# In the Supreme Court of the State of California

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| **ANGIE CHRISTENSEN,**<br>**Plaintiff and Respondent,**<br>**v.**<br>**WILL LIGHTBOURNE, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES,**<br>**Defendants and Appellants.** | Case No. S245395 |



First Appellate District, Case No. A144254
San Francisco County Superior Court, Case No. CPF-12-512070
Honorable Ernest H. Goldsmith, Judge

## ANSWER BRIEF ON THE MERITS

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## INTRODUCTION

Enacted in 1997, the California Work Opportunity and Responsibility to Kids Act (CalWORKs) provides cash assistance to needy families with minor children. The Legislature enacted CalWORKs as part of comprehensive welfare reform with a goal of simplifying how grants are calculated and promoting self-sufficiency through employment. The Legislature charged the Department of Social Services with implementing and administering CalWORKs.

In this case, Angie Christensen's family was found ineligible for CalWORKs aid because the family's income was too high. She challenged that determination, arguing that the Department must ignore income of her husband garnished to pay child support for his children living in other households. In making this argument, Christensen seeks to benefit from a prior Department policy, repealed two decades ago, that deducted any court-ordered child support obligations from the applicant's income for purposes of determining eligibility for and amount of aid. But that policy existed under the former Aid to Families with Dependent Children program that the Legislature replaced with CalWORKs. CalWORKs is a different program with different goals and incentives. Nothing in the text, legislative history, or purpose of CalWORKs requires the Department to exempt child support obligations from income. The Department's repeal of the former exemption was a reasonable response to the Legislature's reforms, which substantially increased a general exemption for earned income.

In addition, contrary to Christensen's argument, the Department's policy of calculating income, without deducting that portion garnished to pay child support obligations, did not result in counting income twice, in violation of Welfare and Institutions Code section 11005.5.

The Court of Appeal correctly determined that the Department's interpretation of CalWORKs—set out in an All County Letter issued over

20 years ago and reflected in its amended regulations—is entitled to great weight and is consistent with the statute. This Court should affirm.

## BACKGROUND

### I. WELFARE REFORM AND THE CALWORKS PROGRAM

The California Legislature enacted the CalWORKs program in 1997 in response to federal welfare reform. A year earlier, Congress eliminated the Aid to Families with Dependent Children program (AFDC) and replaced it with the Temporary Assistance for Needy Families program (TANF). Welfare reform fundamentally shifted the authority to shape welfare programs from the federal government to the States. (Pub.L. No. 104-193 (August 22, 1996) 110 Stat. 2105; 42 U.S.C. § 601 et seq.; CT 313-314 ¶¶ 5, 6.)

Under the former AFDC program, the federal government offered States unlimited matching funds contingent on the State's welfare program meeting detailed federal requirements. (See *Van Lare v. Hurley* (1975) 421 U.S. 338, 340.) Federal law dictated how States were to calculate an individual's income, and directed States to include or "disregard" specified sources of income in doing so. (Former 42 U.S.C. § 602 (1994).)

Congress enacted TANF "to increase the flexibility of states in operating a program designed to" meet certain goals, including "end[ing] the dependence of needy parents on government benefits by promoting job preparation, work, and marriage." (42 U.S.C. § 601(a)(1), (2).) Under the terms of the program, each participating State receives a block grant instead of federal matching funds. (42 U.S.C. § 603.) States now have considerably more discretion in establishing criteria for calculating income and deciding who will receive aid. (Compare 42 U.S.C. § 602 (2018) with former 42 U.S.C. § 602(a) (1994).)

