In the Supreme Court of the State of California

ANGIE CHRISTENSEN,

Plaintiff and Respondent,

v.

WILL LIGHTBOURNE, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES,

Defendants and Appellants.

Case No. S245395

SUPREME COURT
FILED
JUN 19 2018
Jorge Navarrete Clerk
Deputy

First Appellate District, Case No. A144254
San Francisco County Superior Court, Case No. CPF-12-512070
Honorable Ernest H. Goldsmith, Judge

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INTRODUCTION

Enacted in 1997, the California Work Opportunity and Responsibility to Kids Act (CalWORKs) provides cash assistance to needy families with minor children. The Legislature enacted CalWORKs as part of comprehensive welfare reform with a goal of simplifying how grants are calculated and promoting self-sufficiency through employment. The Legislature charged the Department of Social Services with implementing and administering CalWORKs.

In this case, Angie Christensen's family was found ineligible for CalWORKs aid because the family's income was too high. She challenged that determination, arguing that the Department must ignore income of her husband garnished to pay child support for his children living in other households. In making this argument, Christensen seeks to benefit from a prior Department policy, repealed two decades ago, that deducted any court-ordered child support obligations from the applicant's income for purposes of determining eligibility for and amount of aid. But that policy existed under the former Aid to Families with Dependent Children program that the Legislature replaced with CalWORKs. CalWORKs is a different program with different goals and incentives. Nothing in the text, legislative history, or purpose of CalWORKs requires the Department to exempt child support obligations from income. The Department's repeal of the former exemption was a reasonable response to the Legislature's reforms, which substantially increased a general exemption for earned income.

In addition, contrary to Christensen's argument, the Department's policy of calculating income, without deducting that portion garnished to pay child support obligations, did not result in counting income twice, in violation of Welfare and Institutions Code section 11005.5.

The Court of Appeal correctly determined that the Department's interpretation of CalWORKs—set out in an All County Letter issued over

20 years ago and reflected in its amended regulations—is entitled to great weight and is consistent with the statute. This Court should affirm.

BACKGROUND

I. WELFARE REFORM AND THE CALWORKS PROGRAM

The California Legislature enacted the CalWORKs program in 1997 in response to federal welfare reform. A year earlier, Congress eliminated the Aid to Families with Dependent Children program (AFDC) and replaced it with the Temporary Assistance for Needy Families program (TANF). Welfare reform fundamentally shifted the authority to shape welfare programs from the federal government to the States. (Pub.L. No. 104-193 (August 22, 1996) 110 Stat. 2105; 42 U.S.C. § 601 et seq.; CT 313-314 ¶¶ 5, 6.)

Under the former AFDC program, the federal government offered States unlimited matching funds contingent on the State's welfare program meeting detailed federal requirements. (See *Van Lare v. Hurley* (1975) 421 U.S. 338, 340.) Federal law dictated how States were to calculate an individual's income, and directed States to include or "disregard" specified sources of income in doing so. (Former 42 U.S.C. § 602 (1994).)

Congress enacted TANF "to increase the flexibility of states in operating a program designed to" meet certain goals, including "end[ing] the dependence of needy parents on government benefits by promoting job preparation, work, and marriage." (42 U.S.C. § 601(a)(1), (2).) Under the terms of the program, each participating State receives a block grant instead of federal matching funds. (42 U.S.C. § 603.) States now have considerably more discretion in establishing criteria for calculating income and deciding who will receive aid. (Compare 42 U.S.C. § 602 (2018) with former 42 U.S.C. § 602(a) (1994).)

The California Legislature established CalWORKs to implement this new federal welfare program. In 1997, "as part of a comprehensive review and overhaul" of the State's welfare system, the Legislature enacted AB 1542. (*Sneed v. Saenz* (2004) 120 Cal.App.4th 1220, 1231; CT 67-95.) Among its many reforms, AB 1542 established work-participation requirements, capped the total number of months a recipient may receive CalWORKs cash aid, and revised eligibility standards. (CT 68-70, 314 ¶ 7.) To further encourage employment, AB 1542 introduced a simplified methodology for calculating grants which allows applicants and recipients to exempt a larger percentage of their earned income in determining CalWORKs eligibility and aid amount. (§ 11451.5; CT 315, ¶10; *Sneed, supra*, 120 Cal.App.4th at pp. 1232, 1240.)[1]

II. DETERMINING ELIGIBILITY FOR CALWORKS

Eligibility determinations under CalWORKs are made by county welfare departments, following rules and regulations issued by the Department. (§§ 10554, 10600, 10800, 11209.) The Legislature has charged the Department with "supervis[ing] every phase of the administration of public social services." (§ 10600.) The Legislature also granted the Department broad authority to make binding rules and regulations to implement the statutes it administers, including CalWORKs. (§§ 10554, 11209.) The Department's formal regulations are adopted in compliance with the state Administrative Procedure Act, and are published in the agency's Manual of Policies and Procedures (MPP). (*Smith v. Los Angeles County Bd. of Supervisors* (2002) 104 Cal.App.4th 1104, 1109;

[1] All statutory citations are to the Welfare and Institutions Code, unless otherwise stated.

