

Child Support Series

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In Everybody's Best Interests: Why Reforming Child Support Distribution Makes Sense for Government and Families

By Vicki Turetsky

Child support can make the difference between a family needing welfare or not. However, if a family receives child support while also receiving welfare cash assistance, the family does not see the child support dollars. Instead, the government keeps the money to repay the assistance. Even after a family no longer receives welfare, the government keeps a share of the money. Using child support to recoup welfare costs directly compromises a family's ability to leave and stay off of welfare. Low-income children could be benefiting from billions of dollars paid by parents but treated as government revenues. It is time for Congress and the states to change the rules.

This brief discusses how the child support program came to be used as a welfare cost recovery mechanism, the technicalities of assignment and dis-

tribution provisions, and the benefits—to families and government—of passing through child support payments directly to the family.

What Are Assignment and Distribution Rules?

When families apply for cash assistance under the Temporary Assistance for Needy Families (TANF) program, they are required to participate in the child support program. Families who apply for welfare must sign over to the state their rights to unpaid child support. Once families leave welfare, the right to monthly support paid on time and most of the overdue support, or arrears, reverts to the families. However, the government keeps about 40 percent of the arrears.

Assignment and distribution rules determine how child support collections are allocated between these families and the government. The current rules were adopted as part of the 1996 welfare reform law and are extremely complicated to admin-

ABOUT THE CHILD SUPPORT PROGRAM

The public child support program is authorized and funded under Title IV-D of the Social Security Act to provide child support services for children receiving public assistance or for parents requesting help to collect child support. Most single-parent families eligible for child support participate in the child support program.¹ The program collects child support, establishes the legal relationship between children and their non-custodial parent, and obtains private health care coverage through non-custodial parents' employers.

The program serves over 17 million children. Of these children, 17 percent currently receive cash assistance through the welfare program.² However, half of the children in the program used to receive cash assistance, and the vast majority live on a limited budget.

The child support program is jointly administered by federal, state, and local governments. The program collects \$4.38 in child support payments for every government dollar spent. In 2004, the program collected \$21.9 billion in child support. Of this amount, \$10.5 billion was collected for families who currently or formerly received cash assistance. About \$2.1 billion was kept by federal and state governments to help repay welfare and foster care costs. The federal government pays 66 percent of program costs, with states and counties paying the rest. Total program costs were \$5.3 billion.

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ister. They result in the government keeping about \$900 million per year in support paid for current TANF families and \$1.2 billion per year in support paid for former TANF families. In fact, more than half of the child support retained to repay welfare costs is collected on behalf of former TANF families.

There are two separate questions involved in setting assignment and distribution policies. The first question concerns the assignment policy: Who owns the right to the money? The second question concerns the distribution policy: Who is paid first?³

Assignment of Child Support Rights

Assignment rules create a government claim to child support paid on behalf of current and former TANF families. When a family applies for cash assistance, the state takes an assignment to any existing rights to unpaid child support, as well as any future rights that might accrue during the assistance period. The basic rule is that the right to support owed before and during the assistance period belongs to the state, while the right to support owed after the assistance period belongs to the family. However, the family retains a residual claim to assigned support, because the state cannot keep more support than the cumulative amount of cash assistance paid to the family. Once

the state is fully paid, the right to the support reverts to the family.

The legal nature of the state's claim to support depends upon four factors: (1) the family's TANF status; (2) the date the support is owed (before or during the assistance period); (3) the date it is collected (during or after the assistance period); and (4) the collection method.

■ **Support owed during assistance period:** Support owed during the assistance period is *permanently* assigned to the state—that is, the state has the right to collect and keep the support even after the family leaves welfare.

■ **Support owed before assistance period:** Overdue support owed before the family applies for assistance is called “pre-assistance arrears.” The right to pre-assistance arrears is *temporarily and conditionally* assigned to the state. While the family is on welfare, the state holds a temporary assignment to pre-assistance arrears. After the family leaves welfare, the state continues to hold a conditional assignment to pre-assistance arrears. The condition is met if the money is collected through one specific collection method: the IRS tax offset process used to recoup child support payments from the federal tax refunds owed to non-custodial parents. If the money is

collected from an insurance settlement, a bank account, or even a state tax refund, the money belongs to the family. But if the money is collected from a federal tax refund, the money belongs to the state.

■ **Support owed after assistance period:** Support owed after the family leaves welfare belongs to the family. The family has the right to monthly support and any arrears that accrue after the assistance period. However, if the family reapplies for cash assistance, the balance of any unpaid support, including support accruing between assistance periods, becomes “pre-assistance” support and is reassigned to the state.