The California Legislature established CalWORKs to implement this new federal welfare program. In 1997, "as part of a comprehensive review and overhaul" of the State's welfare system, the Legislature enacted AB 1542. (*Sneed v. Saenz* (2004) 120 Cal.App.4th 1220, 1231; CT 67-95.) Among its many reforms, AB 1542 established work-participation requirements, capped the total number of months a recipient may receive CalWORKs cash aid, and revised eligibility standards. (CT 68-70, 314 ¶ 7.) To further encourage employment, AB 1542 introduced a simplified methodology for calculating grants which allows applicants and recipients to exempt a larger percentage of their earned income in determining CalWORKs eligibility and aid amount. (§ 11451.5; CT 315, ¶10; *Sneed, supra*, 120 Cal.App.4th at pp. 1232, 1240.)[1]

## II. DETERMINING ELIGIBILITY FOR CALWORKS

Eligibility determinations under CalWORKs are made by county welfare departments, following rules and regulations issued by the Department. (§§ 10554, 10600, 10800, 11209.) The Legislature has charged the Department with "supervis[ing] every phase of the administration of public social services." (§ 10600.) The Legislature also granted the Department broad authority to make binding rules and regulations to implement the statutes it administers, including CalWORKs. (§§ 10554, 11209.) The Department's formal regulations are adopted in compliance with the state Administrative Procedure Act, and are published in the agency's Manual of Policies and Procedures (MPP). (*Smith v. Los Angeles County Bd. of Supervisors* (2002) 104 Cal.App.4th 1104, 1109;

[1] All statutory citations are to the Welfare and Institutions Code, unless otherwise stated.

§ 10554.)[2] The Department also oversees the programs it administers through "All County Letters" directed to county welfare departments. (See, e.g., § 10606.2; Assem. Bill No. 1542 (1996-1997 Reg. Sess.) § 185, subd. (a); CT 320, 322 [All County Letter No. 97-59, pp. 1, 3].) The Legislature charged the Department with "implement[ting] [CalWORKs] through all county letter or similar instructions from the director." (Assem. Bill No. 1542 (1996-1997 Reg. Sess.) § 185, subd. (a).)

As part of the determination whether and to what extent an applicant is eligible for aid, the county welfare department compares the applicant family's income to the "maximum aid payment" defined by statute, which varies depending on the number of family members eligible for aid. (§ 11450.12, subd. (b); CT 317, ¶ 17.) If the family's income is equal to or less than the maximum aid payment, the family qualifies for aid. (*Ibid.*) Applicants determined to be eligible receive a cash grant equal to the difference between the family's income and the maximum aid payment. (CT 317, ¶ 17.)

Not all income counts in determining eligibility or the amount of aid. Because counties make aid determinations prospectively in six month increments, they may consider only that portion of an applicant's income that is "reasonably anticipated" for the upcoming period. (§§ 11265.2, 11450.12, subd. (b); CT 509-510 [MPP § 44-101(a), (c)]; CT 515 [MPP § 44-102.1].) Counties must then subtract from that amount any income deemed "exempt" by statute or regulation. (§ 11450.12, subd. (b); see also

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[2] The regulations pertaining to CalWORKs are publicly accessible on the Department of Social Services' Web site at <http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CalWORKs-CalFresh-Regulations/Eligibility-and-Assistance-Standards> [as of June 18, 2018].

§ 11451.5.)[3] The Welfare and Institutions Code and the Department's regulations set forth various income exemptions, discussed in more detail below. These exemptions are also referred to as income "disregards," and the terms are used interchangeably in this brief.

The CalWORKs statute defines income as "reasonably anticipated" if the county "is reasonably certain of the amount of income and that the income will be received during the semiannual reporting period." (§ 11265.1, subd. (b).) The Department's implementing regulations direct counties to consider only income that the county is "reasonably certain that the recipient will receive" during the six-month budgeting period. (CT 510 [MPP § 44-101(c)].)[4]

## III. INCOME EXEMPTIONS UNDER CALWORKS

As discussed above, a primary purpose of welfare reform was to increase work incentives for welfare recipients in order to promote self-sufficiency. (§§ 11205, 11207; 42 U.S.C. § 601(a)(1)-(2).) Accordingly, the CalWORKs program seeks "to achieve the greatest possible reduction of dependency and to promote the rehabilitation of recipients." (§ 11207.)

