SUPREME COURT CASE NO. S245395

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ANGIE CHRISTENSEN,

PLAINTIFF AND RESPONDENT,

v.

WILL LIGHTBOURNE, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES,

DEFENDANTS AND APPELLANTS.

After a Decision by the Court of Appeal for the First Appellate District, Division Two, No. A144254

Reversing a Judgment of the Superior Court of San Francisco County Case No. CPF-12-512070, Honorable Ernest H. Goldsmith, Judge

REPLY BRIEF ON THE MERITS

*RICHARD A. ROTHSCHILD, SBN 67356 ALEXANDER PRIETO, SBN 270864 REBECCA C. MILLER, SBN 317405 **WESTERN CENTER ON LAW & POVERTY** 3701 Wilshire Boulevard, Suite 208 Los Angeles, CA 90010 Telephone: (213) 487-7211 Facsimile: (213) 487-0242 Email: rrothschild@wclp.org	HOPE G. NAKAMURA , SBN 126901 **LEGAL AID SOCIETY OF SAN MATEO COUNTY** 330 Twin Dolphin Drive, Suite 123 Redwood City, CA 94065 Telephone: (650) 558-0915 Facsimile: (650) 517-8973 Email: hnakamura@legalaidsmc.org
STEPHANIE E. HAFFNER, SBN 194192 **LEGAL AID OF MARIN** 1401 Los Gamos Drive, Suite 101 San Rafael, CA 94903 Telephone: (415) 492-0230 Facsimile: (415) 492-0947 E: shaffner@legalaidmarin.org	

Attorneys for Plaintiff and Respondent Angie Christensen

SUPREME COURT CASE NO. S245395

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ANGIE CHRISTENSEN,

PLAINTIFF AND RESPONDENT,

v.

WILL LIGHTBOURNE, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES,

DEFENDANTS AND APPELLANTS.

After a Decision by the Court of Appeal for the First Appellate District, Division Two, No. A144254

Reversing a Judgment of the Superior Court of San Francisco County Case No. CPF-12-512070, Honorable Ernest H. Goldsmith, Judge

---

REPLY BRIEF ON THE MERITS

*RICHARD A. ROTHSCHILD, SBN 67356 ALEXANDER PRIETO, SBN 270864 REBECCA C. MILLER, SBN 317405 **WESTERN CENTER ON LAW & POVERTY** 3701 Wilshire Boulevard, Suite 208 Los Angeles, CA 90010 Telephone: (213) 487-7211 Facsimile: (213) 487-0242 Email: rrothschild@wclp.org	HOPE G. NAKAMURA, SBN 126901 **LEGAL AID SOCIETY OF SAN MATEO COUNTY** 330 Twin Dolphin Drive, Suite 123 Redwood City, CA 94065 Telephone: (650) 558-0915 Facsimile: (650) 517-8973 Email: hnakamura@legalaidsmc.org

STEPHANIE E. HAFFNER, SBN 194192
LEGAL AID OF MARIN
1401 Los Gamos Drive, Suite 101
San Rafael, CA 94903
Telephone: (415) 492-0230
Facsimile: (415) 492-0947
E: shaffner@legalaidmarin.org

Attorneys for Plaintiff and Respondent Angie Christensen

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

State Statutes

Regulations

Other Authorities

Legislative History

Introduction

Angie Christensen's family was denied aid under a program named California Work Opportunity and Responsibility to *Kids*. §11200 (emphasis added).[1] The Department of Social Services has lost sight of the "Kids," the very reason CalWORKs exists.

To hear the Department tell it, CalWORKs is all about "simplification" and bringing adults into line through work requirements or incentives and counting all their income. But that is true only to a limited extent. While work incentives are a major part of CalWORKs, they do not justify a policy – counting garnished child support as available to the family of a working parent – which actually discourages employment. And it's one thing to count every penny, but the Department crosses the line when it counts pennies that are actually earmarked to support other children under the very same program.

CalWORKs has brought about changes to the public benefits system, but not to its ultimate goal: "the preservation, so far as possible, of the family unit, and the more fundamental purpose of the preservation of the health of the state's children, the potential leaders of tomorrow." *Waits v. Swoap,* 11 Cal.3d 887, 896 (1974). The Department's policy thwarts that goal and should be invalidated.

---

[1] All undesignated statutory citations are to the Welfare & Institutions Code.