§ 10554.)[2] The Department also oversees the programs it administers through "All County Letters" directed to county welfare departments. (See, e.g., § 10606.2; Assem. Bill No. 1542 (1996-1997 Reg. Sess.) § 185, subd. (a); CT 320, 322 [All County Letter No. 97-59, pp. 1, 3].) The Legislature charged the Department with "implement[ting] [CalWORKs] through all county letter or similar instructions from the director." (Assem. Bill No. 1542 (1996-1997 Reg. Sess.) § 185, subd. (a).)

As part of the determination whether and to what extent an applicant is eligible for aid, the county welfare department compares the applicant family's income to the "maximum aid payment" defined by statute, which varies depending on the number of family members eligible for aid. (§ 11450.12, subd. (b); CT 317, ¶ 17.) If the family's income is equal to or less than the maximum aid payment, the family qualifies for aid. (*Ibid.*) Applicants determined to be eligible receive a cash grant equal to the difference between the family's income and the maximum aid payment. (CT 317, ¶ 17.)

Not all income counts in determining eligibility or the amount of aid. Because counties make aid determinations prospectively in six month increments, they may consider only that portion of an applicant's income that is "reasonably anticipated" for the upcoming period. (§§ 11265.2, 11450.12, subd. (b); CT 509-510 [MPP § 44-101(a), (c)]; CT 515 [MPP § 44-102.1].) Counties must then subtract from that amount any income deemed "exempt" by statute or regulation. (§ 11450.12, subd. (b); see also

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[2] The regulations pertaining to CalWORKs are publicly accessible on the Department of Social Services' Web site at <http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CalWORKs-CalFresh-Regulations/Eligibility-and-Assistance-Standards> [as of June 18, 2018].

§ 11451.5.)[3] The Welfare and Institutions Code and the Department's regulations set forth various income exemptions, discussed in more detail below. These exemptions are also referred to as income "disregards," and the terms are used interchangeably in this brief.

The CalWORKs statute defines income as "reasonably anticipated" if the county "is reasonably certain of the amount of income and that the income will be received during the semiannual reporting period." (§ 11265.1, subd. (b).) The Department's implementing regulations direct counties to consider only income that the county is "reasonably certain that the recipient will receive" during the six-month budgeting period. (CT 510 [MPP § 44-101(c)].)[4]

III. INCOME EXEMPTIONS UNDER CALWORKS

As discussed above, a primary purpose of welfare reform was to increase work incentives for welfare recipients in order to promote self-sufficiency. (§§ 11205, 11207; 42 U.S.C. § 601(a)(1)-(2).) Accordingly, the CalWORKs program seeks "to achieve the greatest possible reduction of dependency and to promote the rehabilitation of recipients." (§ 11207.)

CalWORKs encourages employment by treating as "exempt" a portion of an applicant-recipient's earned income in determining eligibility

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[3] Before 2002, counties recalculated grant amounts each month based on a past month's income. (See, e.g., Assem. Bill No. 444 (2001-2002 Reg. Sess.) p. 4 (hereinafter AB 444), attached as Exhibit B to Appellants' Court of Appeal Request for Judicial Notice.) Monthly reporting proved costly to administer, leading the Legislature to introduce a quarterly reporting system. (*Id.*, pp. 4, 21-24, 29-30; see also §§ 11265.1, 11265.2, 11265.3, 11450.12.) In 2011, the Legislature amended CalWORKs to provide for semi-annual reporting, starting in 2013. (§ 11265.2; MPP § 40-103.5, attached as Exhibit F to Appellants' Court of Appeal Request for Judicial Notice.)

[4] The Department's interpretation of "receive" is discussed further at Argument, Section II.B.1, *infra*.

or grant amount. (§ 11451.5; CT 331-333 [MPP § 44-113.2], CT 315-316 ¶¶ 11-13, CT 320-324 [All County Letter No. 97-59].) This allows individuals to earn more without causing their increased earnings to reduce their grant amount or render them ineligible for aid. Under the former AFDC program, a family could exempt from its gross monthly income only the first $30 and one-third of each additional dollar of earned income. (Former 42 U.S.C. § 602(a)(8)(A)(iv); CT 314-315 ¶ 9, 326-328.) CalWORKs increased the earned-income disregard to permit families to exempt the first $225 and one-half of each additional dollar of earned or disability-based income. (§ 11451.5.)[5] CalWORKs contains no exemptions for income that must immediately be paid out to cover debt, or for amounts that are garnished or withheld from family member paychecks.

Under the former AFDC program, a Department regulation required counties to exempt from the consideration of income any funds used to pay court-ordered child support. (CT 330.)[6] Two months after CalWORKs was enacted, the Department published an All County Letter providing counties with instructions for "implementing [CalWORKs'] new grant structure and aid payment provisions." (CT 320.) The Department concluded that CalWORKs "eliminat[ed]" five AFDC income exemptions, including the exemption for court-ordered child support, and "replace[d]" them with the

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[5] The Christensens' case provides an example. Bruce Christensen's gross monthly earned income was $600.17. (AR 15.) After applying the earned-income disregard, the county included only $187.59 of that income in determining his family's eligibility. (AR 15.)

