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February 24, 2015

Rep. Matthew Trieber
Rep. Anne O'Brien
Statehouse
115 State Street
Montpelier, VT 05602

Dear Representatives Trieber and O'Brien,

I want to thank you both again for your tireless efforts last year to address the so-called "benefit cliff" for Vermont's Reach Up families. The legislature, to its great credit, passed legislation last year designed to reward working families on Reach Up by allowing them to keep more of what they earn before reducing grants and provide an additional year of 100% child care eligibility for Reach Up "leavers." The Governor has included this provision in his FY 2016 budget. You both helped to lead that effort in the House of Representatives. I am certain that the low-income families this will help will be delighted when the changes are enacted. Thank you!

Unfortunately, as you know, the Administration has proposed a \$1.65 million cut to the Reach Up program that represents a significant loss of income to approximately 1,100 households with disabled family members. Vermont Legal Aid strongly opposes the proposal to count \$125 of Supplemental Security Income (SSI) against a Reach Up grant. Establishing a new countable income standard for Reach Up/SSI families essentially amounts to a disability "tax" on certain households to help solve the budget shortfall.¹ In the universe of possible taxes available to respond to a budget crisis, taxing the poorest households with family members who have a disability is surely among the least desirable – from a public policy perspective, from a budgetary perspective, and from a moral and philosophical perspective.

Vermont Legal Aid serves thousands of low-income families every year, including many Vermonters who receive Reach Up benefits. The purpose of Reach Up is to provide temporary

¹ It's worth noting that using the "tax" analogy this would amount to a 23.5% "tax" on an affected grant for a household of 3 (Reach Up grant of 2; SSI 1 with app. \$530 in monthly income from the Reach Up grant); the top state tax rate for millionaires is only 8.95%.

cash assistance to help families meet their basic needs while also helping them to meet the requirements of the TANF program: typically work requirements and/or work-related activities. We ask your committee to reject this proposal for the following reasons:

1. Reducing Household Income for Reach Up Families is Contrary to the Purpose of the Program and Will Destabilize Already Economically Insecure Families.

Reducing household income for Reach Up families, all of whom currently subsist on 49% of the basic needs budget established by the state, **will do nothing to help families succeed or promote work readiness**. To the contrary, any reduction in family grants will destabilize already struggling families and has the potential to leave them on the program longer. Therefore, grant reductions for families with special needs are likely to result in poor outcomes for families served by the program, and undermine the stated goals and purpose of the program.

Some might suggest that the combined income of a person with SSI along with other household members with a Reach Up grant is so generous that a reduction could be absorbed by the household. It is important to remember that under current law, the SSI beneficiary is excluded in the Reach Up household. This means that **grant amounts are already reduced for the other household members**. The practical effect of the proposed reduction is that the SSI beneficiaries will continue to receive personal benefits while the remaining household members will simply have less monthly income to meet their needs.

The problem of income loss for these families becomes especially acute in the context of recently imposed time limits. Families subjected to having fewer resources may be in jeopardy of losing any real ability to exit the program. In the short term, this could result in increased Reach Up caseloads. On the other hand, with time limits in place if families cannot move off the program then eventually they will be involuntarily terminated from the program (except in certain circumstances). The resulting economic chaos inflicted on families suddenly left with no income at all as a result of time limits has serious potential impacts for myriad other programs within the Agency of Human Services, including General Assistance, shelter grants, supportive housing programs, and many others. So, stabilizing families by maximizing resources while the clock is ticking becomes more important than ever.

2. The Administration's Disability Tax Proposal Raises Important Legal Questions

The Administration concedes there are legal questions involving whether or not representative payees acting on behalf of children potentially creates a conflict between households in receipt of TANF benefits and children receiving SSI. Accordingly, its proposal would not affect households with children in receipt of SSI. We applaud the Administration for not taxing families with children who have a disability. That is good news for those families.

However, creating different classes of similarly situated individuals – some whose households will receive a reduction, and some who will be held harmless – raises a host of other legal questions, including, but not limited to:

- Possible Violation of the Americans With Disabilities Act
- Possible Violation of the Constitutional Guarantee of Equal Protection of the Law
- Possible Violation of the Vermont Constitution’s Common Benefits Clause

Establishment of a reduction for some families but not others creates “classes” within the program itself. This approach raises questions about whether, or when, certain classes of individuals may be treated differently from others. For example, the Administration proposal exempts households with children in receipt of SSI. In many cases, children will have a “representative payee” – someone responsible for managing the disability benefit on their behalf. Some adults with disabilities may also have representative payees. Is it permissible for the state to have two classes of households, both with representative payees, but treat them differently? What about two households who have family members with the same disability – one household receives a grant reduction, the other doesn’t simply as a result of the age of the household member alone. Is it legally permissible? Is it good policy?

