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# Hands Up, Not Hand-Outs: Elimination of the Maximum Family Grant Rule in CalWORKs

Elizabeth Colman

*Golden Gate University School of Law*, [epcolman@gmail.com](mailto:epcolman@gmail.com)

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**Hands Up, Not Hand-Outs:  
Elimination of the Maximum Family Grant Rule in CalWORKs  
By Elizabeth Colman**

*"Children born into poverty don't break the cycle.  
Our goal is to support them on the front end to give them a chance."  
- California State Senator Holly Mitchell<sup>1</sup>*

**I. BACKGROUND**

**A. POLICY -THE MYTH OF THE WELFARE QUEEN, AND THE PASSAGE OF PRWORA.**

The brief history of government financial assistance to the indigent in the United States has been tinged with racial bias, and driven by a narrative of the "deserving poor." The first federal government aid to the poor arose in 1911.<sup>2</sup> Known as "Mother's Pensions," the Aid to Dependent Children (ADC) program served mostly white widows, and was designed to allow widowed mothers to stay home and care for their children.<sup>3</sup> Part of the New Deal enacted in 1935 made ADC a permanent program administered by the states "to provide for the benefits of children."<sup>4</sup> Fifteen years later, the federal government began distributing cash payments to caretakers of ADC recipient children.<sup>5</sup> In 1960, the name of ADC was changed to Aid to Families with Dependent Children (AFDC).<sup>6</sup>

In 1967, the Work Incentive Program became the first federal work requirement for male recipients of AFDC.<sup>7</sup> When Ronald Reagan ran for president in 1976, he told many stories of a woman who "used 80 names, 30 addresses, 15 telephone numbers" to collect public assistance

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<sup>1</sup> Dani McClain, *Why Is California Penalizing Poor Women for Wanting to Be Parents?*, THE NATION (Apr. 8, 2014, 6:37 PM), <http://www.thenation.com/blog/179242/why-california-penalizing-poor-women-wanting-be-parents>.

<sup>2</sup> DIANE F. REED, M.P.H. & KATE KARPILOW, PH. D, CAL. CENT. FOR RESEARCH ON WOMEN AND FAMILIES, UNDERSTANDING CALWORKS: A PRIMER FOR SERVICE PROVIDERS AND POLICYMAKERS 2 (2nd Ed., 2010).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

benefits to the tune of "\$150,000 a year."<sup>8</sup> The myth of the "welfare queen" was born.<sup>9</sup> Reagan painted recipients of public assistance as lazy slouches looking for a handout who were undeserving of financial assistance.<sup>10</sup> Using this type of rhetoric, with its unmistakable racial subtext that played into white stereotypes about people of color, Reagan sold his plan to cut public assistance spending.<sup>11</sup> Throughout the 1980's, states imposed work requirements to receive assistance, including mandatory work for mothers with children over six years old.<sup>12</sup>

Driven by a narrative of welfare fraud that had little bearing in reality, states began obtaining waivers to use AFDC funds to try to force a change in behavior of cash aid recipients.<sup>13</sup> The push for indigent parents to work in order to receive financial assistance continued at the state level into the 1990's.<sup>14</sup> States enacted programs that conditioned AFDC payments on requirements that minors in the household attend school.<sup>15</sup> The first family caps that limited or reduced benefits for children conceived while the mother was on AFDC were implemented in many states.<sup>16</sup> "Bridefare" programs were also implemented in some states, whereby mothers receiving AFDC benefits were paid to marry their children's father.<sup>17</sup> The shift in public assistance ideology culminated in the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).<sup>18</sup>

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<sup>8</sup> Josh Levin, *The Welfare Queen*, SLATE (Dec. 19, 2013, 12:41 AM), [http://www.slate.com/articles/news\\_and\\_politics/history/2013/12/linda\\_taylor\\_welfare\\_queen\\_ronald\\_reagan\\_made\\_her\\_a\\_notorious\\_american\\_villain.html](http://www.slate.com/articles/news_and_politics/history/2013/12/linda_taylor_welfare_queen_ronald_reagan_made_her_a_notorious_american_villain.html).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Reed, *supra* note 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

Over the last thirty years, the imposition of more restrictive eligibility limits have made it harder for indigent families to receive public welfare benefits. This paper analyzes one such limit on eligibility for cash-aid assistance to indigent families – the maximum family grant rule. This paper begins with a brief review of the federal and state public cash-aid assistance programs that set the framework in which the rule operates. Next, this paper describes the maximum family grant rule itself. Finally, the paper ends with recommendations and conclusions.