[6] Former MPP § 44-113.9 provided: "Deduction shall be allowed for actual payments made in support of a child or spouse not in the home, paid pursuant to court order. In no instance shall the deduction allowed exceed the amount of the payment required by the court order." (CT 330.)

increased earned-income exemption. (CT 320, 322.)[7] Consistent with that understanding, the Department amended its regulations to remove the provision that had previously exempted income used to satisfy court-ordered child support obligations, effective July 1, 1998. (See CT 314-315 ¶¶ 9, 11; All County Letter No. 98-45; compare CT 330 [former MPP § 44-113.9] with CT 519-542 [MPP § 44-111 et seq., § 44-113 et seq.].)[8] In its Final Statement of Reasons, the Department explained that the AFDC income exemptions, including the prior child support disregard, "that were allowed previously under federal and state law have been replaced with [the $225 and one-half earned-income disregard]." (Appellants' Court of Appeal Request for Judicial Notice (hereinafter COA RJN), Exh. A, p. 10 [rulemaking file].) Since 1997, the Department has consistently interpreted CalWORKs as not including an exemption for child support payments.

IV. ASSIGNMENT OF CHILD SUPPORT RIGHTS UNDER CALWORKS

As a condition of receiving TANF funds, federal law requires that States operate a child support enforcement system meeting federal requirements. (42 U.S.C. § 654(4)-(5).) Under federal and state law,

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[7] The Department also repealed the previous $30 and one-third earned-income disregard, a work-expense disregard, a disregard for child care costs, and a disregard for support paid by "Non-[Assistance Unit] members to others not living in the home who are claimed as federal tax dependents." (CT 322.)

[8] The court below took judicial notice of All County Letter No. 98-45 on its own motion. (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1248, fn. 9.) The letter provides the effective date of the Department's regulations implementing CalWORKs. The court also granted the Department's unopposed request to take judicial notice of the rulemaking file, along with other documents attached to the Department's Request for Judicial Notice below. (See Order Granting Appellant's Request for Judicial Notice before the Court of Appeal (Sept. 28, 2015); *Christensen*, *supra*, 15 Cal.App.5th at p. 1248, fn. 10.)

CalWORKs applicants must assign their rights to any child support to the county in order to receive CalWORKs assistance, provided that the amount of child support does not exceed the amount of their CalWORKs grant. (§ 11477; see also 42 U.S.C. § 608(a)(3); CT 385 [MPP § 82-506.1]; CT 317-318 ¶¶ 20-21, 371-372.) An assignment of support rights to the county also constitutes an assignment to the State. (§ 11477, subd. (a)(1)(B).) State and federal law provide that child support rights assigned to the State constitute an obligation of the paying parent owed to the State in the amount specified in the court order. (§ 11477, subd. (a)(1)(B); 42 U.S.C. § 656(a); *In re Marriage of Shore* (1977) 71 Cal.App.3d 290, 296.) Where such assignment is made, the paying parent is obligated to make payments directly to the local child support agency. (§ 11457, subd. (a); Fam. Code, § 17402, subds. (a), (d).)

State law requires the local child support agency to pay to the CalWORKs recipient the first $50 of child support collected by the agency. (Fam. Code, §17504; CT 318 ¶ 21.) The State retains the remainder of the child support payment as a means of reimbursing the county, State, or federal government for the cost of providing CalWORKs benefits. (CT 318 ¶ 21; see also §§ 11487, subd. (a), 11487.1.) With a few narrow exceptions discussed in more detail below, neither the $50 payment to the family nor the amount retained by the State is considered income to the recipient family in determining eligibility for CalWORKs. (Fam. Code, § 17504; CT 318-319, ¶¶ 21-22; CT 530 [MPP §§ 44-111.47, 44-111.471].)

STATEMENT OF THE CASE

I. CHRISTENSEN'S APPLICATION FOR CALWORKS AID

Angie Christensen applied for CalWORKs benefits in 2010. (Administrative Record (AR) 3.) She lived with her husband, Bruce, her three children from a prior marriage, and the three children she and Bruce

have together. (*Ibid.*)[9] Bruce also has three children from prior relationships who live in other homes. (*Ibid.*) Court-ordered child support was garnished from his monthly wages and unemployment insurance benefits to support those children living in other homes. (*Ibid.*) At the time Christensen applied for aid, one of those children was receiving CalWORKs aid, one was not receiving CalWORKs aid, and one was an adult and no longer eligible for CalWORKs aid. (*Ibid.*) With respect to the adult child, the amount garnished from Bruce's income was for child support arrears. (*Ibid.*)

San Mateo County determined that, for purposes of calculating the maximum aid payment for Christensen's household, the family unit consisted of four persons: Christensen's three children from a prior marriage and Bruce. (AR 3.)[10] Christensen herself was ineligible for aid under CalWORKs because she already was receiving SSI benefits. (*Ibid*; see also § 11203, subd. (a).) Her three children with Bruce were ineligible for aid under the former "maximum family grant" statute, which provided that "the number of needy persons in the same family shall not be increased for any child born into a family that has received aid under this chapter

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[9] In its decision below, the Court of Appeal referred to Angie Christensen as "Christensen" and to her husband Bruce Christensen as "Bruce." (*Christensen, supra*, 15 Cal.App.5th at p. 1248 & fn.11.) This brief follows that convention, unless it could cause confusion.