I. The Department's statutory interpretation does not warrant the deference it seeks, as this Court is better equipped to decide the legal issues presented.

The Department argues that the policy at issue is entitled to "great weight" and should "not be disturbed unless it is 'clearly erroneous.'" Answer Brief on the Merits (AB) at 28. On the contrary, this Court is better equipped than the Department to make the statutory interpretation required. The Court should give little or no deference to the Department's construction.

While, as the Answer Brief states, §§10553, 10554, and 10600 authorize the Department to issues rules and regulations (AB at 28, 46), these statutes do not give the Department carte blanche. "'Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations.'" *Cooper v. Swoap*, 11 Cal.3d 856, 864 (1974) (citation omitted) (invalidating AFDC regulation). *See Webb v. Swoap,* 40 Cal.App.3d 191, 197 (1974) (holding that the Department's predecessor mistakenly relied on §§10553, 10554, and 10600; "[n]one of these sections authorizes the regulations in question.").

The policy counting garnished child support as income is nothing more than a statutory interpretation. "Because an interpretation is an agency's *legal opinion*, however 'expert,' rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference." *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19

Cal. 4th 1, 11 (1998) (italics in original).

When evaluating an agency's statutory interpretation, courts consider "[1] factors relating to the agency's technical knowledge and expertise, which tend to suggest the agency has a comparative interpretive advantage over a court; and [2] factors relating to the care with which the interpretation was promulgated, which tend to suggest the agency's interpretation is likely to be correct." *Association of California Ins. Companies v. Jones*, 2 Cal.5th 376, 390 (2017). Neither set of factors militates in favor of deferring to the Department in this case.

First, determining whether garnished child support is available to the paying parent's family does not require "technical knowledge" in economics, science, or any area where agencies have a comparative advantage. *Compare Spanish Speaking Citizens' Found., Inc. v. Low*, 85 Cal.App.4th 1179, 1234–355 (2000) (deferring to agency's interpretation of proposition regulating auto insurance rates where agency had technical expertise in complex actuarial issues such as "sequential analysis"); *with Styrene Info. & Research Ctr. v. Office of Envtl. Health Hazard Assessment*, 210 Cal.App.4th 1082, 1100 (2012) (declaring that while the defendant agency "may have an interpretive advantage over the courts in determining whether a particular chemical causes cancer, it does not have such advantage in determining whether the appropriate standard under the statute is one of known cause or possible cause.").

In addition, as discussed in the Opening Brief, the CalWORKs and Family Code child support statutes operate

together for the purpose of securing adequate financial support to all California children. Opening Brief on the Merits (OB) at 18-22. The Department cannot claim expertise in child support law. As the Department itself points out, AB at 48, n. 22, in California judges implement the Family Code through child support orders. *Anna M. v. Jeffrey E.*, 7 Cal.App.5th 439, 446 (2017). And insofar as there is a role for a state administrative agency, that agency is not the defendant here – the Department of Social Services – but rather the Department of Child Support Services, legislatively designated to "administer all services and perform all functions necessary to establish, collect, and distribute child support." Fam. Code §17200.

As for the second set of factors, neither the All-County Letter nor the rulemaking file cited by the Department[2] shows "indications of careful consideration by senior agency officials...." *Yamaha*, 19 Cal.4th at 13. In each instance, the Department simply concluded in two sentences or less that the requirement to disregard a parent's payments to children outside the home as income available to his new family had been replaced with an expanded earned income disregard.

Leave aside for a moment the merits of that conclusion, which we address in §II.C. below. The failure of the Department to provide any meaningful explanation for its conclusion should

---

[2] AB at 27-28, citing ACL 97-59 at 3, 1 C.T. 322; Request for Judicial Notice (filed in Court of Appeal), Ex. A at 38 (rulemaking file).

preclude the Court from giving "great weight" to the policy at issue.

The Department did not even attempt to consider, much less carefully consider, how its new policy might harm families that through no fault of their own cannot benefit from the expanded earned income disregard. Nor did the Department consider how the policy might affect the joint, cooperative role of CalWORKs and the family court child support system in supporting *all* of California's poor children.

"Agency interpretation that violates the Legislature's intent is not due deference – even if it was adopted contemporaneously and has been consistently maintained." *Yamaha*, 19 Cal.4th at 13. The policy at issue here does not warrant deference.

