

## Comments to the State's 2015 TANF Plan

We recommend the U.S. Department of Health and Human Services not accept Ohio's TANF plan as written because of the state's inability to meet the TANF program goals, its unfair and inequitable treatment of needy families, its tendency to shirk civil rights and ADA compliance in the implementation of the program, and numerous other reasons explained below.

Ohio's TANF program is state supervised and county administered. The state plan, which outlines a TANF program that is expected to serve "all political subdivisions in the state", is dependent on the ability and willingness of each county to follow the plan and on the ability and willingness of the state to monitor and enforce compliance with the plan.

As will be outlined in the following passages, Ohio's record to date provides overwhelming evidence that the state either encourages non-compliance or demonstrates an unwillingness or inability to enforce compliance with the terms and conditions of the plan by counties. The state's ineffectiveness or complicity in how it supervises the counties leaves Ohio without a statewide TANF program serving all of Ohio's needy families in a fair and equitable manner. The result is 88 different TANF programs. Far worse is the realization that Ohio's operation of the TANF program has been a total failure when measured against the four federally specified goals:

“(a) In general

The purpose of this part is to increase the flexibility of States in operating a program designed 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 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) encourage the formation and maintenance of two-parent families.”

42 USC Sec. 601(a)

### **Unmet Goals**

#### **First Goal – Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives**

As detailed in the ODJFS PRC Reference Guidance, revised May 2013, Ohio has determined that the federal definition of a "needy family" is a family whose income is at or below 200% of the federal poverty level (FPL). Despite this, Ohio's OWF gross income limit is set at an unnecessarily low level of 50% of the FPL.

Of the 600,000 poor children in the state living below 100% of the FPL, only 100,000 are supported through the OWF cash assistance program.

Half of the children who live below 100% of the FPL, around 300,000, are ineligible for OWF because their families have incomes between 50% and 100% of the poverty level.

Still, living below 50% of the poverty line in Ohio does not guarantee a family will receive OWF benefits. A disturbingly high number of Ohio's children – 120,000 – live on SNAP benefits with no other cash income. Around 80,000 children live in families that receive some form of income less than the 50% FPL, yet they do not qualify for OWF.

Of the 100,000 children who do receive OWF, 75,000 are not living with a parent in “child-only cases”. Only 25,000 of Ohio's needy children, about 4%, are actually being served in a household with one of their parents, in accordance with the TANF goal. Clearly, families are being split apart. These statistics translate into Ohio's failure to meet the first federal TANF goal.

### *Inadequate benefits*

Another harsh reality is that children living in OWF households do not receive enough benefits to meet their basic needs. A family of three receives \$465 per month in cash assistance, which is equal to 28% of the FPL. Most families would receive the full SNAP allotment, which would be another \$497 for that same family of three. Still, that only provides an income equal to 58% of the FPL.

Food stamps are only intended to provide 75% of the monthly food needs for a family, with the assumption being that the remaining 25% will be provided from the recipient's cash income. Inadequate cash benefit levels are not high enough to make up this 25%. What it does do is guarantee a family will run short of food. After using what little cash they have for rent, utilities, and food, recipients have nothing left for other basic necessities, such as diapers, personal hygiene products, laundry soap, or over-the-counter medications.

In addition, 80% of OWF households have no car, nor do they have the cash resources to buy the mandatory car insurance or gasoline if they had a car. This lack of transportation prevents those without direct access to public transportation from being able to complete a work requirement.

Due to the state's low benefits, it is inevitable that children have no home to call their own. Families are doubling and tripling up in housing, and it is common for children to sleep in chairs and on the floor. On average, 72% of the state's OWF cases are child-only, yet another indication of the state's failure to meet TANF's first goal.

### **Second Goal – End dependence of needy parents on government benefits by promoting job preparation, work, and marriage**

According to federal policy, the state plan should outline how it intends to “Conduct a program, ...that...provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient”. Ohio's plan does not provide parents with the support needed to leave the program for living-wage jobs. Instead, for at least the past three years, Ohio has used work assignments to either deny parents access to the program or to force parents off the program.

Between January 2011 and June 2014, the number of adults receiving OWF decreased from 67,454 to 19,362 – a drop of over 71%. Those adults did not leave the program because they achieved self-sufficiency. The fact that 20% of Ohio's children live in households with zero cash income – surviving only on food stamps – is evidence of this. That should be unacceptable.

**Third Goal – Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies**

In actuality, the state does not provide programs to address these issues. Counties that had been providing programs have since had to eliminate them as a result of funding cuts by the state. This goal, however, remains mostly irrelevant, as out-of-wedlock births have continued to rise in Ohio and elsewhere with no connection to the TANF program.

**Fourth Goal – Encourage the formation and maintenance of two-parent families**

Ohio’s focus on preventing or removing adults from the OWF program is in direct opposition to this federal goal. With a statewide OWF caseload that is 72% child-only and a state-wide average for two-parent households of just 4%, Ohio cannot claim anything but failure with respect to the plan’s success in the formation and maintenance of two-parent families.