[10] The CalWORKs statute and regulations use the term "assistance unit" or "AU," which is defined as a group of related persons living in the same home who have been determined eligible for CalWORKs and for whom cash aid has been authorized. (MPP § 80-301, attached as Exhibit F to COA RJN.) For purposes of this brief, the Department is using the non-technical term "household" synonymously with "assistance unit."

continuously for the 10 months prior to the birth of the child." (AR 3; former § 11450.04.)[11]

The county denied Christensen's application, concluding that the non-exempt income of her household exceeded the applicable maximum aid payment for a family of four. (AR 3-5.) In calculating her family's income, the county considered Bruce's income without deducting the sums garnished from his wages to fulfill his child support obligations. (AR 15.) Christensen contested the decision, claiming that the amount garnished from her husband's income for child support should not have been considered in determining eligibility because it was not "available" to her household. (AR 22-25.)

An administrative law judge agreed with Christensen that the garnished sums were not "available" to meet the needs of her family and therefore could not be considered as non-exempt income. (AR 7-9.) The Department's Director exercised his discretion and declined to adopt the ALJ's proposed decision. (AR 3-5.) Citing the Department's longstanding interpretation of CalWORKs—embodied in All County Letters and regulations—which require counties to calculate an applicant's income without exempting any funds garnished to pay child support, the Director

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[11] The Legislature repealed the maximum family grant statute in 2016, effective January 1, 2017. (Assem. Bill No. 1603 (2015-2016 Reg. Sess.) § 18 <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1603 [as of June 18, 2018].) Had it not been for that rule, Christensen's family would have qualified for CalWORKs aid whether or not Bruce's child support payments were considered income. In 2010, the Maximum Aid Payment threshold for a family of *seven* similar to the Christensens living in Region 1 (including San Mateo County), was $1,162. (All County Letter No. 09-20 (April 9, 2009) <http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2009/09-20.pdf> [as of June 18, 2018].) The Christensens' income for CalWORKs eligibility purposes, as calculated by the county, was $980, so they would have been eligible for aid. (AR 12.)

concluded that San Mateo County had properly denied Christensen's claim for benefits. (*Ibid.*)

II. PROCEEDINGS BELOW

Christensen filed a combined petition for writ of mandate under Code of Civil Procedure sections 1094.5 and 1085 and a complaint for declaratory relief in the San Francisco County Superior Court. (CT 5-27.) She alleged that the Department violated applicable statutes and regulations by failing to deduct that portion of Bruce's income that was garnished for child support in determining her household's income and eligibility for CalWORKs aid. (CT 6-14.)

The Superior Court held that the Department's position was contrary to its own definition of income in its regulations, and that its "interpretation of the governing scheme" was contrary to Welfare and Institutions Code section 11005.5. (CT 618:11-23.) It issued a writ of administrative mandate and declared that the Department's "policy to count court-ordered child support payments as available income of the CalWORKs applicants and recipients who pay the support is invalid." (CT 619:2-11.) However, it denied Christensen's claim for a writ of mandate under Code of Civil Procedure section 1085 because the statutory landscape was "unclear." (CT 618:24-28.) The Department appealed from the trial court's ruling granting declaratory relief and the writ of administrative mandate. (CT 628-630.) Christensen did not appeal from the denial of the section 1085 claim.

In a unanimous decision, the Court of Appeal reversed. It reviewed the administrative record, the relevant statutes and legislative history, and the Department's regulations and All County Letters. (*Christensen, supra*, 15 Cal.App.5th at pp. 1244-1263.) It concluded that "[s]ince the Legislature first adopted CalWORKs 20 years ago," the Department has taken the consistent position that "court-ordered child support counts as

income to the payor's family in determining the family's CalWORKs eligibility and aid amount." (*Id.* at p. 1263.) The court held reasonable the Department's conclusion that CalWORKs' increased earned-income exemption replaced many of the AFDC disregards, including the prior child support disregard that the Department had recognized by regulation. (*Id.* at p. 1262.) It agreed with the Department that "[t]he grant calculation would not be more simplified," as intended by the Legislature, "if new exemptions were adopted yet all the prior deductions remained in effect." (*Ibid.*)

The Court of Appeal also rejected Christensen's argument that treating amounts garnished for child support as income violates the statutory directive to consider only "reasonably anticipated" income. It held that the Department's "reasoned interpretation" of "available" income was entitled to deference. (*Christensen, supra*, 15 Cal.App.5th at pp. 1254-1258 [relying on section 11265.2, subd. (b); MPP § 44-101(a); MPP § 44-102.1].) It similarly rejected Christensen's argument that treating funds garnished for child support as income violates the principle of "actual availability." (*Id.* at pp. 1255-1257.)

The Court also determined that the Department's policy did not violate Welfare and Institutions Code section 11005.5, which prohibits considering aid granted to a recipient or recipient group and the income or resources of that recipient or recipient group in determining eligibility for or the amount of aid of any other recipient or recipient group. (*Christensen, supra*, 15 Cal.App.5th at pp. 1258-1261.)

This Court granted Christensen's petition for review.