CalWORKs encourages employment by treating as "exempt" a portion of an applicant-recipient's earned income in determining eligibility

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[3] Before 2002, counties recalculated grant amounts each month based on a past month's income. (See, e.g., Assem. Bill No. 444 (2001-2002 Reg. Sess.) p. 4 (hereinafter AB 444), attached as Exhibit B to Appellants' Court of Appeal Request for Judicial Notice.) Monthly reporting proved costly to administer, leading the Legislature to introduce a quarterly reporting system. (*Id.*, pp. 4, 21-24, 29-30; see also §§ 11265.1, 11265.2, 11265.3, 11450.12.) In 2011, the Legislature amended CalWORKs to provide for semi-annual reporting, starting in 2013. (§ 11265.2; MPP § 40-103.5, attached as Exhibit F to Appellants' Court of Appeal Request for Judicial Notice.)

[4] The Department's interpretation of "receive" is discussed further at Argument, Section II.B.1, *infra*.

or grant amount. (§ 11451.5; CT 331-333 [MPP § 44-113.2], CT 315-316 ¶¶ 11-13, CT 320-324 [All County Letter No. 97-59].) This allows individuals to earn more without causing their increased earnings to reduce their grant amount or render them ineligible for aid. Under the former AFDC program, a family could exempt from its gross monthly income only the first $30 and one-third of each additional dollar of earned income. (Former 42 U.S.C. § 602(a)(8)(A)(iv); CT 314-315 ¶ 9, 326-328.) CalWORKs increased the earned-income disregard to permit families to exempt the first $225 and one-half of each additional dollar of earned or disability-based income. (§ 11451.5.)[5] CalWORKs contains no exemptions for income that must immediately be paid out to cover debt, or for amounts that are garnished or withheld from family member paychecks.

Under the former AFDC program, a Department regulation required counties to exempt from the consideration of income any funds used to pay court-ordered child support. (CT 330.)[6] Two months after CalWORKs was enacted, the Department published an All County Letter providing counties with instructions for "implementing [CalWORKs'] new grant structure and aid payment provisions." (CT 320.) The Department concluded that CalWORKs "eliminat[ed]" five AFDC income exemptions, including the exemption for court-ordered child support, and "replace[d]" them with the

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[5] The Christensens' case provides an example. Bruce Christensen's gross monthly earned income was $600.17. (AR 15.) After applying the earned-income disregard, the county included only $187.59 of that income in determining his family's eligibility. (AR 15.)

[6] Former MPP § 44-113.9 provided: "Deduction shall be allowed for actual payments made in support of a child or spouse not in the home, paid pursuant to court order. In no instance shall the deduction allowed exceed the amount of the payment required by the court order." (CT 330.)

increased earned-income exemption. (CT 320, 322.)[7] Consistent with that understanding, the Department amended its regulations to remove the provision that had previously exempted income used to satisfy court-ordered child support obligations, effective July 1, 1998. (See CT 314-315 ¶¶ 9, 11; All County Letter No. 98-45; compare CT 330 [former MPP § 44-113.9] with CT 519-542 [MPP § 44-111 et seq., § 44-113 et seq.].)[8] In its Final Statement of Reasons, the Department explained that the AFDC income exemptions, including the prior child support disregard, "that were allowed previously under federal and state law have been replaced with [the $225 and one-half earned-income disregard]." (Appellants' Court of Appeal Request for Judicial Notice (hereinafter COA RJN), Exh. A, p. 10 [rulemaking file].) Since 1997, the Department has consistently interpreted CalWORKs as not including an exemption for child support payments.

