/General Purpose (GF/GP) budget, depending on the type of case. As of August 2011, the average monthly costs for both TANF- and GF/GP-funded cases were $33,404,089. The average cost per case per month was $417.

- Pursuant to Federal eligibility requirements, a household must comply with work requirements (or qualify for work exemptions) in order to receive cash assistance.

- A majority of the cases – 83.0% in FY 2010-11 – are funded with Federal rather than State dollars. This means that up to 13,300 of the 66,500 federally funded cases could have fallen under the hardship exemption.

Policy Change: TANF Hardship Exemption

Federal regulations impose a 60-month time limit on the receipt of TANF-funded cash assistance. The Federal government, however, allows states to exempt up to 20.0% of TANF-funded cases from this time limit due to hardship. The Department of Human Services recently decided to eliminate this hardship category, which will result in the closure of more cases in FY 2011-12. These hardship cases have received assistance anywhere from five to 15 years. This change was not publically announced when the caseload estimates were provided to the Legislature in February 2011.

This hardship exemption is part of the State's current TANF State Plan, which must be submitted to the U.S. Department of Health and Human Services (HHS) every two years. Although the current plan is in effect until December 31, 2011, the change in policy will not affect the State's compliance with TANF rules. In order to implement changes to the current plan, Title IV Sec. 402 of the Social Security Act specifies a process for amending the plan:

> (b) Plan Amendments. Within 30 days after a State amends a plan submitted pursuant to subsection (a), the State shall notify the Secretary of the amendment.
> (c) Public Availability of State Plan Summary. The State shall make available to the public a summary of any plan or plan amendment section.

While HHS does not formally approve such amendments, the Department would simply acknowledge receipt of the update provided that the change follows regular TANF guidelines, which it does. The Department of Health and Human Services would notify the State if an amendment were out of compliance with TANF guidelines, although it is not clear whether this would result in a penalty or other consequences. If the DHS does not submit an amendment to the plan, the State Auditor General could later find the change to be a misuse of funds.

As part of the current TANF State Plan, the DHS defined a family to be exempt due to hardship for any month that:

- a) Is not countable toward the State limit;
- b) Qualifies as an extension month for purposes of State time limits; or
- c) The family resides in a county that meets Food and Nutrition Services Time Limited Food Stamps waiver criteria.
  - -- The waiver allows able-bodied residents to receive food assistance for more than three months without meeting work requirements. States may request a waiver of this provision in areas with an unemployment rate above 10.0%, or for those residing in an area that does not have "...a sufficient number of jobs to provide employment for the individuals".

Cases that previously fell under the hardship exemption could have included individuals who might have qualified for a work exemption. Data have not been made available, however, on the number of such cases to be cut (i.e., caregivers of disabled children and spouses, seniors, or domestic violence victims). Otherwise, the hardship exemption had been broadly defined to include anyone residing in a county where unemployment was above 10.0% or where there were not a sufficient number of jobs available.

Federal TANF Work Participation Requirement

The Department of Human Services has indicated that the primary driving force behind the decision to eliminate the 20.0% hardship category is the State's difficulty in meeting the TANF work participation rate.

The State did not achieve its actual target work participation rate in three years: 2007, 2008, and 2010. For example, Michigan's revised target rate in 2007 was 44.3% (and the State actually achieved a rate of just 28.0% that year). As a result, the DHS has already received notification that the State could possibly face both a $24.0 million and a $22.0 million fine for noncompliance in 2007 and 2008. The 2010 penalty could be as high as $25.0 million. By eliminating the hardship work exemption under TANF, the DHS expects to achieve greater success in meeting the target work participation rate in upcoming years.

The rate is set at 50.0% (meaning that 50.0% of the caseload must be working or participating in a specified job preparation activity). This 50.0% rate is then adjusted based on credits that the State is able to claim. Because these credits vary from year to year, the target work participation rate fluctuates as well.

Federal Injunction

On September 30, 2011, several welfare recipients filed a class-action lawsuit (case number 11-14298) against DHS Director Maura Corrigan in U.S. District Court in Detroit to block the limit on benefits from taking effect on October 1, 2011. The plaintiffs requested a temporary restraining order and preliminary injunction. On October 4, 2011, U.S. District Judge Paul Borman granted a temporary injunction before the next benefit payment was due to go out on October 5, 2011.

The lawsuit claims that Director Corrigan is violating the recipients' rights under the due process clause of the 14th Amendment to the U.S. Constitution. The plaintiffs also claim that they did not receive adequate notification or reason for the termination of their benefits.

Under Title 45, Section 205.10 of the Code of Federal Regulations, the State is required to provide a minimum of 10 days' notice for the termination of benefits. The language in the section also defines adequate notice and rules regarding clients' right to an administrative hearing:

> "(B) Adequate means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, the circumstances under which assistance is continued if a hearing is requested, and if the agency action is upheld, that such assistance must be repaid under title IV-A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments."

