

FAMILY INDEPENDENCE PROGRAM ELIGIBILITY

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Senate Bill 1386 (S-2 as amended, as passed by the House)

Sponsor: Sen. Bruce Caswell

House Committee: Appropriations

Senate Committee: Appropriations

Complete to 12-14-12

A SUMMARY OF SENATE BILL 1386 AS PASSED BY THE HOUSE 12-13-12

Senate Bill 1386 would amend Section 57a of the Social Welfare Act (MCL 400.57a) to prohibit the Department of Human Services (DHS) from providing Family Independence Program (FIP) assistance to any program group that includes an adult who has received assistance under any state program funded with Temporary Assistance for Needy Families (TANF) for more than 60 months, whether consecutive or not, after October 1, 1996.

The bill specifies that the 60-month provision would not apply to a FIP program group that includes an adult who is both exempt from participation in the Jobs, Education and Training (JET) program under Section 57f(3) or (4)(b), (e), or (f) and was exempt from participation in the JET program under Section 57f(3) or (4)(b), (e), or (f) on the effective date of this bill.

Persons exempt from the JET program and the 60-month provision include: a child under 18; a disabled recipient; a recipient 65 or older; a recipient of federal Supplemental Security Income (SSI) or federal disability insurance (RSDI); a recipient with a history of domestic violence; and a caretaker of a disable spouse or child.

Assistance is defined in federal regulations at 45 CFR 260.31 and would include FIP and transportation and child care provided to families who are not employed.

The bill would also specify that FIP is a temporary program and not an entitlement.

BACKGROUND:

Effective October 1, 2011 Public Acts 131 and 132 of 2011 revised the state's 48-month lifetime limit on FIP by removing the sunset provision, altering when months do or do not count (also known as "clock stoppers") toward the state 48-month lifetime limit, and eliminating the option for a FIP case to apply for a 12 month extension for FIP. The state 48-month time limit began October 1, 2007, meaning that the months an adult received FIP prior to October 1, 2007 do not count toward the state's 48-month lifetime limit.

Also beginning October 1, 2011, DHS amended its TANF State Plan to remove the hardship exceptions to the federal 60-month lifetime limit for cash assistance.¹ The federal 60-month time limit began October 1, 1996. Prior to October 1, 2011 DHS provided hardship exceptions for any month that:

- a) Is not countable toward the state time limit; or
- b) Qualifies as an extension month for purposes of state time limits; or
- c) The family resides in a county that meets Food and Nutrition Services Time Limited Food Stamps waiver criteria.

11,162 FIP cases were closed in October 2011, with 685 (6%) closed as a result of the changes to state law and 10,477 (94%) closed as a result of the DHS program policy changes. These 10,477 FIP cases would have remained eligible for FIP had the state's TANF State Plan not been amended.

On October 28, 2011, the Center for Civil Justice, on behalf of 3 FIP recipients and other similarly situated individuals, filed a lawsuit in the Genesee County Circuit Court challenging DHS's program policy revisions to the federal 60-month lifetime limit. The Center for Civil Justice argued that the DHS time limit policy revisions were in conflict with the 48-month lifetime limit established by the Legislature in the Social Welfare Act. On March 27, 2012 the Genesee County Circuit Court ruled in favor of the plaintiffs and ordered DHS to allow those cases to reapply. 9,207 cases did reapply, and of those, 5,667 applications were approved. In addition, 3,648 FIP cases were allowed to stay on the FIP rolls that would have lost their FIP eligibility had the court injunction not been ordered. The Legislature approved a \$30 million supplemental appropriation in FY 2011-12 to pay for these cases.

On June 26, 2012, the Michigan Court of Appeals ruled that DHS did have the authority to revise the state's hardship exceptions for the federal 60-month lifetime limit. However, the Court found that DHS failed to follow the requirements for promulgating rules under the Administrative Procedures Act. Both DHS and the Center for Civil Justice appealed this ruling to the State Supreme Court. The State Supreme Court heard oral arguments on November 13, 2012 but has not issued a ruling yet. Until a ruling from the State Supreme Court is issued, the 9,300 FIP cases are permitted to stay on the FIP rolls (so long as they meet the other FIP eligibility requirements).

The intent of this bill appears to be to provide DHS with legislative authority to implement DHS's changes to the federal 60-month lifetime limit. However, the bill imposes the 60-month federal time limit on groups with an adult that has received "assistance" under any state program funded with TANF for more than 60 months. This could be interpreted more broadly than simply FIP cash assistance.

¹ The federal 60-month time limit does not apply to FIP cases funded with state funds that are not claimed and TANF Maintenance of Effort (MOE). In general, the state-funded FIP cases are 2 parent households and disabled persons.

FISCAL IMPACT:

Passage of Senate Bill 1386 would have an indeterminate fiscal impact to the state and no fiscal impact to local units of government, as the state fiscal impact would depend on the eventual ruling by the State Supreme Court. The bill would prevent future state costs from higher FIP caseloads than forecasted due to the Circuit Court decision. The bill would require DHS to immediately close 8,300 of the 9,300 FIP cases permitted to stay on the FIP rolls at an average cost per month of \$4.1 million. The exceptions included in Senate Bill 1386 would permit 1,000 cases to stay on the FIP rolls.

It is important to note that recipients with a history of domestic violence and caretakers of a disable spouse or child exempt under section 57f(4)(b), (e), or (f) may still have their FIP benefits terminated under the state 48-month lifetime limit, because section 57f(4) provides DHS with the option to either exempt or not exempt those cases from the JET program. If DHS chooses not to exempt those cases from the JET program, then those months count toward the state 48-month lifetime limit. Current DHS policy (BEM 230A and 234) does exempt those cases from the JET program and the state time limit.

The final fiscal impact of the bill would depend upon the eventual decision of the State Supreme Court, which could rule 3 different ways. First, the Supreme Court could rule in favor of DHS, but the date of the ruling is uncertain. Without this bill, if the ruling is issued in a month the fiscal impact to the state would be \$4.1 million, and if the ruling is issued in three months the fiscal impact to the state would be \$12.2 million.

Second, the State Supreme Court could rule that DHS has the authority to revise the federal 60-month lifetime limit but orders DHS to follow the Administrative Procedures Act to implement the 60-month federal time limit. The closure of these FIP cases could be delayed even longer while the policy goes through the rulemaking process. An additional three months could cost the state \$12.2 million or the rulemaking process could last through the end of the fiscal year costing the state \$36.7 million.

Third, without this bill, the State Supreme Court could rule in favor of the plaintiffs that DHS lacked legislative authority to impose the federal time limits, allowing the 8,300 FIP cases to stay on the FIP rolls through the end of the fiscal year costing \$36.7 million. Some or most of these cases would also be eligible to receive FIP assistance during FY 2013-14 and beyond. The number of FIP cases receiving more than 60-months of TANF funded FIP assistance would gradually decline as they would still be subject to the state 48-month lifetime limit.

In addition to caseload changes, there may also be one-time and ongoing administrative costs to track and identify the cohort of FIP cases that are eligible for the hardship exceptions to the 60-month time limit and to track the FIP cases that are not eligible for these hardship exceptions.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.