

**TANF UPDATE:
FAIM CASELOAD AND COMMITTEE
OPTIONS REGARDING
HB 273**

Prepared for the
Legislative Finance Committee
by

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BACKGROUND

During its October meeting, the Legislative Finance Committee (LFC) received a report from the Department of Public Health and Human Services (DPHHS) on spending of the Temporary Assistance for Needy Families (TANF) block grant. HB 2 requires that DPHHS report at every meeting of the LFC: 1) the actual amount of federal TANF funds expended in the current biennium; 2) the actual amount of TANF block grant maintenance of effort (MOE) funds expended in the current biennium; 3) the balance of previous fiscal years' TANF block grant funds that remain unexpended; and 4) the balance of the current fiscal year federal TANF block grant funds that remain unexpended.

According to the October report to the LFC, DPHHS is projecting a deficit in federal TANF funds of \$9.2 million for the biennium. DPHHS presented the department's plan to proportionally reduce spending in Families Achieving Independence in Montana (FAIM) Phase II R line items, in accordance with HB 2, so that TANF spending does not exceed the available federal funds. DPHHS plans to reduce spending for each TANF FAIM Phase II R item by approximately 35 percent.

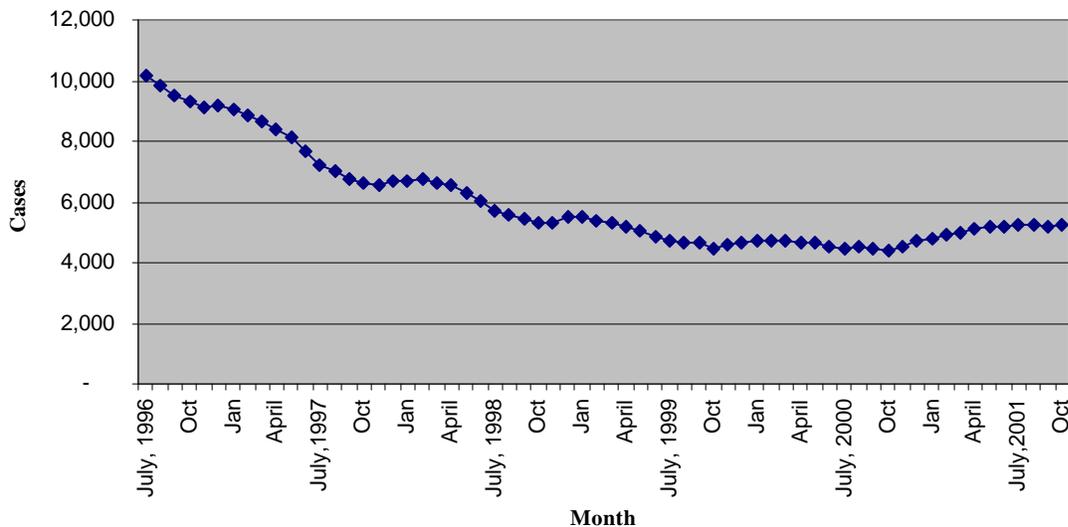
Legislative staff advised the LFC that the proposed spending reduction plan may not comply with the requirements of HB 273 passed by the 2001 Legislature. HB 273 requires that \$3.4 million of TANF funds be transferred to the affordable housing revolving loan account. The LFC requested an opinion on this issue from the Director of Legal Services, Greg Petesch, and directed that this item be placed on the agenda for the next LFC meeting.

CASELOAD

DPHHS staff has indicated that the change in TANF spending plans is necessary because the FAIM caseload has increased. Because cash assistance expenditures exceeded the anticipated level in fiscal 2001 and are projected to be greater than the budgeted level in fiscal 2002 and 2003, DPHHS is projecting that there will not be adequate TANF funds available to support all of the programs and projects funded in the 2003 biennium budget. As stated, DPHHS is projecting that this shortfall will be \$9.2 million.

Exhibit 1 illustrates the FAIM caseload for the past six years during welfare reform. As illustrated in exhibit 1, FAIM caseloads decreased from fiscal 1997 until the fall of 2000. Caseloads began increasing during the fall 2000 and have continued to increase since that time.

Exhibit 1
 FAIM Caseload
 July 1996 - October 2001



Several policy decisions that impact FAIM caseload were accepted by the 2001 Legislature. Cash assistance expenditures were projected to increase in the 2003 biennium due to changes in: 1) sanction policy; 2) the community service program; and, 3) caretaker relative grants. Changes to the sanction policy have not been implemented. Changes in the caretaker relative grant were effective February 2001 and changes in the community service program were effective July 1, 2001. LFD staff requested information regarding the costs of these policy changes. DPHHS staff indicated that the costs of these items are not separated from other cash assistance costs and currently only anecdotal information is available regarding the impact of these policy changes on caseload. Because information regarding the costs and caseload changes related to these policy changes is not available, it is not possible to determine what portion of the caseload increase is attributable policy changes versus the portion of the caseload increase that is attributable to other factors.