## IV. ASSIGNMENT OF CHILD SUPPORT RIGHTS UNDER CALWORKS

As a condition of receiving TANF funds, federal law requires that States operate a child support enforcement system meeting federal requirements. (42 U.S.C. § 654(4)-(5).) Under federal and state law,

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[7] The Department also repealed the previous $30 and one-third earned-income disregard, a work-expense disregard, a disregard for child care costs, and a disregard for support paid by "Non-[Assistance Unit] members to others not living in the home who are claimed as federal tax dependents." (CT 322.)

[8] The court below took judicial notice of All County Letter No. 98-45 on its own motion. (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1248, fn. 9.) The letter provides the effective date of the Department's regulations implementing CalWORKs. The court also granted the Department's unopposed request to take judicial notice of the rulemaking file, along with other documents attached to the Department's Request for Judicial Notice below. (See Order Granting Appellant's Request for Judicial Notice before the Court of Appeal (Sept. 28, 2015); *Christensen*, *supra*, 15 Cal.App.5th at p. 1248, fn. 10.)

CalWORKs applicants must assign their rights to any child support to the county in order to receive CalWORKs assistance, provided that the amount of child support does not exceed the amount of their CalWORKs grant. (§ 11477; see also 42 U.S.C. § 608(a)(3); CT 385 [MPP § 82-506.1]; CT 317-318 ¶¶ 20-21, 371-372.) An assignment of support rights to the county also constitutes an assignment to the State. (§ 11477, subd. (a)(1)(B).) State and federal law provide that child support rights assigned to the State constitute an obligation of the paying parent owed to the State in the amount specified in the court order. (§ 11477, subd. (a)(1)(B); 42 U.S.C. § 656(a); *In re Marriage of Shore* (1977) 71 Cal.App.3d 290, 296.) Where such assignment is made, the paying parent is obligated to make payments directly to the local child support agency. (§ 11457, subd. (a); Fam. Code, § 17402, subds. (a), (d).)

State law requires the local child support agency to pay to the CalWORKs recipient the first $50 of child support collected by the agency. (Fam. Code, §17504; CT 318 ¶ 21.) The State retains the remainder of the child support payment as a means of reimbursing the county, State, or federal government for the cost of providing CalWORKs benefits. (CT 318 ¶ 21; see also §§ 11487, subd. (a), 11487.1.) With a few narrow exceptions discussed in more detail below, neither the $50 payment to the family nor the amount retained by the State is considered income to the recipient family in determining eligibility for CalWORKs. (Fam. Code, § 17504; CT 318-319, ¶¶ 21-22; CT 530 [MPP §§ 44-111.47, 44-111.471].)

## STATEMENT OF THE CASE

### I. CHRISTENSEN'S APPLICATION FOR CALWORKS AID

Angie Christensen applied for CalWORKs benefits in 2010. (Administrative Record (AR) 3.) She lived with her husband, Bruce, her three children from a prior marriage, and the three children she and Bruce

have together. (*Ibid.*)[9] Bruce also has three children from prior relationships who live in other homes. (*Ibid.*) Court-ordered child support was garnished from his monthly wages and unemployment insurance benefits to support those children living in other homes. (*Ibid.*) At the time Christensen applied for aid, one of those children was receiving CalWORKs aid, one was not receiving CalWORKs aid, and one was an adult and no longer eligible for CalWORKs aid. (*Ibid.*) With respect to the adult child, the amount garnished from Bruce's income was for child support arrears. (*Ibid.*)

San Mateo County determined that, for purposes of calculating the maximum aid payment for Christensen's household, the family unit consisted of four persons: Christensen's three children from a prior marriage and Bruce. (AR 3.)[10] Christensen herself was ineligible for aid under CalWORKs because she already was receiving SSI benefits. (*Ibid*; see also § 11203, subd. (a).) Her three children with Bruce were ineligible for aid under the former "maximum family grant" statute, which provided that "the number of needy persons in the same family shall not be increased for any child born into a family that has received aid under this chapter

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[9] In its decision below, the Court of Appeal referred to Angie Christensen as "Christensen" and to her husband Bruce Christensen as "Bruce." (*Christensen, supra*, 15 Cal.App.5th at p. 1248 & fn.11.) This brief follows that convention, unless it could cause confusion.