At the time that this article was written, the potential impact of the injunction on the DHS's policy and budget was not known. Depending on the length of the injunction and the requirements, the projected budget savings might be reduced. It is possible that a month-long injunction could reduce savings by as much as $5.8 million. While the DHS is being represented by the Attorney General and such legal services are generally covered by the standard contract, it is unknown whether additional fees could be incurred if the length of the lawsuit exceeds normal billing practices. The judge is requiring the DHS to provide adequate notification before the policy can be implemented. It is not known whether the DHS will be required to provide administrative hearings to all recipients who request one before the injunction can be lifted.

Other Changes to the Governor's Recommendation

The Governor’s budget recommended a 48-month lifetime limit for FIP assistance. Early caseload estimates from February 2011 assumed that 12,623 cases at an average cost of $511 per case per month would be disenrolled effective October 1, 2011. The gross savings were projected to total $77.4 million and the GF/GP savings were projected at $65.0 million. The Governor's recommendation included exemptions for approximately 6,124 cases. These exemptions would prevent the cases from being immediately disenrolled and allow households to continue receiving FIP assistance for the duration of the fiscal year. With P.A. 63 of 2011, the Legislature assumed adoption of the 48-month time limit that was described in the Governor's recommendation.

Recently, the Department provided revised estimates for the reduced caseload, exemptions, and projected savings. The adjusted caseload estimate assumed that a total of 10,897 cases would be dropped on October 1, 2011. Additional cuts will be made throughout the fiscal year so that a total of 14,062 cases will be eliminated in FY 2011-12, 12,868 cases of which will be due to the Federal 60-month time limit and 1,194 of which will be due to the State 48-month time limit. The projected savings are slightly lower than originally assumed at $74,852,364. (A revised GF/GP savings estimate is not yet available.) The average savings per case per month are $444. Table 1 shows both the total number of cases that were cut on October 1, 2011 -- some of which were due to factors other than the time limits -- as well as the adjusted caseload and projected savings throughout the year.

Some of the language regarding temporary exemptions has changed from the Governor's recommendation. For example, the description provided by the Administration specified that the exemptions for caregivers of disabled spouses would be "based on a doctor's statement and reviewed annually" and that caregivers for children would be exempt "until a child attended school". Public Acts 131 and 132 of 2011 (discussed in more detail in the following section) simply require a case review for extensions beyond specified intervals; a review is not required if a case is to be eliminated.

Table 1

Case Closures in FY 2011-12												
	Cases Subject to 60-Month TANF Counter					**Cases Subject to State 48-Month Counter**						
Roll Off Date	Number of Cases Closed	**Cases Closed Due to Time Limit**	Average Grant	Monthly Savings	Monthly Annualized Savings	Number of Cases Closed	**Cases Closed Due to Time Limit**	Average Grant	Monthly Savings	Monthly Annualized Savings	Cases Closed Due to Time Limit	Total Savings based on Time-Limit Cases
10/1/2011	11,062	**10,822**	$510	$5,519,220	$66,230,640	100	**75**	$435	$32,625	$391,500		
11/1/2011	264	**198**	$451	$89,298	$982,278	59	**44**	$446	$19,736	$217,091		
12/1/2011	254	**191**	$463	$88,202	$882,015	63	**47**	$421	$19,892	$198,923		
1/1/2012	242	**182**	$489	$88,754	$798,782	89	**67**	$430	$28,703	$258,323		
2/1/2012	295	**221**	$485	$107,306	$858,450	103	**77**	$446	$34,454	$275,628		
3/1/2012	239	**179**	$454	$81,380	$569,657	109	**82**	$406	$33,191	$232,334		
4/1/2012	261	**196**	$480	$93,960	$563,760	135	**101**	$448	$45,360	$272,160		
5/1/2012	252	**189**	$459	$86,751	$433,755	140	**105**	$442	$46,410	$232,050		
6/1/2012	217	**163**	$488	$79,422	$317,688	168	**126**	$464	$58,464	$233,856		
7/1/2012	247	**185**	$482	$89,333	$267,999	183	**137**	$428	$58,743	$176,229		
8/1/2012	240	**180**	$460	$82,800	$165,600	193	**145**	$467	$67,598	$135,197		
9/1/2012	216	**162**	$454	$73,548	$73,548	251	**188**	$451	$84,901	$84,901		
FY 11-12 Totals	13,789	**12,868**			**$72,144,172**	1,593	**1,194**			**$2,708,192**	**14,062**	**$74,852,364**

Source: Department of Human Services

Table 2 compares the exemptions listed in the Governor's recommendation to the actual exemptions implemented by the DHS. Based on early projections, it was anticipated that the 6,124 exempt cases in the Governor's recommendation would be able to remain on FIP assistance for the duration of the year. At 6,135, the early projections are similar to the most recently available data. While child-only cases are not included in the table, exemptions will be provided to approximately 19,152 such cases. As child-only cases and disabled individuals are the only cases that will receive permanent exemptions from the time limit, some of the exemptions in the Table 2 are temporary. In some instances, the categories in Table 2 are not exact matches, and data are not available for comparison.