II. Child support paid to another family is not income available to the family of the paying parent under the CalWORKs statutes.

The Department repeatedly points out that no CalWORKs statute expressly states that garnished child support should be disregarded in CalWORKs income calculations. *See, e.g.*, AB at 30. But at the same time, while the Department cites no fewer than 52 provisions of the Welfare & Institutions Code, not one of those provisions states that garnished child support should be *counted* as income. The Department has failed to show that it should.

A. The Department's policy thwarts the purposes of both CalWORKs and child support in a manner that could not have been intended by the Legislature.

As previously discussed, the Department's policy conflicts with the shared primary purpose of the inter-related CalWORKs and child support statutory schemes: to provide sufficient support and protection for California children. Child support actually paid to another family does not count as income available to the paying parent under the court-ordered child support provisions found in Family Code §4059(e). The Legislature could not have intended a more punitive result when the family of the paying parent is poor enough to potentially qualify for CalWORKs. OB at 18-22. The Department's contrary arguments are less than persuasive.

First, the Department asserts that excluding Bruce Christensen's child support payments from his family's income would shift his obligation to support his children to the state. Based on this, the Department argues that treating payments to children outside the household as available for the Christensen children's needs advances "the intent of both the child support system and CalWORKs that parents have the responsibility to provide sufficient support for their children..." AB at 49.

The Department is correct that parents have a legal obligation to support their children, as the CalWORKs statutes acknowledge. But the CalWORKs program also recognizes that the state must sometimes step in to help parents meet this

obligation when they lack the means to do so; the program exists because adequately supporting children is ultimately a shared obligation for the benefit of society as a whole.

Seen from this perspective, excluding Bruce Christensen's child support payments from his income would not improperly "subsidize" his child support obligations, as the Department contends. AB at 49. It simply acknowledges that when the same income must support two sets of children, there is only so much to go around. Once Mr. Christensen has met his obligation to support his children outside the home, there is not enough left over to provide sufficient support for the Christensen children. Yes, the state fills the gap through CalWORKs payments, but that is what CalWORKs is supposed to do.

The Department's distinction that child support is not a government benefit, *id.* at 47, misses the point. The two programs are interconnected. OB at 18-19. Enforcing parents' individual obligations to provide for children through the child support system and aiding parents who are financially unable to meet those obligations both serve the state's goal of meeting the needs of all children. Because the Department's policy ignores the interlocking statutory schemes to secure children's financial needs, it is inconsistent with the purposes of both.

Next, the Department contends that Family Code §4059(e) actually supports its position because the Legislature has not added the same express exclusion to the Welfare & Institutions Code. AB at 31. But the chronology of events contradicts this contention. The family law requirement to disregard child

support paid to other families first appeared in 1984. Stats. 1984, ch. 1605, §4, adding [former] Civ. Code § 6721(c)(5)., At that time, the Department's AFDC regulations exempted garnished child support from income calculations. As a result, there was no need for the Legislature to restate what was already the law. Then, when the Legislature later enacted CalWORKs, it added §11157(b), which states that income remains the same as under AFDC unless otherwise specified, and thus there was no further need for an express exclusion.

In short, the Department's policy cannot be reconciled with the primary purpose of both CalWORKs and child support.

B. Treating child support obligations as different from other debt is entirely consistent with legislative intent.

As explained in the Opening Brief, the Court of Appeal was mistaken in concluding that child support cannot be distinguished from any other debt that may lead to garnishment of income. Unlike with other debt, CalWORKs and the child support statutes work together to assure that all children receive sufficient support. Child support takes priority over all other debt, cannot be compromised without both agency and court approval, cannot be discharged in bankruptcy, and never benefits the family of the paying parent. OB at 25-28. For the most part, the Department does not dispute the accuracy of these descriptions.

Instead, the Department states that other garnished debt may also be unavailable to the family of the paying parent and in

some instances may not be for items that have benefitted that family. AB at 41-42. From there, the Department leaps to the conclusion that there is "no principled basis to distinguish child support payments from other wage garnishments for purpose of applying the availability principle." *Id.* at 41.

That there are some similarities between child support obligations and other debt is beside the point. The "principled basis" for treating child support differently is that *the Legislature* has done precisely that in so many ways that it is unreasonable to infer legislative intent to require identical treatment in this context.

