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Affirmative Options Coalition

555 Park St., Suite 420, St. Paul, MN 55103
(651) 292-1568 • www.affirmativeoptions.org

Promoting *affirmative options* for low-income Minnesotans

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By BH Deputy

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TO: Special Master Blatz

July 1, 2011

Clarifying the interpretation of Judge Gearin's order regarding the Minnesota Family Investment Program and the Diversionary Work Program

Our Coalition interprets Judge Gearin's decision in regards to the state's welfare-to-work programs, Minnesota Family Investment Program (MFIP) and the Diversionary Work Program (DWP), to mean that all components of those federally funded programs should continue during a shut down. The Governor's Administration has adopted a narrower interpretation.

At issue are the cash assistance programs the state of Minnesota operates with the federal Temporary Assistance to Needy Families (TANF) block grant.

The Administration has agreed that benefit payments to families who rely on MFIP and DWP for income support will continue. But the Administration has notified Employment Services Providers that "funding for the [MFIP] Consolidated Fund has not been deemed critical." The MFIP Consolidated Fund - which includes federal TANF funds - funds core elements of the welfare to work program, including employment services, the state's share of county eligibility worker salaries, county operations for the Diversionary Work Program; and emergency assistance to families at risk of homelessness or homeless and seeking stable housing.

The Minnesota Family Investment Program and the Diversionary Work Program are conditional transfers of assistance: the transfers come with work obligations. The intent of the federal TANF program is a welfare-to-work program - the state cannot sever the assistance payments from the participation requirements and the services that make that participation possible.

About 40,000 families currently rely on MFIP and DWP and are subject to lifelong time limits for that assistance: in many, many cases the lack of employment services will set these families back in their efforts to exit from the program. It is through an employment counselor that parents receive transportation assistance or referrals for treatment or services, for instance. Parents who lose jobs or have to abandon education or treatment programs are likely to be set back many months - even if the shut down itself is relatively short. That is because even a few days missed on the job or in the classroom are enough to warrant termination.

For example, Katharine Feig is currently in her last semester at Minneapolis Community and Technical College, finishing up two classes needed to graduate with her A.A.S. degree. Her semester ends on 7/25/11. She lives in Bloomington and travels downtown to attend class. She relies on assistance from her employment services agency with gas cards in order to be able to get to and from class. She did not qualify for any financial aid this semester and has no income other than her \$437 MFIP cash per month. Without that assistance, it is likely she will miss several classes and therefore may not be able to graduate.

Valerie Raiter in Mille Lacs County has to travel 84 miles a day, five days a week, round trip for the Vista Volunteer job she holds to meet her work requirements. Her travel is not at all atypical of the sort of trips parents in rural Minnesota have to make in order to meet their work requirements. Through her employment counselor she receives transportation assistance to cover her \$180 a month costs.

We think Judge Gearin's decision was to keep not only the assistance payments but the full program in operation during a shut down. We read her decision to rest on her interpretation of the role of the Supremacy Clause in the U.S. Constitution and how that clause affects the State's decision about federally-funded services during a shut down.

According to Judge Gearin: (*Italics are ours.*)

- paragraph 24, page 7 The State of Minnesota has entered into numerous agreements with the United States Government which require the state to make payments to individuals or local government units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2011, the State will violate the Supremacy Clause of the U.S. Constitution. These agreements and obligations involve, but are not limited to, *the administration* and payment of medical assistance, general assistance¹, and a variety of other programs designed to insure the health, safety and welfare of Minnesota citizens."
- Paragraph 25, pages 7-8 Examples of federal programs referenced in paragraph 17 include the following: the Supplemental Nutrition Assistance Program (referred to herein as the Food Stamp program); the *Temporary Assistance to Needy Families program* . . . Should the State fail to fulfill its *numerous responsibilities* under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. . . The Supremacy Clause of the United States Constitution requires the State of Minnesota to fulfill these agreements with the United States government requiring the state to make payments to individuals or local units of government . . . *The duty to fulfill these agreements et cetèra constitute core functions for state government under the United States Constitution.*"
- Paragraph 26, page 8 "Budget impasses in the absence of state funding appropriations do not permit a state to forego its obligation to fund certain federal programs."
- Order 6, p. 17 "Minnesota Workforce Council Association's motion to intervene is denied as their position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor." The Minnesota Workforce Council's petition was very specifically about the MFIP Consolidated Fund and the need for its federal dollars to continue to flow through the state government to the local counties. Judge Gearin clearly then expected that the Governor and Attorney General's language about flow through federal dollars would cover this very specific request.
- Paragraph 28, page 9 In addition the court noted that it made "some minimal changes in the document submitted by the Governor". Among those changes are on numbered page 3 of Exhibit A. Each State department has a column of continued services listed below it. Under Human Services, Activities Recommended to Continue, Judge Gearin crossed out the following line: "Related vendor/provider payments will not continue" and initialed that change. MFIP is among the programs listed, immediately preceding that deleted line and clearly referenced by "related".

The sense that our responsibility as a state to meet federal requirements is also why, we believe, the courts added to the Governor's list MFIP child care assistance as a program that needed to continue because "not to do so would violate the supremacy clause of the United States Constitution." (paragraph 33, page 11) Without child care, parents cannot meet the work requirements. In other words: the state's TANF program *as whole* must continue.

Deborah Schlick
Executive Director
The Affirmative Options Coalition
deborah@affirmativeoptions.org
651-895-4778 - cell phone; 651-292-1568 - office phone

¹ We believe the reference to General Assistance was an understandable error in a complicated division of state public assistance programs. General Assistance is a fully state-funded and governed public assistance program. Its continuation during the shut down is not in dispute. The Governor as recognized it as an essential service, presumably because of its role in meeting basic needs for vulnerable Minnesota citizens.