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Drug Testing of Welfare Applicants and Recipients

In 2011, 36 states proposed drug testing public assistance applicants or recipients and three states, Arizona, Florida, and Missouri, successfully enacted legislation. In 2012, 28 states proposed similar bills and four, Utah, Tennessee, Georgia, and Oklahoma, successfully enacted legislation. Public assistance programs for which drug testing has been proposed include Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps, and Medicaid. TANF is the only program for which drug testing of applicants has been successfully implemented.¹

The purpose of this report is to find the impact of drug testing for persons receiving services or payments from the State Human Services Agency.

TANF is administered by the U.S. Department of Health and Human Services, but benefits and services are provided by each individual state. The Department of Health and Human Services provides a grant to states to:

- “(1) provide assistance to needy families with children so that they can live in their own homes or the homes of relatives;
- (2) end dependence of needy parents on government benefits through work, job preparation, and marriage;
- (3) reduce out-of wedlock pregnancies; and
- (4) promote the formation and maintenance of two-parent families.”²

TANF is jointly financed by federal and state funding. The TANF federal spending given to a state is “equal to peak expenditures for pre-TANF programs during the FY1992-to-FY1995

¹ National Conference of State Legislators, “Drug Testing and Public Assistance,” January 2013, accessed on February 26, 2013, <http://www.ncsl.org/issues-research/human-services/drug-testing-and-public-assistance.aspx>.

² Congressional Research Service, “The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements,” October 2012, accessed on February 26, 2013 <https://www.fas.org/sgp/crs/misc/RL32748.pdf>, Summary.

period...The basic block grant is legislatively fixed—that is, it does not change when the cash assistance caseload decreases or increases, nor is it adjusted for inflation.”³

States are required to maintain a minimum spending level of their own funds on TANF activities in order to receive federal TANF funding. These required state expenditures are known as the maintenance of effort (MOE) funds. If a state does not meet this requirement, it will be penalized with “a reduction in [the] subsequent year’s block grant by \$1 for each \$1 shortfall from the required spending level.”⁴ A state’s MOE level is determined by

“...75% of what was spent from state funds in FY1994 in TANF’s predecessor programs of cash, emergency assistance, job training, and welfare-related child care spending. States are required to maintain their own spending of at least that level, and the MOE requirement increases to 80% of FY1994 spending for states that fail to meet TANF work participation requirements.”⁵

Federal Stipulations

In 1996, the United States Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A section of the bill states the following: “States shall not be prohibited by the Federal Government from testing welfare recipients for use of controlled substances nor from sanctioning welfare recipients who test positive for use of controlled substances.”⁶

In 2003, Michigan initiated a pilot program that required all applicants for TANF benefits to submit a urine sample to be tested for drug use. Applicants would be denied TANF benefits if they refused the drug test or tested positive for illicit drugs and did not participate in a treatment program.⁷ The pilot program was challenged in the United States District Court, E.D. Michigan, Northern Division in the case of *Marchwinski v. Howard*.⁸ “The State’s desire to address substance abuse as a barrier to employment is laudable and understandable in view of

³ Congressional Research Service, “The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements,” p 3.

⁴ Congressional Research Service, “The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements,” p. 7.

⁵ Congressional Research Service, “The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements,” p. 6.

⁶ United States Congress, *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, H.R. 3734. 104th Cong., Title IX Misc., Sec. 902 Sanctioning for Testing Positive for Controlled Substances, <http://thomas.loc.gov/cgi-bin/query/F?c104:18:./temp/~c104OfMbES:e772211>.

⁷ Congressional Research Service, “Constitutional Analysis of Suspicionless Drug Testing Requirements for the Receipt of Governmental Benefits,” January 2012, accessed on February 26, 2013 <http://www.fas.org/sgp/crs/misc/R42326.pdf>.