Indeed, for 30 years, *the Department* and its predecessors, without express legislative direction, specified that garnished child support could not be counted as income available to the families of paying parents.[3] Presumably, the Department had a "principled basis" for its former regulations, which did not make similar allowances for other garnished debts. The Department's concern for supposed lack of a limiting principle comes 30 years too late and does not justify its current policy.

Nor do inapposite federal opinions support the Department. As previously discussed, *Heckler v. Turner,* 470 U.S. 184 (1985), is distinguishable. OB at 27-28. Child support *is* less available to the paying family than the payroll deductions involved in

---

[3] [Former] MPP §44-113.241, effective July 1, 1968; [Former] MPP §44-113.9, repealed effective July 1, 1998. *Christensen v. Lightbourne,* 15 Cal.App.5th 1239, 1248 (2017), *review granted,* Jan. 10, 2018.

Heckler; and, unlike those deductions, is part of an interlinked system to assure the all California children are sufficiently supported. *Heckler* can hardly be read as commanding the treatment of garnished child support as income, given that for more than a decade after that decision the Department continued to treat that support as unavailable to the paying family.

It is true that other federal cases the Department cites do treat garnished child support as available for purposes of different federal programs. AB at 38-40. *But see Dep't of Health Servs. of State of Cal. v. Sec'y of Health & Human Servs.*, 823 F.2d 323 (9th Cir. 1987) (permitting California Department of Health Services to disregard as income for Medicaid purposes money paid for child support and alimony).

None of the cited cases concerns programs and policies comparable to those involved here. For example, in *Peura By & Through Herman v. Mala*, 977 F.2d 484 (9th Cir. 1992), the challenged state policy, unlike the Department's policy, took "into account only a portion of the funds [the plaintiff] must spend on child support in calculating the extent of [the plaintff's] Medicaid benefits." *Id.* at 489. More importantly, the court ruled in favor of the state in part because "[m]issing here is any indication that the entire amount of [the plaintiff's] court-ordered obligation was earmarked to advance an identified congressional purpose." *Id.* at 490. By contrast, all the money taken from the Christensens *was* earmarked to serve the state legislative purpose to assure that every California child receives adequate support.

As the Department points out, some of the federal opinions

state that a person is benefitted by the payment of his or her obligations. AB at 37-38. But in each of these cases, the government assistance reduced by the withheld or garnished amount would have gone solely to the individual plaintiff, not to his or her family. *Peura*, 977 F.2d at 484 (institutionalized Medicaid recipient); *Emerson v. Steffen*, 959 F.2d 119, 121 (8th Cir. 1992) (plaintiff class of "medically needy" individual Medicaid recipients rather than "categorically needy" families); *Cervantez v. Sullivan*, 963 F.2d 229 (9th Cir. 1992) (recipients of Supplemental Security Income, an individual benefit program); *Martin v. Sullivan*, 932 F.2d 1273 (9th Cir. 1990) (same). By contrast, whatever benefit Bruce Christensen himself derives from payment of his child support obligations, the children in the Christensen family do not share in that benefit at all.

It is no answer for the Department to state that CalWORKs provides aid to adults as well as children. AB at 37-38. While a child not living with an eligible adult may receive aid,[4] it is impossible for an adult not living with a needy child to qualify. CalWORKs is for the benefit of children, and the children in the Christensen family do not benefit from the money garnished to support children in another family.

Beyond these distinctions, as this Court has stated, even "United States Supreme Court interpretation of federal statutes does not bind us to similarly interpret similar state statutes." *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 568 (2004).

---

[4] *See* §11450 (table) (listing Maximum Aid Payment to a family of one).

The same is true for any of the federal cases cited by the Department, particularly in light of California statutes requiring an expansive interpretation of beneficiary rights to public benefits. *See* OB at 27. These opinions are therefore inapposite.

Even more inapplicable is the federal income tax law relied on by the Department. AB at 34-35. The purpose of the Internal Revenue Code is to raise money for the federal government, not to assist needy children.

Child support obligations are fundamentally different from other debt, and the Legislature has repeatedly reaffirmed its intent that they be treated differently. The Department's policy, which conflicts with that intent, is invalid.[5]

C. The increased earned income disregard, which does not assist persons with unearned income and provides less assistance to those with disability-based income, was not intended to permit counting garnished child support as income to the paying family.