Example 1: A support order is entered for \$300 per month in a divorce proceeding. The non-custodial parent does not pay for 10 months. The custodial parent loses her job and applies for cash assistance. The \$3,000 owed by the non-custodial parent before the family applied for assistance is temporarily and conditionally assigned to the state. The family receives \$425 per month in cash assistance for six months, or \$2,550, and then leaves welfare. The \$1,800 in support owed during the assistance period is permanently assigned to the state. The \$300 per month in support accruing after the family leaves welfare is owed to the family.

Distribution Between Families and Government

Distribution rules determine the order of payment when both the state and the family have competing claims to collected child support. As in a bankruptcy, the first person in line usually takes all of the money. The basic rule is simple enough: when the family is on welfare, the state is paid first. When the family is off of welfare, the family is paid first. In addition, collected support is allocated first to satisfy the current monthly obligation, with remaining support allocated to any arrears balance.

However, there is an exception for federal tax offset collections. If arrears are collected from a federal tax refund, the state is paid first, even if the family has left welfare. In addition, federal tax offset collections are applied in total to arrears, with no portion allocated to current support.

Example 2: This example uses the same facts as above. The state begins collecting \$300 in current support in the fifth month that the family is receiving cash assistance. The state keeps \$600 from months five and six. The family leaves welfare and begins receiving \$300 every month. The state has a \$1,950 claim for unreimbursed assistance (\$2,550 welfare benefits paid out less \$600 in support retained), a \$1,800 permanent assignment of support rights (of which \$1,200 is unpaid), and a \$3,000 conditional assignment.

The family has a \$3,000 conditional claim to pre-assistance arrears.

Example 3: This example uses the same facts as above. After the family leaves welfare, the state intercepts a \$2,000 federal tax refund. The state keeps \$1,950 to repay itself for welfare costs, and the family receives \$50. The state's claim is fully paid off, and the family is owed the remaining \$2,250 pre-assistance arrears.

Example 4: This example uses the same facts as above, except that the state collects the \$2,000 through a state tax refund or insurance settlement. The family is paid the \$2,000. The state is still owed \$1,950, and both the state and family have conditional claims to the remaining \$1,000 pre-assistance arrears. The state also has a permanent claim to the \$1,200 still owed for the assistance period.

Distribution Between States and the Federal Government

Retained child support is shared between state and federal governments according to the state's Federal Medical Assistance Percentage (FMAP), the variable rate used by the federal government to calculate federal financial contributions to the Medicaid program. In 2005, the federal share of state Medicaid costs ranges from 50 to 77 percent.⁴ Because the FMAP rate is based on state per capita income, poorer states receive a larger

federal contribution to their Medicaid programs. However, these states are required to send more retained child support to the federal government. For example, since Mississippi received a 77 percent contribution to its Medicaid program in 2003, it paid 77 percent of retained collections to the federal government in 2003.

The logic behind this revenue-sharing formula has its origin in the welfare cost recovery purpose of the child support program. Historically, the FMAP rate also was used to calculate the federal share of costs for the Aid to Families with Dependent Children (AFDC) program (the precursor program to TANF), as well as Medicaid costs. (Since TANF is a block grant, the FMAP rate is no longer used to determine federal welfare payments to states.)

Example 5: State A collects and retains \$500 in child support to repay cash assistance. State A has a 50 percent FMAP rate. The state pays \$250 to the federal government as the federal share and keeps \$250 as the state share of support. State B retains \$500. State B has a 75 percent FMAP rate. The state pays \$375 to the federal government and keeps \$125.

Retained collections lose their identity as child support and become government revenues. The federal share of support is paid to the federal treasury. The state share of support may be

spent by a state in any manner and is not earmarked for any specific use. However, nearly all states use the state share of support to help pay for their obligatory contribution to the TANF program (called “Maintenance of Effort”) or their share of costs in the child support program.⁵ In addition, 40 percent of states return some of the money to families receiving cash assistance.⁶ These payments are “passed through” to current TANF families and are discussed in the next section.

Child Support Pass-Through

Before 1996, federal law required states to pay, or pass through, the first \$50 of collected support each month to families receiving cash assistance. The pass-through provision applied only to families receiving cash assistance and did not apply to families who had left welfare. The \$50 that was passed through was disregarded, or exempted, in determining welfare benefits paid to families.

The \$50 pass-through blended two distinct policies. One was a distribution policy—a decision to pay support to families, rather than the government. The other was a disregard policy—a decision to ignore the child support income in the welfare program.