⁸ *Marchwinski v. Howard*, 113 F. Supp. 2d 1134 –Dist.Court, ED Michigan 2000, accessed on March 25, 2013, http://scholar.google.com/scholar_case?case=13040978699174765839&q=marchwinski+v.+howard&hl=en&as_sdt=2,46&as_vis=1.

the Federal mandate to move welfare recipients to work. Yet, it does not constitute a special need sufficient to warrant a departure from the Fourth Amendment's main rule."⁹ The pilot program was deemed to be a violation of the Fourth Amendment due to the suspicion-less nature of the drug tests. The program was shut down and modified so that "tests would be conducted only when 'there is a reasonable suspicion that [a] recipient is using drugs.'"¹⁰

Vermont

Vermont does not require drug testing for welfare applicants or recipients. Vermont's TANF program receives \$47.4 million from the Federal TANF block grant. Vermont's maintenance of effort spending level at 75% is \$25.5 million. This sums the total of TANF spending in Vermont to be \$72.9 million annually.¹¹ Vermont's main TANF program is named Reach Up.¹²

Missouri

Missouri's House Bill 73, which was signed into law by Governor Nixon on July 12, 2011 and took effect August 2011¹³, directs the Defense Security Service (DDS) to create a program to screen certain TANF recipients or applicants for potential illegal drug use.¹⁴ The bill, referred to as "HB 73," stops the distribution of benefits from the TANF program to recipients that test positive for illegal drug use.¹⁵

Missouri's HB 73 requires the Department of Social Services to administer a mandatory urine drug test for all people currently receiving benefits or applying to receive benefits from TANF whom they believe, according to a screening procedure, participate in illegal drug use. This is considered a suspicion-based test because it is administered only to those recipients whom they believe could possibly be participating in illegal drug use, based on the screening procedure they conduct. If the drug test comes out positive or the individual doesn't agree to take the test, they become ineligible to receive benefits for three years unless they take part in

⁹ *Marchwinski v. Howard*, *Marchwinski v. Howard*, 113 F. Supp. 2d 1134 –Dist. Court, ED Michigan 2000, accessed on March 25, 2013,

¹⁰ Congressional Research Service, "Constitutional Analysis of Suspicionless Drug Testing Requirements for the Receipt of Governmental Benefits," January 2012, accessed on February 26, 2013
<http://www.fas.org/sgp/crs/misc/R42326.pdf>, p. 9.

¹¹ Congressional Research Service, "The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements."

¹² State of Vermont, "Vermont TANF State Renewal Plan," October 2012, accessed on February 26, 2013,
<http://dcf.vermont.gov/sites/dcf/files/pdf/esd/TANF%20State%20Plan%20Oct%202012%20-%20Dec.%202015.pdf>.

¹³ National Conference of State Legislatures, "Drug Testing and Public Assistance."

¹⁴ State of Missouri, "Missouri Department of Social Services," 2011, accessed on February 26, 2013.
<http://dss.mo.gov/re/pdf/2011-dss-annual-report.pdf>.

¹⁵ State of Missouri, "Missouri Department of Social Services."

a substance abuse treatment program. On completion of the program the individuals are able to reapply for benefits in six months. If the caseworker of an individual receiving benefits, whom previously tested positive or refused the test, suspects the recipient of child abuse as a result of drug abuse they are required to report it.¹⁶

Missouri's TANF program receives \$217.1 million from the Federal TANF block grant. Missouri's MOE spending level at 75% is \$120.1 million. Therefore, the total of TANF spending in Missouri is \$337.2 million.¹⁷ Missouri's drug testing legislation was designed to be suspicion-based, differentiating it from Florida's model, which is not. Recipients who are convicted of illegal drug use are referred to a drug treatment program and their children or other household members who would otherwise be unable to receive the benefits can continue to do so through a third party payee.¹⁸ Missouri has only calculated minimal savings for reduced monthly payments, because the model does not eliminate cases altogether.¹⁹ The estimated cost of Missouri's program is up to \$1,904,632 in fiscal year 2012 and up to \$2,204,202 in fiscal year 2013.²⁰ The estimate includes the costs of increased staffing needs, administrative hearings, drug treatment, changes to electronic applications, and hiring contractors to administer drug tests.²¹

Florida

Florida receives a TANF basic block grant of \$562.3 million per year, which amounts to 3.4% of TANF grants nationally.²² Additionally, Florida's state MOE spending for TANF and state programs in the 2011 fiscal year totaled \$406,238,491.²³ "Florida operates its Temporary Assistance for Needy Families (TANF) Program as a partnership among [the Department of Children and Families (DCF), Agency for Workforce Innovation (AWI), and Department of Education], a state-level policy board, Workforce Florida, Inc. (WFI), and a network of Regional

¹⁶ National Conference of State Legislatures, "Drug Testing and Public Assistance."