Given that policy changes have occurred and that the events of September 11th have impacted the economy, it is difficult to predict future cash assistance caseloads and whether they will increase, decrease or stabilize. The DPHHS projection appears to be based upon annualization of the costs incurred during the first quarter of fiscal year 2002, indicating that the department's costs estimate anticipates a leveling off of the caseload at the average for the months of July, August, September and October.

The October caseload was the largest caseload experienced since March of 1999. Typically cash assistance caseloads increase slightly during the winter months. If the fiscal 2002 caseload for the remainder of the year follows the trend and is the same as the fiscal 1999 caseload was for the November through June timeframe, cash assistance costs would probably exceed the DPHHS projection by approximately \$550,000 annually. If

caseload expenditures stabilize at the level equal to the average caseload for the past twelve months, estimated cash assistance expenditures would be approximately \$300,000 less than the DPHHS projection. Given the difficulty in predicting caseloads, it is probable that further adjustments in TANF spending will be necessary during the 2003 biennium.

LEGAL OPINION SUMMARY

The LFC, in October, posed two questions to legislative legal counsel. First, can the funding in item 11 FAIM II R – Low-income housing, be proportionally reduced as allowed in HB 2 or do requirements in HB 273 take precedence?

In summary, legislative legal counsel states that: “Section 17-8-103(2), MCA, provides that a condition or limitation in an appropriation act may not amend any other statute”. And, that “this provision is intended to comply with the requirement in Article V, Section 11(4) of the Montana Constitution providing that a general appropriation bill shall contain only appropriations for the ordinary expenses of state government”. Furthermore, with regard to the question of timing of the transfer to the low-income housing fund, legislative legal counsel concludes that the fund transfer in HB 273 must occur during the biennium beginning July 1, 2001.¹

The second question posed to legislative legal counsel requests guidance on actions the LFC could take if it wishes to require compliance with HB 2 or other laws. In summary, legislative legal counsel indicates the LFC has three possible courses of action:

1. The power of persuasion. The LFC could recommend to the Executive Branch that actions taken comply with law. If an Executive Branch officer refused to comply with the law, the legislature could commence impeachment proceedings pursuant to Title 5, chapter 5, part 4 MCA.
2. Introduce legislation directing a specific result. Because the legislature convenes and adjourns prior to the end of the biennium for which funds were appropriated by the previous legislature, it is possible for the succeeding legislature to modify appropriations made by the previous legislature.
3. Initiate legal proceedings. The legislature could initiate legal proceedings to either compel performance or to halt improper performance of an action.²

¹ October 17, 2001 correspondence from Greg Petesch, Legal Services Director, Montana Legislative Branch to Clayton Shenck, Legislative Fiscal Analyst.

² *ibid*

Options for LFC Consideration

With regard to the fund transfer to the low-income housing account, the LFC has several options that could be pursued. Three options are outlined below.

Option 1: Request an Attorney General's opinion regarding this issue (including the issue of when the transfer must occur).

The LFC could ask that an Attorney General's opinion be requested. If this option is chosen, the LFC may wish to defer further action on this issue until the Attorney General's opinion is received.

Option 2: Recommend to the Executive Branch that their actions comply with the requirements of HB 273 (per legislative legal counsel's opinion) and transfer \$3.4 million of TANF funds to the low-income housing account this biennium.

The Executive Branch could accept or reject the LFC recommendation. If the Executive Branch did not accept the LFC recommendation, the LFC could consider taking further action against an Executive Branch officer for failure to comply with law (as outlined by legislative legal counsel in his legal opinion).

Option 3: Request a committee bill for consideration by the 2003 Legislature that amends statute and reduces the amount of the transfer to the low-income housing account provided in HB 273 passed by the 2001 Legislature.

The 2003 Legislature could pass or defeat a bill of this nature. Pursuing this avenue presents risk for the Executive Branch. In the event a bill to reduce the amount of the transfer was defeated by the 2003 Legislature, the Executive Branch would have a short time to comply with statute and complete the transfer of funds.

To mitigate this risk, the Executive Branch could take a conservative approach to expending TANF funds and set aside a reserve to be expended in the event that it is necessary to comply with statute as it currently exists. The maintenance of a TANF reserve is not consistent with the action taken by the 2001 Legislature. The 2001 Legislature determined that it did not wish to maintain a reserve of TANF funds due to the potential risk of federal funding reductions if TANF funds remain unexpended when Congress reauthorizes the TANF grant.

Option 4: Take no action.

The LFC could choose to take no action. The department has indicated that the Office of Budget and Program Planning has approved the plan for proportional reduction of all items in FAIM II R and that they are implementing these reductions.³ If no action is

³ A budget change document decreasing FAIM II R appropriations and increasing the FAIM Benefits appropriations was completed by OBPP on November 9, 2001.

undertaken by the LFC, this action would then stand unless another legislative committee, legislator or interested party pursues action.

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