Ohio has never offered strong financial support through the OWF program for two-parent households. But in the past three years, conditions have deteriorated rapidly. The OWF-Unemployed Parent caseload dropped from 8,658 in January 2011 to 2,531 in April 2014 – a drop of over 70%. Many counties don’t provide cash assistance to any two-parent households.

**Unfair/Inequitable Implementation**

The state has failed to meet the standard for fair and equitable treatment, as is evidenced by the drastic difference in OWF caseloads throughout the state. Several counties have fewer than ten adults on cash assistance; in June 2014, four counties had zero adults. This seems highly unlikely if OWF services were indeed available equally throughout the state.

An even more dramatic example of the state’s inability or unwillingness to implement and consistently enforce the state plan in a fair and equitable manner can be seen in the disparities between two similarly situated counties. Caseload data for April 2014 from Athens and Washington Counties, two Appalachian, rural counties with similar demographics located next to each other, shows:

	Athens	Washington
Number of adults on OWF	<u>719</u>	<u>1</u>
% of child-only cases	<u>32%</u>	<u>98%</u>
% of two-parent cases	<u>20%</u>	<u>0</u>
Number of hardships granted	<u>133</u>	<u>0</u>

By allowing such drastic disparities between counties, the state is not operating the TANF program in a fair and equitable manner.

Possibly the most obvious example of the state’s inability to implement and consistently enforce the plan in a fair and equitable manner is the number of hardship exemptions being granted by counties. As indicated in the state plan on page 6, counties must review each case and decide whether to grant a hardship exemption to either the state 36-month or the federal 60-month time limit. The plan states:

“In determining whether the time limit is a hardship, the county must look at the totality of the family’s circumstances to determine whether the 36 or 60-month time limit is a hardship”.

If the state were implementing and consistently enforcing the terms of the plan, then why, as of June 2014, have 50 counties granted **zero** hardship exemptions? As the plan indicates, neither federal nor state law defines the term hardship. Webster’s New Collegiate Dictionary defines hardship as:

“1: SUFFERING, PRIVATION 2: something that causes or entails suffering or privations”

Are there really no individuals in those 50 counties who, “given the totality of their circumstances”, would suffer at least some deprivation if the last few dollars of their cash income were taken away? Do those counties really have no individuals with some sort of disability that would prevent them from completing a work assignment and for whom the loss of their cash assistance would cause suffering and privation?

The state has also not met the standard for fair and equitable treatment in its failure to provide adequate funding for the counties’ PRC supportive services program. According to the state’s plan, the PRC program is essential to the state TANF plan by addressing the needs of families with barriers to self-sufficiency. As an example, a county would use PRC funds to meet the requirement spelled out on page 12 of the state plan regarding a county’s obligation with respect to an individual who was the victim of domestic violence:

“An individual must be referred for counseling and supportive services if the individual responds affirmatively to any screening question at any interval.”

But the state plan on page 13 also states:

“Effective October 15, 2009, a CDJFS may amend its PRC plan to temporarily suspend operation of its PRC program”.

This authority to suspend the operation of the PRC program is the result of drastic cuts in state funding. In SFY 2014, the state allocations for TANF remain \$110 million – 27% lower than in SFY 2009. With such funding cuts, serious questions must be raised regarding the availability of various PRC-related provisions of the state plan, such as the domestic violence provision. Without assurance that the state will provide adequate funding for all of the counties’ PRC programs, the state plan is misleading.

### **Civil Rights/ADA Noncompliance**

Minorities and the disabled have been disproportionately impacted in a negative way by the state’s implementation of the program, indicating further unfair/inequitable treatment.

While the African American population is about 11% of the overall population in Ohio, it constitutes roughly 40% of OWF clients. However, that population has suffered the same proportion of cuts in benefits. In the past three years, over 100,000 OWF recipients have been cut off assistance with a total loss of OWF benefits of over \$166 million per year. While the loss to minority clients statewide may be 40% of those numbers, in the metropolitan counties, minority clients constitute over 70% of the OWF population and therefore would have suffered a greater loss of benefits. The disparity in poor health

and education outcomes for minorities has been intensified by the disproportionate reduction in their OWF cash assistance.

The number of incapacitated recipients has been cut by roughly two thirds in the past three years. The number of cases with an incapacitated parent dropped 63% between Jan. 2011 and June 2014. These changes are the result of front-end diversion tactics, leaving many disabled clients without our assistance.

By not conducting individual appraisals and assessments, counties cannot make appropriate work assignments, and they fail to comply with the federal Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act of 1973 (Sec 504).

The state recently proposed new rules for counties to follow regarding the ADA and Section 504. These proposed rules were the result of collaboration with the Ohio Poverty Law Center, the Ohio legal aid community, and Disability Rights Ohio that started with an initial letter to ODJFS dated May 9, 2013.

The letter, submitted by Michael R. Smalz, Senior Attorney, Ohio Poverty Law Center, “enumerated a number of serious problems and deficiencies with respect to the treatment of persons with disabilities under the ADA.”