STANDARD OF REVIEW

This case presents two issues: (1) whether the Department must exempt garnished child support in calculating the payor's income under CalWORKs; and (2) whether the Department's policy of not deducting child support payments from the payor's income violates Welfare and Institutions Code section 11005.5 under the facts of this case. Both are questions of law that this Court reviews de novo. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12.) In construing the relevant statutes, this Court assigns weight to the construction of a statute by the agency officials charged with its administration. (*Id.* at pp. 9, 11, fn. 4.) As discussed below, the Department's longstanding interpretation is entitled to great weight in light of its responsibilities and expertise.

SUMMARY OF ARGUMENT

To be eligible for CalWORKs aid, a family's income must fall below thresholds set by statute. To calculate family income for that purpose, the Legislature directed the Department to consider the family's combined gross income, minus amounts deemed exempt by statute or regulation.

Under the CalWORKs statutes, income garnished to satisfy child support obligations is not deemed exempt and is therefore considered by the Department in determining eligibility and aid amount. Christensen argues that the Department is required to exempt wages and unemployment benefits garnished for child support. But no statute or regulation requires such an exemption. There are many debts and obligations that, as a practical matter, reduce the income available to an applying family, but the program as set out in statute does not turn on concepts of "actual availability." Although a former AFDC regulation exempted income used to pay court-ordered child support, the Department reasonably took a fresh

look at income exemptions when the Legislature replaced AFDC with CalWORKs, and it concluded that CalWORKs' expanded earned-income disregard replaced many of the AFDC disregards, including the disregard for income used to satisfy child support obligations. The Legislature has since ratified the Department's conclusion. In the past two decades, the Legislature has made numerous amendments to CalWORKs, but has not restored the child support exemption. And although the Legislature considered proposed language in one of those amendments that would have added a child support exemption, that language was removed from the bill before the amendment became law. The Department's conclusion is fully consistent with the purpose of CalWORKs and general principles of welfare benefits law.

Christensen also argues that the Department violated section 11005.5 by allegedly "double counting" monies garnished from Bruce's income both as income to her family and as income to Bruce's child residing in the home of the custodial parent and receiving CalWORKs aid. Section 11005.5 prohibits considering the "aid . . . and income or resources" of one recipient or recipient group in determining eligibility for or amount of aid of another recipient or recipient group. (§ 11005.5.)

Christensen's argument rests on the faulty premise that wages and other income garnished for child support are transformed into whatever that income is ultimately used for—a single "child support payment," which can be counted as "income" only once as between the paying parent's household and the receiving household. This misunderstands the law. As to the party paying support, here Bruce Christensen, his income consists of wages and unemployment insurance benefits, and his child support obligations are simply one of his expenditures. Section 11005.5 does not prohibit the Department's policy at issue here.

In addition, the case law and history suggest that the primary purpose of section 11005.5 is to prevent treating one recipient or recipient group's *aid* as the income of another person or group in determining eligibility for aid. Here, CalWORKs benefits are the only government aid at issue, and the Department did not treat any aid received by a non-member of the Christensen household (specifically, Bruce's child who is living with the other parent and who is receiving CalWORKs aid) as the Christensens' income in determining their eligibility for CalWORKs aid.

In any event, even under Christensen's incorrect interpretation of section 11005.5, there was no "double counting" under the facts of this case, because Bruce's noncustodial child on CalWORKs aid was required to assign the right to child support to the State as a condition of receiving aid. Thus, that child's family did not receive the payments made by Bruce, and those payments were not treated as that family's income in determining its eligibility for or amount of aid.

Christensen speculates that even if section 11005.5 was not violated under the facts of her case, the Department may have counted income twice in certain other CalWORKs cases. She bases her argument on two narrow exceptions to the general rule requiring assignment of child support payments to the county, neither of which was applicable to her case. The argument fails due to its faulty legal premise, and, in any event, Christensen has presented no evidence that alleged "double counting" has occurred in any other case. The Court should decline to issue declaratory relief based on a purely hypothetical set of facts.

ARGUMENT

I. THE DEPARTMENT'S LONGSTANDING INTERPRETATION OF CALWORKS AS NOT EXEMPTING AMOUNTS GARNISHED FOR CHILD SUPPORT IN CALCULATING THE PAYOR'S INCOME IS ENTITLED TO GREAT WEIGHT

The amount of weight a court assigns an agency's interpretation of law is situational, turning on "factors relating to the agency's technical knowledge and expertise, which tend to suggest the agency has a comparative interpretive advantage over a court; and factors relating to the care with which the interpretation was promulgated, which tend to suggest the agency's interpretation is likely to be correct." (*Association of California Insurance Companies v. Jones* (2017) 2 Cal.5th 376, 390, citing *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12.)

The Department has consistently maintained that, under CalWORKs, counties must calculate an applicant's income without deducting income garnished to pay child support. The Department first explained this position in 1997, two months after CalWORKs was enacted, in an All County Letter providing counties with guidance on "implementing the new grant structure and payment provisions of [CalWORKs]." (CT 320 [All County Letter No. 97-59, p. 1]).) And when the Department formally amended its regulations to implement CalWORKs in 1998, it repealed the AFDC child support exemption. (CT 314-315 ¶ 9; compare CT 330 [former MPP § 44-113.9] with CT 519-533 [MPP § 44-111 et seq.] and CT 534-542 [MPP § 44-113 et seq.].) In both the All County Letter and the rulemaking file for the regulations implementing CalWORKs, the Department provided the same rationale: the CalWORKs program "eliminate[d] the existing income disregards," including the child support disregard, and "replac[ed] them with" the expanded earned-income

disregard. [CT 322 [All County Letter No. 97-59, p. 3]; see COA RJN Exh. A, p. 38 [rulemaking file for regulations implementing CalWORKs].)