¹⁷ Gene Falk, "Federation of American Scientists," Congressional Research Service, 2012, accessed on February 25, 2013, <https://www.fas.org/sgp/crs/misc/RL32748.pdf>.

¹⁸ Office of the Assistant Secretary for Planning (ASPE), U.S. Department of Human Services, "Drug Testing Welfare Recipients: Recent Proposals and Continuing Controversies," October 2011, accessed on February 26, 2013, <http://aspe.hhs.gov/hsp/11/DrugTesting/ib.shtml>.

¹⁹ Missouri Department of Social Services. "Family Support Division/MO Health Net Division-Monthly Management Report, Table 1," May 2012, accessed on February 25, 2013, http://www.dss.mo.gov/re/pdf/fsd_mhdmr/1205-family-support-mohealthnet-report.pdf.

²⁰ Missouri Committee on Legislative Research Oversight Division, "Fiscal Note: SB 7," 2011, accessed on February 25, 2013, <http://www.moga.mo.gov/oversight/OVER11/fispdf/0287-01N.ORG.PDF>

²¹ Office of the Assistant Secretary for Planning (ASPE), U.S. Department of Human Services, "Drug Testing Welfare Recipients: Recent Proposals and Continuing Controversies."

²² Congressional Research Service, "The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements."

²³ US Department of Health and Human Services, "Florida: Federal TANF and State MOE Expenditures Summary by ACF-196 Spending Category, FY 2011," 2011, accessed on February 21, 2013, <http://archive.acf.hhs.gov/programs/ofa/data/2011fin/states/florida.pdf>.

Workforce Boards.”²⁴

In 2011, Florida passed a law that requires all applicants for TANF funding be tested for drug use.²⁵ This testing method is known as a suspicionless drug test, meaning all applicants are tested for drug use, regardless of whether or not they are suspected of abusing controlled substances. The same year, Luis Lebron, an applicant for TANF benefits, filed suit against David Wilkins, Secretary of the Florida Department of Children and Families, “arguing that requiring TANF applicants to submit to a drug test violates the Fourth Amendment’s prohibition against unreasonable searches.”²⁶ As a result of *Lebron v. Wilkins*,²⁷ a Federal District Court judge ordered that Florida’s TANF drug-testing activities cease.²⁸ This decision was appealed by Florida Governor Rick Scott and was upheld by the 11th Circuit Court of Appeals in February 2013.²⁹

Under Florida law, each applicant for TANF benefits must take a drug test and is responsible for paying for the test when administered; if the applicant tests negative for controlled substances, he or she is reimbursed for the cost of the drug test in his or her first TANF payment.³⁰ If the applicant tests positive for controlled substances, he or she is ineligible for TANF benefits and may reapply for benefits one year after the date of the failed drug test. If an individual tests positive for controlled substances when reapplying after the first failed drug test, he or she may not apply for TANF benefits for three years after the date of the second failed test.³¹ If an individual that tests positive for controlled substances completes an approved drug treatment program, he or she may reapply for TANF benefits six months after the initial failed drug test.

²⁴ Florida Department of Children and Families, “2011 Annual Report on TANF and State MOE Programs,” 2011, accessed on February 21, 2013, <http://www.dcf.state.fl.us/programs/access/docs/TANFMOE2010-2011AnnualReport.pdf>, p.1.

²⁵ Family Self-Sufficiency: Social Welfare, *Drug screening for applicants for Temporary Assistance for Needy Families*, 2011, 414.0652 §§ 1, accessed on February 26, 2013, http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=drug+testing&URL=0400-0499/0414/Sections/0414.0652.html.

²⁶ Library of Congress, “United States: Court Enjoins Florida Law Requiring Welfare Recipients to Take Drug Tests,” November 9, 2011, accessed on February 25, 2013, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402878_text.

²⁷ *Lebron v. Wilkins*, 802 F. Supp 2d 1273 – Dist. Court, MD Florida 2011, accessed on March 26, 2013, http://scholar.google.com/scholar_case?case=454801404362323497&q=lebron+v.+wilkins&hl=en&as_sdt=2,46.