Mr. Smalz indicated the newly proposed rules and forms should dramatically improve ADA compliance, but with the significant caveat, “*if implemented and consistently enforced*,” (emphasis added). But, more than a year after the initial letter raising these concerns, the proposed rules have not yet been adopted. Disabled adults are still being inappropriately diverted or thrown off the program, as confirmed by the caseload information above.

ADA and Sec 504 requirements have applied since before 2011, when counties started diverting and throwing adults off the program with abandon. The state could and should have “consistently enforced” federal ADA and Sec. 504 law during this entire time period but has instead been negligent in allowing the failures identified by Mr. Smalz.

Given the state’s inaction over the past three years, it remains to be seen whether and to what extent these proposed rules will change things, as long as the state is so focused on improving the work participation rate at the expense of individuals who are unable to work or need accommodations in order to be able to work.

### **Misguided Focus**

The state’s focus has not been on TANF’s four goals – it’s been on the work participation rate (WPR). The state’s own independent evaluation of the TANF program confirmed this. Reducing the number of adults (the denominator in the WPR calculation) was far easier than actually finding work for people (the numerator in the equation). This independent review of how the TANF program was being operated in Ohio found at page 6 that:

1. “The message sent by ODJFS regarding the urgency of WPR improvement has been heard – and acted upon – in county offices.”
  2. “one county director said that their focus on the WPR ‘became a religion’.”
- The Public Consulting Group (PCG) report from May of 2013

The state makes no secret of the fact that strategies have been developed to divert applicants away from the OWF program. "Pay-for- Performance" is specifically outlined in the state's TANF plan on page 9. As described in the state plan, counties have the option of requiring the applicant to complete a work assignment prior to the authorization of benefits. In most counties, applicants are immediately assigned to a work site without any regard to existing barriers, such as transportation (a huge barrier for the vast majority of individuals) or potential disabilities. When the individual fails to complete the work assignment, the individual does not show up in the county's work participation rate calculation.

PCG found that with regard to the Pay-For-Performance:

1. "With very limited exceptions, Pay for Performance (PFP) has been adopted and become a major component of OWF." At page 10.
2. "It was much more common, however, for individuals assigned to PFP to either never engage in the component or fail to complete the requirements as mandated by the county." At page 10.
3. "The Pay for Performance program was consistently cited by staff at CDFJS offices as the most prominent factor in improving the WPR. While the content, expectations, and duration of PFP varied somewhat from county to county the intent (for OWF applicants to display a commitment to participation) and results (significant non-compliance, particularly initially) were quite similar." At page 10.

These tactics, of course, violate federal TANF law at 42 USC Section 602(a)(1)(A)(ii), which says the state program is to "Require a parent...to engage in work...*once the State determines the parent or caretaker is ready to engage in work...*" (emphasis added).

The majority of counties performed no appraisal or employability assessment for these individuals, and the state implicitly or explicitly approved this. Although misguided, the method proved effective. Note the changes in caseload data:

1. The number of adults on OWF has dropped between Jan. 2011 and June 2014 from 67,454 to 19362, a drop of over 71%;
2. The number of ADCI cases, cases with an incapacitated parent, has dropped between Jan. 2011 and June 2014 from 9481 to 3517, a drop of almost 63%;
3. The number of individuals assigned to "Alternative Activities" as spelled out in the plan at page 10 has dropped between Jan 2011 and May 2014 from 3914 to 1120, a drop of 71%; and
4. The number of adults actually completing a work assignment has dropped between Jan. 2011 and May 2014 from 12,143 to 7978, a drop of 34%.

### **Needed Modifications**

The plan, as outlined by the state, bears little resemblance to the actual program the state supervises and that the counties administer. Inadequate OWF cash assistance benefits and PRC supportive services funding guarantee that even if the TANF plan is operated as outlined, Ohio does not operate a program that addresses the goals of the TANF program.

As demonstrated by the huge disparity in how benefits are provided among counties, regardless of the terms and conditions in the state's plan, the state either encourages non-compliance or is unwilling or unable to enforce compliance with the terms and conditions of the plan by counties. This creates a lack of fair and equitable treatment among Ohio's neediest families.

A final nonsensical deficiency in the plan is the state's lack of interest in mandating that counties fully spend the limited resources they are given to help needy families. There exists no requirement that the state use its best efforts to monitor the counties to ensure they spend all available funds.

Historically, huge balances have gone unspent year after year in Ohio. The unspent balance could exceed \$100 million this year, despite documented increases in the number of Ohio children living in poverty. The state plan is irrelevant and ineffective if the money is not spent. Counties that fail to spend their allocations contribute to the lack of a statewide fair and equitable TANF program.

We have elaborated on several areas where Ohio's TANF plan fails to comply with specific goals and rules. But what is of utmost importance is for Ohio to devise a plan that provides adequate cash assistance to meet the basic needs of families. This should be the first priority. All other issues become irrelevant when families with children remain hungry and homeless.

Thank you for your thoughtful consideration of these comments.

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