The All County Letter and regulations implementing CalWORKs reflect the Department's formal interpretation of CalWORKs and bind county welfare departments. (§§ 10553, subd. (e), 10554, 10600, 10800, 11209.) All County Letters come from the "authoritative legal and policymaking levels of the agency." (*Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 436-437 [assigning "great weight" to the Department's interpretation of an adoption statute, set forth in an All County Letter].) The regulations repealing the former child support disregard likewise reflect the authoritative position of the agency regarding the proper treatment of child support garnishments under CalWORKs, and were promulgated after public notice and comment. (See COA RJN, Exh. A.) Where, as here, "the Legislature has delegated to an administrative agency the responsibility to implement a statutory scheme through rules and regulations, the courts will interfere only where the agency has clearly overstepped its statutory authority or violated a constitutional mandate." (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 356.) As the agency most familiar with the AFDC and CalWORKs programs, the Department's "long-standing" and "consistently maintained" policy is entitled to "great weight," and should not be disturbed unless it is "clearly erroneous." (See *Yamaha, supra*, 19 Cal.4th at pp. 7, 12-13; *Larkin v. Workers' Compensation Appeals Board* (2015) 62 Cal.4th 152, 158.) As explained below, it is not.

II. THE DEPARTMENT'S POLICY IS CONSISTENT WITH THE TEXT, STATUTORY HISTORY, AND POLICY OF CALWORKS

A. The Text of the CalWORKs Statutes Supports the Department's Policy

In construing statutes, a court's task is to ascertain and effectuate the Legislature's intended purpose. (*Carmack v. Reynolds* (2017) 2 Cal.5th 844, 849.) Courts begin with the statute's text, "giving the words their usual and ordinary meaning." (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) "If there is no ambiguity, then [courts] presume the lawmakers meant what they said, and the plain meaning of the language governs." (*Ibid.*)

Christensen argues that income garnished to satisfy child support obligations "are not, and never will be, 'the family's income' used to decide the CalWORKs grant amount in § 11450(a)." (Opening Brief on the Merits [hereinafter OB] 23.) She is mistaken.

Section 11451.5, the CalWORKs provision addressing "[f]amily income calculation" and "exemption amounts," instructs the Department to calculate the sum of the applicant family's "earned" and "unearned" income, before subtracting any "exempt" income. (§ 11451.5, subds. (a), (b).)[12] Section 11451.5 makes clear that for purposes of CalWORKs, all income is either "earned" or "unearned"—and therefore counted in calculating net non-exempt income—or "exempt as income." (§§ 11450, 11451.5, subds. (a), (b).)

The statutory scheme also makes clear that the term "income," used alone, means gross income. Section 11451.1 defines "earned income" as

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[12] The statute distinguishes between "disability-based unearned income" and all other "unearned income," but the distinction is not relevant here.

all "gross income received as wages" or "salary," among other sources. (§ 11451.5, subd. (b)(1).) "Disability-based unearned income" describes income from enumerated forms of disability benefits. (§ 11451.5, subd. (b)(2).) And "[u]nearned income" means "any income" not falling within the statutory definition of "earned" or "disability-based unearned" income. (§ 11451.5, subd. (b)(3).) This includes, for example, unemployment insurance benefits. Finally, section 11157, addressing the treatment of "lump sum payments," instructs that, subject to specific exceptions, "*all* lump-sum income received by the applicant or recipient shall be regarded as income in the month received." (§ 11157, italics added.) None of these provisions qualifies its respective definition based on how the CalWORKs applicant or recipient choses to or must *use or spend* his or her income. (See, e.g., § 11451.5, subd. (b).)

As these provisions illustrate, the Department does not, as Christensen claims, count Bruce's child support expenditures as her family's income; it counts as income Bruce's wages and unemployment insurance benefits, from which he pays child support. Under CalWORKs, these income streams count as "earned" and "unearned income," and are included in determining Christensen's eligibility for aid, unless deemed "exempt." (§§ 11450; 11451.5.) Here, no statute requires the Department to exempt income garnished to pay child support, and the surrounding statutory scheme does not suggest that an exemption should be implied. (OB 18.) Section 11451.5's provisions addressing "exemption amounts" require the Department to disregard the first $225 of earned or disability-based unearned income, plus one half of any additional earned income, but make no mention of an exemption for child support payments. (§ 11451.5, subd. (a).) And the Welfare and Institutions Code contains at least nine other

express income disregards applicable to CalWORKs and other aid programs, none of which exempts garnished child support.[13] These statutory disregards support the conclusion that the Legislature did not intend to exempt income garnished to pay child support. (See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 266 [applying the interpretative canon *expressio unius* in construing provisions of wage order promulgated by the Industrial Welfare Commission].)