The idea behind the federal pass-through policy was to improve cooperation with the child support program by

increasing the stake of custodial parents in collecting child support. The cost of the pass-through was shared between the states and federal government—the \$50 pass-through was paid “off the top” of support collections. This meant that both federal and state shares were reduced by the amount passed through to families.

Example 6: In 1995, State A collected \$100. It had a 50 percent FMAP rate. The state passed through the first \$50 to the family. The child support was disregarded, so that the family benefited from an additional \$50 in income. The state split the remainder with the federal government. The federal share was \$25 and the state share was \$25. State B collected \$100. It had a 75 percent FMAP rate. The state passed through the first \$50 to the family. The federal share was \$37.50 and the state share was \$12.50.

Under current rules, states have the flexibility to determine their own pass-through policy. States may keep their entire share of retained support as revenue, or instead, they may pass some or all of it through to families. States also may decide whether to disregard or count child support income in determining TANF benefits.

The hitch is that the federal government no longer shares the costs of a state child support pass-through. While the 1996 law gave states more flexibility

over their pass-through policy, it also shifted the cost of that policy to the states. Now, the federal share is paid “off the top”—that is, calculated based on the total amount of retained collections. If a state passes through support to families, it must bear the entire cost.

The current formula has had a disproportionate impact on poorer states (those with higher FMAP rates). Because they must return a higher proportion of support to the federal government, poorer states are less able to afford a pass-through policy. Of the 17 states that have continued to pass through at least some support to families, only two states have an FMAP rate above 60 percent. The average FMAP rate for states passing through support is 55 percent. Conversely, states that repealed the pass-through have an average FMAP rate of 63 percent.

Example 7: In 2005, State A collects \$100. It has a 50 percent FMAP rate. The state passes through and disregards \$50 to the family. The state pays the federal government \$50. The state retains nothing. State B collects \$100. It has a 75 percent FMAP rate. The state passes through \$50 to the family. The state pays the federal government \$75. To pay for the pass-through, the state must contribute \$25 in new funds to its \$25 state share of support.

Wisconsin Pass-Through Demonstration Program

In 1997, Wisconsin implemented a welfare reform demonstration program to pass through more child support to families receiving cash assistance. Under Wisconsin's TANF program, only those recipients considered the least job-ready (and often the most disadvantaged) are eligible for cash assistance. A random assignment experiment compared two groups of cash assistance recipients: those who received a 100 percent pass-through of monthly support payments, and those who received a partial pass-through. In both groups, the passed through support was disregarded in determining welfare benefits. The state continued to retain arrears collections.⁷

Wisconsin researchers found that when 100 percent of the current support is passed through to families, non-custodial parents are more likely to pay support. This was especially true for parents who were new to the welfare system and had not paid under the former rules. It also was true for parents who paid support on a regular basis. In addition, more generous pass-through policies appear to increase the speed of paternity establishment and to decrease the likelihood that non-custodial parents will work in the underground economy. Non-experimental analyses reinforce these conclusions. The researchers

found that custodial parents took a more active interest in their case and agency staff interacted more positively with parents.

The Wisconsin findings also hint at the possibility that family well-being may improve when child support is paid regularly and passed through to families. There are some indications of improved child health and educational outcomes, as well as increased maternal satisfaction with child care arrangements. In addition, there is some evidence in cases with regular support payments of reduced levels of severe conflict between the parents.

Just as striking, researchers found no significant difference in overall government costs. More support paid by non-custodial parents and reduced welfare use by custodial parents offset lost state revenue. The research did not account for savings resulting from a simplified administrative system.

Should Child Support Be Used as a Cost Recovery Mechanism?

The child support program was created in 1974 with a dual purpose: to reimburse federal and state governments for public assistance costs, and to avoid future public costs by helping families remain self-sufficient. However, the cost avoidance purpose quickly took a backseat to the cost recovery purpose. States implemented the program

primarily as a welfare cost reimbursement mechanism.

The distribution changes in the 1996 welfare reform law were intended to expand the rights of former welfare families to unpaid support and to increase the amount of support paid to those families. The "families first" rules (as the 1996 assignment and distribution provisions were called) elevated the priority of the family's claim to support after leaving welfare. The new rules required states to pay more collected support to former TANF families. However, to help pay for expanded distribution to former TANF families, Congress eliminated the \$50 federal pass-through to current TANF families. In addition, a last-minute political compromise led to the special rules relating to IRS tax offset collections, allowing states to keep all support collected from federal tax refunds.