Table 2

Projected and Actual Exemptions on FY 2011-12

FY 2011-12 Exemptions From the Time Limit[1)]	**Projected Cases (as of Feb.)**	**Adjusted Cases (as of Sept.)**
Total FIP cases over 48 months as of October 1, 2011	**18,754**	**19,371**
Exemptions:		
Incapacitated adults - incapacitation over 90 days	4,042	Not available
Chronic mental health problems - granted by Medical Review Team	143	Not available
Physical limitations - granted by Medical Review Team	388	Not available
Low intellectual capacity - granted by Medical Review Team	19	Not available
Total Disabled	**4,592**	**5,078**
Needed in the home to care for disabled spouse or child	900	929
Victim of domestic violence - 90 days plus potential for 90-day extension	155	118
Pregnancy - duration plus 90 days after	477	Not available
Seniors over age 65	Not available	10
Subtotal - FIP cases with exemptions	**6,124**	**6,135**

1) Child-only cases are not included in this table. Approximately 19,152 child-only cases will be exempt from both the State and Federal time limits.

Sources: State Budget Office and Department of Human Services

The State's 48-Month Time Limit: P.A. 131 and P.A. 132 of 2011

Public Acts 131 and 132 amended the Social Welfare Act to implement a 48-month time limit for State-funded cases and define the circumstances under which the DHS can grant temporary and permanent exemptions to the Jobs, Education and Training (JET) Program work requirements. These exemptions can, but do not necessarily, translate to an exemption from the time limit. Under the amendments, the months in which certain cases are exempt from participating in the JET work requirements will not count toward the 48-month time limit. The DHS recently announced a new policy regarding permanent exemptions to the time limit: they will be granted only to disabled individuals and child-only cases.

Temporary exemptions from the JET work requirements were granted for certain circumstances (P.A. 132 Section 57f(4)). The language is permissive, making the exemptions optional. In practice, the maximum extension allowed will be 12 months, as these cases will no longer exceed a total of 60 months. While this 12-month provision was not part of discussions regarding the legislation, it is permissible. The language of the amendment requires case review at given intervals if a case is to receive an extension, but not necessarily if a case is to be cut off. Temporary exemptions from the work requirements include the following groups:

- Short-term mental or physical illness or disability (case review for extensions beyond 90 days).
- Domestic violence (case review for extensions beyond 90 days).
- Postpartum recovery or a parent with an infant under 60 days old (case review for extensions beyond 60 days).
- Difficult pregnancy as confirmed by a medical review.
- Caregiver of a disabled spouse (case review for extensions beyond 365 days).
- Caregiver of a disabled child (case review for extensions beyond 365 days).

There are several categories of individuals with permanent exemptions from the JET Program (P.A. 131 Section 57f (3)). Again, the permanent work exemptions do not necessarily translate into permanent exemptions from the time limit. Permanent exemptions from the JET Program include the following groups:

- A child under the age of 16 (a child-only case, which is exempt from the time limit).
- A child age 16 to 18 who is attending elementary or secondary school full time (a child-only case, which is exempt from the time limit).
- A recipient who is disabled or has a mental or physical condition (exempt from the time limit).
- A recipient otherwise unable to participate as determined by the medical review team.
- A recipient aged 65 or older.
- A recipient of Supplemental Security Income.
- A recipient of retirement, survivor, or disability insurance and one who is eligible for this insurance and is in a non-pay status.

Fund Source by Type of Case

Federal TANF funding will continue to support most of the FIP caseload. The caseload primarily consists of single-parent families that are subject to the 48-month time limit. Other Federally funded cases that will be subject to the 48-month time limit include caretakers of spouses receiving Supplemental Security Income (SSI) assistance, some victims of domestic violence, and seniors over the age of 65. Child-only cases will continue to be funded with TANF dollars, as children are not subject to the work requirement, time limit, or other factors until they turn 18.

State-funded cases will include cases that are eligible for temporary exemptions and will continue to include two-parent families, as well as disabled individuals.

Conclusion

Under the Governor's budget recommendation in February 2011, the DHS would implement a 48-month State time limit on FIP cash assistance with some exemptions. Since that time, the DHS has expanded the policy change to eliminate the hardship exemption for 20.0% of the TANF-funded cases in FY 2011-12. By eliminating the hardship category, the DHS expects to be more successful in meeting the Federal TANF work participation rate. Currently, the State faces potential penalties of up to $71.0 million for not meeting its target rate for three years. The State is now subject to a temporary Federal injunction as a result of a class-action lawsuit that was filed on behalf of several FIP recipients.

Among other changes to FIP policy, permanent exemptions will be granted only to disabled individuals and child-only cases, and cases with temporary exemptions from the State limit will still be subject to the 60-month Federal limit. The adjusted caseload numbers and projected savings provided by the DHS are similar to the original Governor's proposal.