For similar reasons, Christensen's comparison of CalWORKs to the Family Code's child support formula does not support, and in fact undermines her argument. (OB 20). The Family Code's child support formula relies on each parent's "net disposable income." (Fam. Code, §§ 4055, 4059.) For those purposes, courts start with the parent's "gross income" before subtracting not only "child or spousal support actually being paid by the parent pursuant to a court order," but also taxes, FICA withholdings, certain mandatory payroll deductions, and other job-related expenses. (*Id.* §§ 4055, 4059.) This shows that the Legislature knows how to exclude expenses and obligations from an income calculation where that is its intent. The Legislature charted a different course with CalWORKs, choosing to determine eligibility and grant amount without providing for any of the income deductions contained in Family Code section 4059.

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[13] These include a disregard for "income from college work-study programs" (§ 11157, subd. (b)(2)); income received too infrequently to be considered "reasonably anticipated" (§ 11157, subd. (b)(1)); academic or extracurricular awards or scholarships (§ 11157, subd. (b)(3)); income received under state benefits programs for the blind and disabled (§ 11008.1); income from certain student loans or grants to undergraduates (§ 11008.10); income of certain children or wards of the juvenile court who participate in federal programs (§ 11008.15); certain postponed property taxes and renters credits (§ 11008.4); voluntary contributions or grants from public or private sources meeting certain conditions (§ 11010); and the value of free board or lodging (§ 11009.1).

(Compare § 11451.5 with Fam. Code § 4059.) The contrast "is significant to show that a different intention existed." (*People v. Licas* (2007) 41 Cal.4th 362, 367.)[14]

B. No Authority Compels the Department to Exempt Garnished Child Support from Income

Christensen does not dispute that the CalWORKs statutes generally require the Department to consider a family's gross earned and unearned income in determining eligibility, unless that income is deemed exempt. (See OB 18, 22-25.) And she identifies no statute exempting child support payments. (*Ibid.*) Instead, Christensen argues that the garnished sums cannot be considered "income" at all because the funds are never "received" and are "'not actually available' to provide for her children on a day-to-day basis." (OB 22-25.) Both arguments are without merit.

1. Section 11265.2, Subdivision (b), Addresses the Timing and Predictability of Income; It Does Not Require "Actual Receipt" of Income

To argue that amounts garnished to pay child support payments do not count as income, Christensen first relies on section 11265.2. That section directs the Department to consider only income that is "reasonably anticipated for the upcoming semiannual [reporting] period," which means that "the county is reasonably certain of the amount of income and that the income will be received during the semiannual reporting period."

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[14] As explained below, there are significant differences between the policies underlying a state aid program and the Family Code's mechanisms for enforcing a private party's support obligations. (See Argument, Section II.D., *infra*.) But even assuming CalWORKs and the Family Code are as closely related as Christensen argues (OB 18-22), that would only bolster the inference that the Legislature intended that income used to satisfy existing child support obligations should be treated differently under each. (*Licas*, *supra*, 41 Cal.4th at p. 367.)

(§ 11265.2, subds. (a), (b).) Christensen argues that because Bruce's child support payments are "transferred via garnishment," the garnished income is never "received" by Bruce, and therefore cannot be considered her family's "reasonably anticipated income." (OB 23.)

Christensen fundamentally misconstrues the meaning and purpose of section 11265.2, subdivision (b). The Legislature inserted the "reasonably anticipated" language in 2002 when it replaced a monthly-reporting system—whereby CalWORKs grants were recalculated each month based on actual past income—with a system under which counties award aid prospectively based on "reasonably anticipated" income for the upcoming period. (See Assem. Bill No. 444 (2001-2002 Reg. Sess.) pp. 4, 21-24, 29-30, attached as Exhibit B to COA RJN; §§ 11265.1, 11265.2, 11265.3, 11450.12.)[15] The statute uses "income" to mean "gross income" before any exempt income is deducted. (See Argument, Section II.A, *supra*.) Accordingly, section 11265.2, subdivision (b), simply instructs the Department to consider the amount of gross earned and unearned income that the Department can "reasonably anticipate" the applicant will earn in the prospective budgeting period, before deducting any exempt income.

This Court should reject Christensen's reading of 11265.2 for at least three additional reasons. First, nothing in section 11265.2, subdivision (b)'s text or legislative history suggests that it was intended to qualify section 11451.5's instruction to consider a family's "reasonably anticipated" gross income, unless that income is deemed "exempt." And of course, gross income typically includes funds that are never deposited in an individual's bank account—such as tax withholdings, payroll deductions, or garnishments for debt. (See OB 23.) It is implausible that the Legislature

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[15] The prospective budgeting system is currently applied on a semi-annual basis. (MPP § 40-103.5, attached as Exhibit F to COA RJN].)

intended section 11265.2—a provision adopted for the express purpose of "mak[ing] eligibility determinations based on . . . a prospective budgeting system"—to effect such a significant change to the substantive definition of income without saying so in the statute's text or legislative history. (COA RJN, Exh. B at p. 4 [Legislative Counsel's Digest for AB 444 (2001-2002)]; see also OB 13.)