²⁸ Library of Congress, “United States: Court Enjoins Florida Law Requiring Welfare Recipients to Take Drug Tests.”

²⁹ National Conference of State Legislatures, “Drug Testing and Public Assistance,” March 2013, accessed on March 25, 2013, <http://www.ncsl.org/issues-research/human-services/drug-testing-and-public-assistance.aspx>.

³⁰ Family Self-Sufficiency: Social Welfare, *Drug screening for applicants for Temporary Assistance for Needy Families*, 2011, 414.0652 §§ 2a, accessed on February 26, 2013, http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=drug+testing&URL=0400-0499/0414/Sections/0414.0652.html.

³¹ Family Self-Sufficiency: Social Welfare, *Drug screening for applicants for Temporary Assistance for Needy Families*, 2011, 414.0652 §§ 3h, accessed on February 26, 2013, http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=drug+testing&URL=0400-0499/0414/Sections/0414.0652.html.

Drug treatment programs must be completed at the expense of the applicant.³² A failed drug test by a parent does not affect the benefits of his or her children. In this case, a designated payee, usually an immediate family member, is put in place to receive and distribute benefits for the affected child. This designated payee is also drug tested.³³

Prior to the implementation of Florida's TANF drug testing law, "the state had conducted a suspicion-based pilot program from January 1, 1999, through May 31, 2000. The pilot program had used the Substance Abuse Subtle Screening Inventory (SASSI) in order to screen clients for potential drug use."³⁴ The limitations of the accuracy of these tests were highlighted in the pilot program. The pilot program's SASSI screening tool predicted 22.4% of applicants to be drug abusers, however, only 5.1% of these individuals failed a drug test.³⁵ Once Florida's suspicionless drug testing law was enacted in 2011, only 2.6% of applicants failed the drug test and were unable to receive TANF benefits.³⁶ In regards to the fiscal implications of the Florida pilot program,

"A Florida State University researcher under contract to evaluate the pilot program did not recommend continuation or statewide expansion of the project. Overall research and findings concluded that there is very little difference in employment and earnings between those who test positive versus those who test negative. Researchers concluded that the cost of the pilot program was not warranted."³⁷

Conclusion

Drug testing for welfare recipients needs to be a suspicion-based program or else risk being shut down for violation of the Fourth Amendment. Both Missouri and Florida have shown minimal, if any, savings due to the state paying for negative drug tests and other costs, such as treatment. As shown in the Florida example this could be because of the limited ability of the accuracy of drug tests. The Missouri example highlights inconclusive evidence of any impact on

³² Family Self-Sufficiency: Social Welfare, *Drug screening for applicants for Temporary Assistance for Needy Families*, 2011, 414.0652 §§ 2j, accessed on February 26, 2013, http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=drug+testing&URL=0400-0499/0414/Sections/0414.0652.html.

³³ Family Self-Sufficiency: Social Welfare, *Drug screening for applicants for Temporary Assistance for Needy Families*, 2011, 414.0652 §§ 3a-3c, accessed on February 26, 2013, http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=drug+testing&URL=0400-0499/0414/Sections/0414.0652.html.

³⁴ Frances Carley, "Drug Testing Welfare Recipients: A Review of Potential Costs and Savings," 2012, accessed on February 18, 2013, <http://www.senate.michigan.gov/sfa/publications%5Cnotes%5C2012notes%5Cnotessum12fc.pdf>.

³⁵ Frances Carley, "Drug Testing Welfare Recipients: A Review of Potential Costs and Savings."

³⁶ Frances Carley, "Drug Testing Welfare Recipients: A Review of Potential Costs and Savings."

³⁷ Florida Senate Budget Committee, "Bill Analysis and Fiscal Impact Statement," April 14, 2011, accessed on February 18, 2013, <http://www.flsenate.gov/Session/Bill/2011/0556/Analyses/9/pWb5TDaaOHN/mJs9Yvi9hjGS8=%7C7/Public/Bills/0500-0599/0556/Analysis/2011s0556.pre.bc.PDF>, p. 3.

prevention of drug use or protection of children. Due to the recentness of the passing of other states legislation, drug testing may be more effective, however currently these programs appear to be of limited effectiveness.

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