



MAINE EQUAL JUSTICE

Finding solutions to poverty and improving the lives of people with low income in Maine.

Implementing Drug Testing in the TANF Program: *Problematic for Many Reasons*

In 2011, the Governor proposed drug testing for TANF recipients with a previous drug-related conviction in the 2012-2013 biennial budget. The Legislature passed a compromise proposal that did impose drug testing. DHHS has never implemented the policy. In a series of proposals that make it harder for people with low income to obtain the help they need, the Governor recently proclaimed that DHHS will now be implementing the drug testing policy.

DHHS has proposed rules to implement drug testing. The proposed rules would make the following changes:

DHHS will start requiring that all parents who have been convicted of a drug-related felony charge since August 22, 1996 have a drug test. (This would not apply to alcohol-related convictions). Individuals who test positive for illegal drug use will be required to participate in a drug treatment program in order to continue to receive assistance. Individuals who disagree with a test result can appeal the decision and will be tested a second time to verify the results of the first test. Anyone who refuses to take the drug test or who does not enroll in a drug treatment program without “good cause” after a positive drug test will lose their TANF benefit.

This policy change is flawed for many reasons:

- **These parents have already “done their time” and are often trying to move on with their lives.** Under this proposed rule, someone with a conviction that is more than a decade old would be required to undergo a drug test regardless of their current circumstances. These individuals may be drug-free and fully rehabilitated, yet they would be required to submit to an obtrusive and unnecessary test.
- **This proposal is legally questionable.** The Eleventh Circuit Court recently found that suspicionless drug testing of public assistance applicants is a violation of the Fourth Amendment to the U.S. Constitution. *Lebron v. Secretary, Fla. Dept. of Children and Families*, (11th Cir. Fla., Feb. 26, 2013). A prior drug-related conviction from 15 years ago does not, by itself, create a reasonable suspicion that the person is using drugs currently.

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- **Some people will not be able to comply with this rule.** State law provides that parents who are unable to enroll in a drug treatment program due to “good cause” should not lose their benefits. However, the proposed rule defines “good cause” very narrowly, stating that the person must be experiencing an “emergency family crisis that renders participation unreasonable.” Lacking transportation to a drug treatment program or lacking access to a drug treatment program in one’s local area should constitute good cause, but under the proposed definition these circumstances would likely not qualify. These families would lose their TANF.
- **Most women with drug-related felony convictions have struggled with use and addiction, often in response to significant experiences with abuse and victimization, but rarely have access to treatment to address their issues.** The Maine Coalition to End Domestic Violence testified on a drug-testing bill that “domestic violence victims do sometimes resort to drug use to dull the pain of abuse. On occasion, they are caught up in the drug trafficking of an abuser, arrested, convicted and spend time in jail. Sometimes this results in a change of life, enforced separation from the abuser and on release, a new safer life.”
- **This creates another barrier for people who have already struggled to get back on their feet.** Women who make the transition from prison or jail back to their communities must achieve stability in their lives. Yet, many factors do not make this easy. Numerous studies have shown that having a criminal record creates a significant barrier to employment. Prior convictions generally limit opportunities for many ex-offenders to the low wage/low-skill job market where employers are generally not able to be as selective about a criminal record.
- **Without access to the basic safety net that TANF provides, these families will face high levels of distress, including hunger and homelessness.** Those affected by this policy would lose more than access to TANF cash assistance—they would also lose access to other vital services provided through the ASPIRE Program, including child-care, education, and other activities designed to help them find and maintain employment.
- **These types of limits not only affect the women who are in the greatest need of services but their children as well, who will suffer physically, mentally, and emotionally from these economic struggles.** Any cut to the parent’s share of the benefit will reduce a benefit that is already inadequate to meet the family’s basic needs; and children will suffer. The maximum monthly TANF benefit for a family of three is only \$485. The loss of the parent’s portion of the benefit would mean that only \$262 would be available for the children in this family. This is not enough to pay the rent, never mind their other basic needs.
- **Assuming that people with a past felony conviction are serious drug offenders is erroneous.** Studies indicate that the majority of women with drug convictions were incarcerated on charges involving low levels of substances designed for personal use, not distribution. In Maine, possession of a scheduled drug may result in a drug-related felony conviction.
- **This new policy will make backlogs and delays at DHHS even worse.** People are already experiencing delays in application decisions, as well as difficulty getting timely help from the Department. Imposing drug testing will add yet another task for DHHS staff, many of whom are already underwater trying to deal with current demands.