Distribution rules reflected a basic tradeoff between helping families become self-sufficient and maintaining a source of state revenue. However, the political efforts to "split the baby"—to pay more money to former TANF families, yet continue to recover government costs—has created a level of complexity and inequity that has proven difficult to administer and almost impossible for parents to understand. A number of federal and state administrators cite problems with automating complicated rules as a contributing cause of

computer system delays and delayed payments to families.⁸

In the final analysis, using child support to recover welfare costs was the wrong turn for the child support program. The program's ability to generate state revenues has been highly popular with lawmakers. However, the belief that the child support program should be a money-maker for states, rather than a program to help families, led to chronic under-investment in and under-performance of the program. In many states, the child support program was expected to make a profit. Revenue generation dictated program priorities, not performance. That dynamic, in turn, undercut the program's political visibility. Cost recovery policies have weakened its standing as a "helping program" within the state human services bureaucracy and constrained political support from advocacy groups.

Cost recovery policies also have reduced the willing participation of low-income parents in the program. A growing body of research about low-income fathers has reinforced the view that distribution rules interfere with the relationships between parents and their children and create unrealistic expectations about the financial ability of low-income fathers to repay welfare benefits.⁹ Workforce programs have had trouble convincing some unemployed parents to look for a regular job

and pay child support, because the parents know that the child support would be kept by the government and would not benefit their children. Efforts to circumvent the formal child support system through underground employment and under-the-table payments have meant less stable support for children over the long haul.

From Welfare Cost Recovery to Public Cost Avoidance

The paradigm of the child support program is shifting from welfare cost recovery to family support. A consensus has emerged that takes the rationale of the child support program almost 180 degrees from its starting point in the 1970s. As the strategic plan by the federal Office of Child Support Enforcement announces: "Child support is no longer primarily a welfare reimbursement, revenue-producing device for the Federal and State Governments; it is a family-first program, intended to ensure families' self-sufficiency by making child support a more reliable source of income."¹⁰ There is broad support among federal legislators, states, and advocates for reforming child support distribution policies. Federal TANF reauthorization legislation pending in Congress includes expanded options for states to dismantle cost recovery policies and pay the money to children.¹¹

But if the child support program should no longer be in the business of welfare cost recovery, what is the public purpose of the child support program? Proponents of distribution reform point to the other reason why Congress enacted the child support program: avoidance of public assistance costs.

Simply put, families who receive their child support need less public support. A study by the Urban Institute found that the child support program pays for itself by directly decreasing the direct budgetary outlays of other public assistance programs such as TANF, Medicaid, Food Stamps, and Supplemental Security Income.¹² Researchers at the University of Michigan have concluded that at least one-fourth of the welfare caseload decline between 1994 and 1996 may have been attributable to child support enforcement.¹³

Moreover, there is increasing evidence that reliable child support results in broader social benefits to families and society. Almost two-thirds of current and former TANF families with child support receive steady payments.¹⁴ Custodial parents who receive steady child support payments are more likely to find work more quickly and to hold jobs longer than those who do not.¹⁵ Receipt of child support is especially important to help families stabilize their incomes after leaving welfare.¹⁶ Regular child support appears to have a positive effect on children's

achievement in school and has a greater impact on children dollar for dollar than other types of income.¹⁷ There also is evidence that strengthened child support enforcement reduces divorce rates and deters non-marital births.¹⁸

Conclusion

Fully implementing distribution reforms and eliminating welfare cost-recovery from the child support program has the potential to boost the income of millions of low-income children. More than \$2 billion per year is currently withheld by the government to reimburse welfare costs. This money could be going to families. Moreover, the evidence suggests that more non-custodial parents would pay child support if they knew the money benefited their children. While there are a number of reforms that could be made to increase the reliability of child support reaching low-income children, distribution reform is a key one.

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ABOUT CLASP

The Center for Law and Social Policy (CLASP), a national nonprofit organization founded in 1968, conducts research, legal and policy analysis, technical assistance, and advocacy related to economic security for low-income families with children.

CLASP advocates reorienting the child support program into an income support program by providing tailored services to both parents and integrating child support services into the welfare-to-work agenda. This reframing includes a focus on improving program performance; eliminating welfare cost recovery as a program function; expanding family distribution;

setting realistic child support orders; managing arrears; expanding health care coverage through the child support program; and creating case management and referral mechanisms for mothers and fathers. CLASP thanks the Annie E. Casey Foundation for funding this policy brief.

CLASP POLICY BRIEF

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