Some federal courts (notably Washington and West Virginia) have issued injunctions based on preliminary findings that in households with representative payees, counting SSI income against a TANF grant may create a conflict for the representative payee (often the head of household – a parent or spouse of a disabled household member. The theory is that loss of the household grant may put pressure on the representative payee to meet other household needs with SSI income if the family grant is reduced. Social Security regulations require representative payees to manage the disability payment on behalf of the individual – not a household. There are severe penalties for financial mismanagement – including jail time and fines. The Federal District Court in West Virginia, in issuing a preliminary injunction – admittedly on the issue of children with representative payees – identified problems with this approach:

- 1) “the Court is not persuaded that PRWORA gave States the flexibility to count SSI benefits as household income for purposes of determining a household’s eligibility for TANF benefits; and
- 2) “the Court seriously doubts that Congress intended to present households (like Plaintiffs’) with the ‘unappetizing choice’ of choosing to receive either federal SSI benefits for one disabled child or state welfare benefits for the entire household; and
- 3) (in a footnote) “the Court also doubts that Congress intended to present representative payees, (like plaintiffs), with the choice of facing possible criminal punishment for using

SSI benefits improperly or of leaving the needs of nondisabled children in the household unmet.”

V.R., et al. v. Ohl, Civil Action No. 3:98-CV-1176 (S.D. W.Va) (1999); and see *Eneliko, et al. v. Dreyfus*, Civil Action No. 2:11-CV-00312-JLR (W.D. WA) (2011).

These are all questions that require additional exploration. But, the number and range of questions associated with this policy beg for an abundance of caution.

Finally, lawmakers should be certain this policy change does not adversely affect Vermont’s work participation rate (“WPR”). Federal law requires work participation rates of at least 50% with allowances for states with caseload reduction credits, waivers, or other exceptions. Only households with a work eligible individual are considered in the state’s WPR. At the election of a state, individuals in receipt of SSI may be excluded from the WPR. Most states, including Vermont, have notorious difficulty meeting federal standards for WPR, but may be eligible for caseload reduction credits.² One of the advantages of excluding Vermonters with disabilities from the Reach Up household is avoiding potentially countable adults in the WPR rate. States not in compliance with federal WPR requirements risk penalty in the amount of 5% of the TANF block grant, and more in succeeding years.³ It is doubtful that counting unearned income to the household would trigger federal interpretation that those disabled individuals are now subject to inclusion in the state’s WPR as “work eligible” but it bears thinking through any unintended consequences that could jeopardize Vermont’s ability to meet its WPR or that could result in penalties for failure to meet federal requirements.

3. Alternatives

Vermont Legal Aid supports finding creative solutions to funding essential programs and services like Reach Up. The Governor’s Council on Pathways from Poverty, Vermont Legal Aid, and others endorse looking to Medicaid to cover the costs of supportive housing. To the extent that Medicaid may be a source of revenue to cover the shelter allowance for Reach Up households with family members with a disability we support that option. Using Medicaid dollars to pay for the shelter costs of approximately 1,100 households would generate substantial savings to the state budget. The current housing allowance outside Chittenden County is \$400. If Medicaid covered the housing allowance for those households, it could potentially generate more

² Vermont’s aggregate WPR is generally around 30%. Source: Congressional Research Service, “Temporary Assistance for Needy Families: Welfare Waivers,” (September 6, 2012). Available at: <http://democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/documents/112/pdf/TANF-CRSMemo-9.6.12.pdf>

³ Congressional Research Service, “The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements,” (April 2, 2013). Available at: <https://www.fas.org/sfp/crs/misc/RL32748.pdf>

than \$5 million in savings which could fund not only the Reach Up/SSI households, but fuel assistance, LIHEAP, and other human services priorities as well. We urge your committee to investigate this option, and other creative sources of funding, in lieu of imposing new financial burdens on these households.

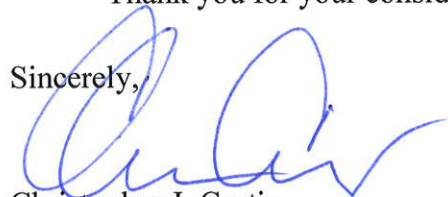
Conclusion

In sum, we believe that a major policy change reducing Reach Up household grants is likely to result in **poorer outcomes for families with children** – both substantively in terms of meeting their day to day needs, and from a policy perspective by leaving them on the program longer – and raises a host of thorny legal questions that could undermine the ability of the state to effectuate the change and realize the savings.

We ask you to defend the interests of the very poorest Vermont households with family members who have a disability, and ask that you **reject the Administration's proposal** to count SSI benefits as income to Reach Up households. Instead, we ask you and your committee to **continue to fund the Reach Up program while excluding SSI benefits for purposes of determining grant amounts.**

Thank you for your consideration.

Sincerely,



Christopher J. Curtis

Staff Attorney

Vermont Legal Aid, Inc.

cc: House Appropriations Committee Members
Senate Appropriations Committee Members
House Human Services Committee Members
Senate Human Services Committee Members
Hal Cohen, Secretary, Agency of Human Services