## **B. PRWORA AND THE TEMPORARY AID TO NEEDY FAMILIES (TANF) PROGRAM.**

PRWORA replaced AFDC with the Temporary Aid to Needy Families (TANF) program, which remains in effect today.<sup>19</sup> According to PRWORA, TANF was established

"to increase flexibility of States in operating a program designed to 1) provide assistance to needy families so that children may be cared for in their homes or in homes of relatives; 2) end the dependence of needy parents on government benefits by promoting job preparations, 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."<sup>20</sup>

TANF fundamentally transformed the way America addresses the needs of its indigent population. First, the TANF program changed federal financing into a block grant to the states.<sup>21</sup> So long as federal TANF funds are spent on programs designed to accomplish one of the four purposes of TANF, states have broad discretion in how to actually utilize the grant.<sup>22</sup> Second, TANF instituted the first federal work requirements for indigent parents to receive assistance.<sup>23</sup> Although the first federal public aid program was designed to allow mothers to stay home to rear their children, one consequence of the modern work requirement is that most indigent parents

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<sup>19</sup> *Id.*

<sup>20</sup> 42 U.S.C.A. § 601 (2012).

<sup>21</sup> 42 U.S.C.A. § 603 (2012).

<sup>22</sup> LIZ SCHOTT, CENTER ON BUDGET AND POLICY PRIORITIES, POLICY BASICS: AN INTRODUCTION TO TANF 3, (Dec. 4, 2012), available at <http://www.cbpp.org/cms/?fa=view&id=936>.

<sup>23</sup> 42 U.S.C.A. § 607 (2012).

must spend time away from the home and family as a condition to receiving essential cash aid.<sup>24</sup> Third, prior to PRWORA, indigent adults could receive AFDC aid indefinitely.<sup>25</sup> Under TANF, adults are subject to a lifetime limit of 60 months of federal assistance.<sup>26</sup> States may continue providing benefits to needy families beyond 60 months, so long as the funds come from state-TANF funds.<sup>27</sup> With some exceptions, California limit adults to 60 months of state-TANF aid through its CalWORKs program.<sup>28</sup>

## **II. CALWORKS AND THE MAXIMUM FAMILY GRANT RULE**

### **A. THE CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS (CalWORKs) ACT.**

California integrated TANF into state law through adoption of the California Work Opportunity and Responsibility to Kids (CalWORKs) Act of 1997.<sup>29</sup> The CalWORKs program is implemented throughout the state at the county level through the Department of Social Services.<sup>30</sup> CalWORKs funds go toward a variety of programs aligned with the four purposes of TANF, including cash aid to indigent families, welfare-to-work programs, childcare assistance, vocational training, and domestic abuse services.<sup>31</sup>

As of December 2013, over 549,000 California families depend on CalWORKs cash aid benefits to supplement their income.<sup>32</sup> Over one million children live in CalWORKs-reliant families.<sup>33</sup> Depending on the region the applicants resides in, a California family of three that

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<sup>24</sup> Reed, *supra* note 2, at 12 (exemptions may be given in select circumstances, including parents under age 16, disabled parents, full time VISTA volunteers, and parents age 16-18 enrolled in school).

<sup>25</sup> S.B. 899, 2013-2014 Leg., Reg. Sess. (Cal. 2014).

<sup>26</sup> 42 U.S.C.A. § 608(7)(A) (2012).

<sup>27</sup> Reed, *supra* note 2, at 4.

<sup>28</sup> *Id.* at 8.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> CAL. WELF. & INST. § 11207 (West 1965).

<sup>31</sup> Reed, *supra* note 2, at 8.

<sup>32</sup> STAFF OF S. HUMAN SERV. COMM. 2013-2014 LEG., REG. SESS., ANALYSIS OF SB 899, 4 (Cal. 2014).