[10] The CalWORKs statute and regulations use the term "assistance unit" or "AU," which is defined as a group of related persons living in the same home who have been determined eligible for CalWORKs and for whom cash aid has been authorized. (MPP § 80-301, attached as Exhibit F to COA RJN.) For purposes of this brief, the Department is using the non-technical term "household" synonymously with "assistance unit."

continuously for the 10 months prior to the birth of the child." (AR 3; former § 11450.04.)[11]

The county denied Christensen's application, concluding that the non-exempt income of her household exceeded the applicable maximum aid payment for a family of four. (AR 3-5.) In calculating her family's income, the county considered Bruce's income without deducting the sums garnished from his wages to fulfill his child support obligations. (AR 15.) Christensen contested the decision, claiming that the amount garnished from her husband's income for child support should not have been considered in determining eligibility because it was not "available" to her household. (AR 22-25.)

An administrative law judge agreed with Christensen that the garnished sums were not "available" to meet the needs of her family and therefore could not be considered as non-exempt income. (AR 7-9.) The Department's Director exercised his discretion and declined to adopt the ALJ's proposed decision. (AR 3-5.) Citing the Department's longstanding interpretation of CalWORKs—embodied in All County Letters and regulations—which require counties to calculate an applicant's income without exempting any funds garnished to pay child support, the Director

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[11] The Legislature repealed the maximum family grant statute in 2016, effective January 1, 2017. (Assem. Bill No. 1603 (2015-2016 Reg. Sess.) § 18 <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1603 [as of June 18, 2018].) Had it not been for that rule, Christensen's family would have qualified for CalWORKs aid whether or not Bruce's child support payments were considered income. In 2010, the Maximum Aid Payment threshold for a family of *seven* similar to the Christensens living in Region 1 (including San Mateo County), was $1,162. (All County Letter No. 09-20 (April 9, 2009) <http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2009/09-20.pdf> [as of June 18, 2018].) The Christensens' income for CalWORKs eligibility purposes, as calculated by the county, was $980, so they would have been eligible for aid. (AR 12.)

concluded that San Mateo County had properly denied Christensen's claim for benefits. (*Ibid.*)

## II. PROCEEDINGS BELOW

Christensen filed a combined petition for writ of mandate under Code of Civil Procedure sections 1094.5 and 1085 and a complaint for declaratory relief in the San Francisco County Superior Court. (CT 5-27.) She alleged that the Department violated applicable statutes and regulations by failing to deduct that portion of Bruce's income that was garnished for child support in determining her household's income and eligibility for CalWORKs aid. (CT 6-14.)

The Superior Court held that the Department's position was contrary to its own definition of income in its regulations, and that its "interpretation of the governing scheme" was contrary to Welfare and Institutions Code section 11005.5. (CT 618:11-23.) It issued a writ of administrative mandate and declared that the Department's "policy to count court-ordered child support payments as available income of the CalWORKs applicants and recipients who pay the support is invalid." (CT 619:2-11.) However, it denied Christensen's claim for a writ of mandate under Code of Civil Procedure section 1085 because the statutory landscape was "unclear." (CT 618:24-28.) The Department appealed from the trial court's ruling granting declaratory relief and the writ of administrative mandate. (CT 628-630.) Christensen did not appeal from the denial of the section 1085 claim.

In a unanimous decision, the Court of Appeal reversed. It reviewed the administrative record, the relevant statutes and legislative history, and the Department's regulations and All County Letters. (*Christensen, supra*, 15 Cal.App.5th at pp. 1244-1263.) It concluded that "[s]ince the Legislature first adopted CalWORKs 20 years ago," the Department has taken the consistent position that "court-ordered child support counts as