

## TANF Funding for Pre-Petition Legal Representation

Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System – October 3, 2022

### The TANF Block Grant

Temporary Assistance for Needy Families (TANF) is block grant funding that states receive from the federal government. States have significant decision-making authority over how to best spend these funds. However, states are required to demonstrate “maintenance of effort” (MOE) in state dollars spent. Typically, this means that in order to receive maximum federal funding, states are required to spend at least 80% (75% if the state meets certain requirements) of the amount of money the state spent for welfare and related spending in fiscal year 1994, when TANF was established.<sup>1</sup> Failure of a state to meet MOE requirements will result in reduced federal funds in the following year.<sup>2</sup> Unlike many other federal funds, TANF block grants amounts have remained static. State funding is based on the amount of federal funds the state received prior to the 1996 introduction of TANF, and funds have never increased. As a result, by 2021, the block grant had lost 40% of its value as a result of inflation.<sup>3</sup> Maine’s TANF award in federal fiscal year 2020 was \$127,485,479.<sup>4</sup>

### Purposes

States can spend TANF block grant money on any of the four purposes established in law. The four allowable purposes of TANF funds are to:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;*
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;*
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and*
- (4) formation and maintenance of two-parent families*<sup>5</sup>

### State Use of Funds

Because of the broadness of the language describing allowable uses of Block Grant and MOE funds, states have used TANF funding for a wide variety of purposes. The U.S. Department of Health and Human Services, Office of Family Assistance reports that in FY 2020, 22.3% of TANF and MOE funds

---

<sup>1</sup> U.S. Government Accountability Office. *Temporary Assistance for Needy Families: State Maintenance of Effort Requirements and Trends* (May 17, 2012), at, <https://www.gao.gov/products/gao-12-713t>.

<sup>2</sup> *Temporary Assistance for Needy Families: State Maintenance of Effort Requirements and Trends*, supra note 1.

<sup>3</sup> Congressional Research Service. *The Temporary Assistance for Needy Families (TANF) Block Grant*. Updated (March 24, 2022), at [IF10036 \(congress.gov\)](https://www.congress.gov/117/records/2022/03/24/IF10036).

<sup>4</sup> United States Department of Health and Human Services, Office of Family Assistance. *TANF and MOE Spending and Transfers by Activity, FY 2020. State Data*. at: [https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2020\\_tanf\\_and\\_moe\\_state\\_pie\\_charts\\_092221.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2020_tanf_and_moe_state_pie_charts_092221.pdf)

<sup>5</sup> 42 U.S.C. 1305 §601(a).

## TANF Funding for Pre-Petition Legal Representation

Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System – October 3, 2022

were used for basic assistance, 9.7 % for work, education and training activities and 16.6% for child care. Child welfare services accounted for 8.3% of spending.<sup>6</sup>

The percentage of total individual state TANF funds that were spent on child welfare services ranged from 0% (Alaska, California, Delaware, District of Columbia, Kentucky, Minnesota, Tennessee and Wyoming) to 67.0% in Arizona. Maine spends 7.7% of its TANF and MOE funds on child welfare services.<sup>7</sup> In FY 2020, state uses of TANF funds for child welfare services included foster care services; family support, family presentation and reunification services; and adoption services.<sup>8</sup>

### Restrictions

The federal government does place some restrictions as to whom may benefit from TANF funded programs. Beneficiaries of services that fall under the following two purposes of TANF must be deemed financially eligible by the state:<sup>9</sup>

- 1) provision of assistance to needy families so that children may be cared for in their own homes or in the homes of relatives and
- 2) ending dependence of needy parents on government benefits by promoting job preparation, work, and marriage

Financial eligibility is not required for beneficiaries of programs that fall under the second two purposes of TANF:<sup>10</sup>

- 1) prevention and reduction of the incidence of out-of-wedlock pregnancies and
- 2) formation and maintenance of two-parent families).

However, in determining any restrictions on use of TANF funds for these purposes, a state must examine whether the service meets the definition of “assistance.”<sup>11</sup> If it does, increased restrictions apply.

An additional consideration is whether services are provided using MOE or federal funds.<sup>12</sup> Federal guidance provides that MOE funds can only be spent on services provided to individuals demonstrating financial need, regardless of which of the four TANF purposes the intervention serves.<sup>13</sup>

---

<sup>6</sup> United States Department of Health and Human Services, Office of Family Assistance. *TANF and MOE Spending and Transfers by Activity, FY 2020*. (Updated October 31, 2021), at <https://www.acf.hhs.gov/ofa/data/tanf-and-moe-spending-and-transfers-activity-fy-2020>.

<sup>7</sup> *TANF and MOE Spending and Transfers by Activity, FY 2020. State Data*, supra note 4

<sup>8</sup> *TANF and MOE Spending and Transfers by Activity, FY 2020. State Data*, supra note 4

<sup>9</sup> U.S. Department of Health and Human Services, Administration for Children & Families Office of Family Assistance, Q & A: Use of funds, TANF program policy questions and answers (2010), at <https://www.acf.hhs.gov/ofa/resource/q-a-use-of-funds?page=all>

<sup>10</sup> *Q & A: Use of Funds*, supra note 9.

<sup>11</sup> Title 45 § 260.31(a)(1) defines “assistance” as “cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).”

<sup>12</sup> *Q & A: Use of Funds*, supra note 9. See question 17.

<sup>13</sup> *Q & A: Use of Funds*, supra note 9. See question 17.

## **TANF Funding for Pre-Petition Legal Representation**

Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System – October 3, 2022

### **Use of TANF Funds for Legal Representation**

Federal guidance does make it clear that TANF funds may be used for legal representation of families, so long as these families are considered “needy” and so long as the legal representation is related to a program purpose.<sup>14</sup> Federal guidance defines a needy family as one experiencing “financial deprivation, i.e., lacking adequate income and resources.”<sup>15</sup> States establish their own specific parameters for eligibility.

There appears to be precedent for using TANF funds to pay for pre-petition legal representation for families at risk of involvement with child services. Beginning in 2014, Oklahoma partnered with a civil legal services entity to provide pre-petition services, including divorce, domestic violence, guardianship and housing cases. It appears that the state initially used TANF funds, but no longer do so. Staff were unable to locate evidence that any other state has used TANF funds to pay for pre-petition legal representation services.

---

<sup>14</sup> *Q & A: Use of Funds*, supra note 9. See question 20.

<sup>15</sup> *Q & A: Use of Funds*, supra note 9, citing FR Vol. 64, No. 69, April 12, 1999, p. 17825. See question 30