When the Department eliminated the child support disregard in 1997, its sole rationale for doing so was that the disregard had been replaced with an expanded earned income

---

[5] The Department suggests that its policy is necessary to guarantee that Bruce Christensen's garnished child support payments are treated the same as if he were paying child support "voluntarily." AB at 40, n. 19. This argument is a red herring. There is nothing in the record to indicate that Mr. Christensen's payments were anything but voluntary. Family Code §5230 requires a court to include in any child support an "earnings assignment order" regardless of the motivation of the non-custodial parent.

disregard. *See* footnote 2 above. Twenty years later, the Department has attempted to explain that conclusory statement, but without great success.

To begin with, as the Department acknowledges, the AFDC statutes already provided for work incentives by disregarding $30 plus one third of a recipient's income; and implementing both a $90 work expense disregard and a disregard of up to $175 for child-care costs. AB at 43. *See also Sneed v. Saenz*, 120 Cal. App. 4th 1220, 1230 (2004) (describing an additional provision – authorized by a federal waiver effective from 1991 to 1997 – which permitted employed recipients to keep the difference between the Maximum Aid Payment and the higher legislatively-prescribed standard of need). While for most employed recipients the new provision, which exempts up to $225 plus one half of all earned income (§11451.5), was an improvement,[6] it was a difference in degree, not kind.

---

[6] While the current earned income disregard is more generous than the one existing under AFDC, even the families of employed parents subjected to the Department's policy often end up with less money. Under the current policy, the County counted $188 of Mr. Christensen's $600 gross monthly earnings. AR 15. However, under the prior AFDC rule, only $135 of his earnings would have counted as available income. (The $600 gross monthly income was calculated using his $277 bi-weekly check and multiplying by 2.167. (*See* AR 15.) However, if the $128 in garnished child support (AR 20) was deducted under the old rule ([former] MPP §44-113.9 (1 CT 189)], the $600 would be reduced to $323. $277 - $128= 149; $149 x 2.167 = $323. Applying the additional $90 and $30 + 1/3 additional earned income disregards allowed under former MPP §§44-113.214 and .215 (CT 181) would leave only $135 as countable income. ($323 - ($90+$30) = $203 – ($203/3) = $135.))

Though the Department is correct that §11451.5 simplifies calculations by consolidating earned income disregards, AB at 44, the former requirement exempting garnished child support paid outside the home was ***not*** an earned income disregard. The child support disregard applied equally to unearned income and disability-based income, as does the current policy of pretending that garnished child support is available to the family of the paying parent.

Under the Department's current policy, the family of a person who is laid off from his or her job and receiving unemployment insurance benefits, while at the same time required to pay child support from that unemployment check, is far *worse* off than it would have been under AFDC. *See* AB at 30 (unemployment insurance is unearned income). The full unemployment insurance amount is deducted from the family's CalWORKs grant without any reciprocal benefit.

And contrary to the Department's description, AB at 17, §11451.5 does not treat disability-based income as favorably as earned income. Section 11451.5 exempts $225 of disability-based income, but the additional 50% disregard applies only to earned income. §11451.5(a)(2)(B). Thus, the family of a person unable to work whose disability check is garnished to pay child support to another family is also disadvantaged.

The Court should reject the Department's rationale that punishing the families of unemployed and disabled people in this way is an additional work incentive intended by the Legislature. AB at 45. Low-income parents do not need a huge benefits cut to make them want to keep their jobs or find new ones. They already have substantial economic and legal incentives. Workers may not receive unemployment benefits when they voluntarily quit their jobs; and persons receiving such benefits are required to search for new employment. Unemp. Ins. Code §§1256, 1253. And as the Ninth Circuit has pointed out, "the idea of imposing a work-incentive benefits cut on individuals whose disabilities preclude work can only be called absurd." *Beno v. Shalala*, 30 F.3d 1057, 1073 (9th Cir. 1994) (invalidating federal approval of a statewide AFDC cut as a work incentive experiment). Punishing the families of unemployed and disabled parents required to pay child support outside the home cannot be justified under the guise of simplification or work incentive.

The legislative history behind the increased income disregard does not support the Department's policy. The Senate Health and Human Services Committee analysis of AB 1542 states that the $225 plus one half formula replaced "a complex calculation," i.e., the $30 plus one third plus $90. The committee analysis did *not* state that the new earned income disregard