<sup>33</sup> *Id.*

satisfies the eligibility requirements for cash assistance may receive a maximum grant of \$638 per month for the entire family.<sup>34</sup> However, unless an exception applies, any children born ten months after their family began receiving CalWORKs benefits are subject to the maximum family grant rule.<sup>35</sup>

## **B. WHAT IS THE MAXIMUM FAMILY GRANT RULE?**

When the AFDC program was still in effect, there were no limits on the length of time an indigent family could receive aid.<sup>36</sup> California implemented a family cap, known as the maximum family grant (MFG) rule in July 1994, just two years before PRWORA was passed.<sup>37</sup> Written into the California Welfare and Institutions Code, the maximum family grant rule provides that no child born ten months after a member of the family has begun receiving CalWORKs benefits is eligible to receive CalWORKs cash aid.<sup>38</sup> Supporters of the MFG rule at the time it was implemented asserted that placing a cap on the amount of a family's grant would control costs by acting as a disincentive for those families to have additional children.<sup>39</sup> Under this rule, the grant amount a family receives stays the same even if the family size has grown.<sup>40</sup> In *Dandridge v. Williams*, the Supreme Court held that states have discretion to implement maximum family grant rules because they have a legitimate interest in encouraging employment and in maintaining balance between welfare families and families of the working poor.<sup>41</sup>

Although *Dandridge* was decided when AFDC was still in effect and aid recipients did not have

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<sup>34</sup> *Id.* at 5.

<sup>35</sup> CAL. WELF. & INST. § 11450.04 (West 1994)

<sup>36</sup> S.B. 899, 2013-2014 Leg., Reg. Sess. (Cal. 2014).

<sup>37</sup> STAFF OF S. HUMAN SERV. COMM. 2013-2014 LEG., REG. Sess., *supra* note 32, at 5.

<sup>38</sup> CAL. WELF. & INST. § 11450.04 (West 1994).

<sup>39</sup> STAFF OF S. HUMAN SERV. COMM. 2013-2014 LEG., REG. Sess., *supra* note 32, at 3.

<sup>40</sup> S.B. 899, 2013-2014 Leg., Reg. Sess. (Cal. 2014).

<sup>41</sup> *Dandridge v. Williams*, 397 U.S. 471, 486 (1970).

a mandatory work requirement, its holding giving states discretion over whether to implement family caps remains valid law.<sup>42</sup>

In California, about six percent of families (and 13.4 percent of children) that rely on CalWORKs benefits are subject to the maximum family grant rule.<sup>43</sup> "For a family of three, in which the MFG baby would become the third member of the assistance unit, the loss in grant is \$123 per month – the difference between a maximum grant of \$515 per month for a family of two to a maximum grant of \$628 per month for a family of three in 2014."<sup>44</sup>

The MFG rule drives families into deeper poverty and forces newborns to suffer lifelong punishment they don't deserve by arbitrarily denying them essential financial assistance. This uneven distribution of financial support is entirely arbitrary, as one family with three children receive one amount if the parent applies after all three are born, but a mother who has a third child ten months after initial receipt of benefits receives less for no reason other than *when* her third child was born. Although her need is no less real, under the MFG rule, a newborn is forced to suffer the harsh effects of deep poverty solely because her indigent working mother chose to both give birth and receive assistance at the same time. While \$123 per month does not seem like a lot, it can go a long way toward purchasing diapers, wipes, onesies, and other essentials needed for taking good care of a newborn. Scientific research has correlated the effects of deep childhood poverty with poor health and outcomes including low birth weight, lead poisoning, child mortality and hospitalization...and chronic health conditions in adulthood."<sup>45</sup> Studies have

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<sup>42</sup> *Id.*

<sup>43</sup> STAFF OF S. HUMAN SERV. COMM. 2013-2014 LEG., REG. Sess., *supra* note 32, at 4.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 7.

also shown that deep poverty can lead a child to "lifelong impairments limiting their ability to be prepared for and succeed in school."<sup>46</sup>

There are a number of exceptions to the maximum family grant rule.<sup>47</sup> Under CalWORKs, the MFG rule can be avoided if the mother chooses to stop receiving CalWORKs aid for two consecutive months during the pregnancy.<sup>48</sup> Sometimes women choose to stop receiving cash assistance during pregnancy in order to maintain eligibility for their newborns. At a time when an expectant mother needs more resources in order to prepare for and grow a healthy child, under the MFG rule, indigent women must decide whether to endure deep poverty during pregnancy in order to secure additional help once their baby arrives.

Another exception arises when women become pregnant as a result of rape or incest.<sup>49</sup> To qualify, the woman must report the sexual violation before or within three months of the birth of the child to a specified authoritative figure.<sup>50</sup> In the case of pregnancy as a result of incest, once paternity has been confirmed, the child will no longer be subject to the MFG rule.<sup>51</sup>

A third exception to the MFG rule involves the failure of three contraceptive methods.<sup>52</sup> California is the only state with an MFG rule that carves out an exception for contraceptive failure.<sup>53</sup> One excepted method, NorPlant, was removed from the market surrounded in controversy over its effectiveness and side-effects.<sup>54</sup> Another contraceptive method included in the MFG rule exception is a pregnancy that is the result of the failed sterilization of either parent. Pregnancies resulting from a failed intrauterine device is the last type of contraception exception

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<sup>46</sup> *Id.* at 3.

<sup>47</sup> CAL. WELF. & INST. § 11450.04 (West 1994).

<sup>48</sup> CAL. WELF. & INST. § 11450.04(a) (West 1994).

<sup>49</sup> CAL. WELF. & INST. § 11450.04(B)(1) (West 1994). CAL. WELF. & INST. § 11450.04(B)(2) (West 1994).

<sup>50</sup> *Id.*

<sup>51</sup> CAL. WELF. & INST. § 11450.04(B)(2) (West 1994).

<sup>52</sup> CAL. WELF. & INST. § 11450.04(B)(3) (West 1994).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* STAFF OF S. HUMAN SERV. COMM. 2013-2014 LEG., REG. Sess., *supra* note 32, at 3.



under the MFG rule.<sup>55</sup> Failure of the most common birth control methods like "the pill" are not recognized exceptions to the MFG rule.<sup>56</sup>

The maximum family grant rule also provides an exception for children not living in the same home as their parents.<sup>57</sup> Often when a parent can no longer provide for all of her children, she is forced to send one or more of her children to live with relatives, like an aunt or grandparent, in order to keep the rest of her family together. The MFG rule pulls families apart by providing that the mother can choose to give her newborn to a relative in order to preserve that child's CalWORKs eligibility.<sup>58</sup> This is a difficult and divisive decision that no parent should have to make.

### **III. THE MAXIMUM FAMILY GRANT RULE IN CALWORKS SHOULD BE ELIMINATED.**

At the height of its pervasiveness, twenty-four states had family caps like the maximum family grant.<sup>59</sup> Today, only seventeen states still have family cap rules.<sup>60</sup> Although the stated purpose of its initial passage was to deter poor women from having more children in order to control costs, studies have shown that there is no link between fertility rates and welfare benefits.<sup>61</sup> The idea that poor women have children to "live the good life" cannot be substantiated.<sup>62</sup>

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<sup>55</sup> CAL. WELF. & INST. § 11450.04(B)(3) (West 1994).

<sup>56</sup> *Id.*

<sup>57</sup> CAL. WELF. & INST. § 11450.04(D)(3) (West 1994).

<sup>58</sup> *Id.*

<sup>59</sup> STAFF OF S. HUMAN SERV. COMM. 2013-2014 LEG., REG. Sess., *supra* note 32, at 6 (citing Welfare Rules Database, Urban Institute and "*Bringing Families out of Cap'tivity: The Need to Repeal the CalWORKs Maximum Family Grant Rule*," UC Berkeley School of Law, Apr. 2013).

<sup>60</sup> *Id.*

<sup>61</sup> Rebekah J. Smith, *Family Caps in Welfare Reform: Their Coercive Effects and Damaging Consequences*, 29 Harv. J.L. & Gender 151, 157(2006).

<sup>62</sup> *Id.*

On the contrary, the MFG rule drives families deeper into poverty. States with family cap rules in place generally pay about twenty percent less to families that qualify for benefits.<sup>63</sup> In California, families receive a maximum cash aid benefit of 40 percent of the federal poverty line.<sup>64</sup> The MFG rule further "reduc[es] the income of families with infants to less than 30 percent of the [federal poverty line]."<sup>65</sup>

The exceptions to the MFG rule violate women's privacy by unfairly forcing them to choose between sharing highly personal and confidential medical information and not receiving desperately needed financial assistance for their newborns.<sup>66</sup> Victims of rape and incest should not have to relive the horrors of sexual violence in order to maintain assistance eligibility for a child that is a product of that violence.

To remove this harmful rule, the California state government should pass SB 899 this year. Currently moving through the California Senate, SB 899 would prospectively eliminate the MFG rule in CalWORKs.<sup>67</sup> Authored by Senator Holly Mitchell, and supported by over 80 national, state, and local community groups, SB 899 would eliminate application of the MFG rule as of January 1, 2015.<sup>68</sup> It would also prohibit "conditioning an applicant's or recipient's eligibility for aid on [her] disclosure of information regarding rape, incest, or contraception."<sup>69</sup>

Although California is the only state that is currently considering legislation to repeal the MFG rule, this solution need not be limited to California. Since 2002, Wyoming, Nebraska,

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<sup>63</sup> U.S. GENERAL ACCOUNTING OFFICE, MORE RESEARCH NEEDED ON TANF FAMILY CAPS AND OTHER POLICIES FOR REDUCING OUT-OF-WEDLOCK BIRTHS, 2-3 (Sept. 2001), *available at* <http://www.gao.gov/products/gao-01-924>.

<sup>64</sup> STAFF OF S. HUMAN SERV. COMM. 2013-2014 LEG., REG. Sess., *supra* note 32, at 3.

<sup>65</sup> *Id.*

<sup>66</sup> ELENA GUTIERREZ, PH.D., CENT ON REPRODUCTIVE RIGHTS AND JUSTICE BRINGING FAMILIES OUT OF CAP'TIVITY: THE NEED TO REPEAL THE CALWORKS MAXIMUM FAMILY GRANT RULE (U.C. Berkeley School of Law, Apr. 2013).

<sup>67</sup> S.B. 899, 2013-2014 Leg., Reg. Sess. (Cal. 2014).

<sup>68</sup> S.B. 899, 2013-2014 Leg., Reg. Sess. (Cal. 2014). STAFF OF S. HUMAN SERV. COMM. 2013-2014 LEG., REG. Sess., *supra* note 32, at 8.

<sup>69</sup> S.B. 899, 2013-2014 Leg., Reg. Sess. (Cal. 2014).

Oklahoma, Kansas, and Maryland have repealed their family cap policies.<sup>70</sup> Less than one third of American states still employ a family cap policy as an eligibility limitation.<sup>71</sup> Policymakers in those states should recognize the lasting harm to children, parents, and communities when families are driven deeper into economic despair as a result of these policies. Leaders across the country can begin breaking the cycle of poverty now by introducing and passing legislation to repeal the family cap policies in their states.

#### IV. CONCLUSION.

Federal assistance programs began over a hundred years ago for the benefit of indigent children. The ideological shift over the years has steered the social safety net away from meeting the needs of all indigent children. Instead, cash benefits are reserved for those whose behavior reflects an artificial construction of worth, where only those who are deemed "deserving" are given a desperately needed hand-up. The maximum family grants rule punishes poor women receiving aid for becoming pregnant. The MFG rule punishes poor children for having an indigent mother who became pregnant. Under the MFG rule, indigent families needlessly suffer lifelong consequences. It is an injustice, and it should be corrected immediately through the elimination of the maximum family grant rule.

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<sup>70</sup> STAFF OF S. HUMAN SERV. COMM. 2013-2014 LEG., REG. Sess., *supra* note 32, at 6 (citing Dyer et al., *Do Family Caps Reduce Out-of-Wedlock Births?*, ECONOMIC GROWTH CENTER (Yale Univ.) Dec. 2003.).

<sup>71</sup> Currently, the following states employ some form of family cap policy: Arizona, Arkansas, California, Delaware, Florida, Georgia, Indiana, Idaho, Massachusetts, Minnesota, Mississippi, New Jersey, North Carolina, North Dakota, South Carolina, Tennessee, Virginia. Welfare Rules Database, *supra* note 59.