Second, Christensen cannot explain how other deductions from income—such as tax withholdings or consumer-debt garnishments—are in fact "received" in the sense she uses the term. (See OB 23.)[16] Yet Christensen does not claim, and could not claim, that section 11265.2 prohibits the Department from treating as income amounts withheld for taxes or garnished to pay consumer debt.[17]

Finally, the Department's treatment of gross income as having been "received" by an applicant, even when a portion of that income is garnished to meet an obligation, is consistent with fundamental accounting principles reflected in, for example, federal tax law. Under those principles, "[a]n employer's payment of an obligation of the taxpayer is equivalent to the

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[16] Christensen's efforts to distinguish child support garnishments from tax withholdings and consumer-debt garnishments focus solely on asserted differences in their "availability," not the extent to which they are "received." Christensen's availability argument is addressed immediately below. (See Argument, Sections II.B.2 and II.B.3, *infra*.)

[17] Christensen argued below that the Department's regulations interpreting the prospective budgeting system of section 11265.2, support the conclusion that amounts garnished to pay child support are not available to needy members of the family. (*Christensen*, *supra*, 15 Cal.App.5th at p. 1255.) Christensen has not raised this argument in her Opening Brief on the Merits, and therefore has abandoned it. In any event, the Court of Appeal correctly determined that the Department offered a reasoned explanation for its interpretation that its regulations, particularly MPP sections 44-101(a) and 44-102.1, mean that income is "available" when it is reasonably anticipated. (*Id.* at pp. 1255-1258.)

taxpayer's receipt of the income in the amount paid." (*Chambers v. C.I.R.* (T.C. 2000) 80 T.C.M. (CCH) 73, *3 affd. (9th Cir. 2001) 17 F. App'x 688 [amounts garnished from wages to pay child and spousal support must be included in taxable income].) "Lack of control over the earnings," or "[t]he fact that the transfer is involuntary, such as by garnishment, has no significance." (*Ibid.*)

2. The "availability" principle precludes consideration of fictional sources of income; it does not preclude counting income irrespective of garnishments

Christensen argues that the "principle of actual availability" prohibits treating income garnished for child support as available to the payor's family. (OB 23-24, citing *Cooper v. Swoap* (1974) 11 Cal.3d 856, *Waits v. Swoap* (1974) 11 Cal.3d 887, and *Mooney v. Pickett* (1971) 4 Cal.3d 669.) The availability principle prevents States from "conjuring fictional sources of income and resources by imputing financial support from persons who have no obligation to furnish it or by overvaluing assets in a manner that attributes nonexistent resources to recipients." (*Heckler v. Turner* (1985) 470 U.S. 184, 200.) It does not preclude counting gross income, including amounts garnished for child support, as the income of the noncustodial parent's family in determining CalWORKs eligibility.

The principle of "actual availability" applied by this Court in *Cooper*, *Waits*, and *Mooney*, has its origins in federal welfare law. As explained by the United States Supreme Court in *Heckler v. Turner*, "[t]he availability principle traces its origins to congressional consideration of the 1939 amendments" to the Social Security Act. (*Turner*, *supra*, 470 U.S. at p. 200.) At the time, members of Congress expressed concern that state welfare agencies would "assume financial assistance from potential sources, such as children, who actually might not contribute." (*Ibid.*) "[T]hese congressional concerns were incorporated in the federal guidelines for

AFDC administration." (*Deel v. Jackson* (4th Cir. 1988) 862 F.2d 1079, 1084 (en banc) [citing *Turner*, *supra*, 470 U.S. at pp. 200-201].)

Applications of this principle have reflected the purpose the rule seeks to achieve. In three early cases applying the principle, the United States Supreme Court rejected state rules that imputed income to AFDC recipients from individuals living in their household who were not AFDC recipients and had no legal duty to provide support. (*Van Lare v. Hurley* (1975) 421 U.S. 338, 340-341; *Lewis v. Martin* (1970) 397 U.S. 552, 560-561; *King v. Smith* (1968) 392 U.S. 309, 312-314, 333.) These cases exemplify the purpose served by the availability principle of preventing States from "imputing financial support from persons who have no obligation to furnish it," or by "attribut[ing] nonexistent resources to recipients." (*Turner*, *supra*, 470 U.S. at p. 200.)

This Court's applications of the availability principle have been equally consistent with this purpose. In *Waits v. Swoap*, this Court considered a regulation that reduced AFDC recipients' benefits based on the value of "noncash economic benefits," such as shared housing, provided by "nonneedy relatives" who were not themselves recipients of aid. (*Waits*, *supra*, 11 Cal.3d at p. 893.) Relying on *King* and *Lewis*, the Court invalidated the regulation because it "assumed that income or resources of an individual not legally obligated to support the AFDC recipient were available for the recipient's support." (*Id.* at p. 894.) *Cooper v. Swoap*, a companion case to *Waits*, invalidated a similar regulation that considered noncash benefits received under another state welfare program as income under AFDC. (*Cooper*, *supra*, 11 Cal.3d at pp. 859-860.) The regulation violated the availability principle because it failed to "measure the *actual* value of a recipient's benefits," instead assigning them "a fictional value." (*Id.* at p. 870, citing *Lewis*, *supra*, 397 U.S. 552, and *King*, *supra*, 392 U.S. 309.) Finally, in *Mooney v. Pickett*, this Court held, in the context of the

General Assistance program, that aid could not be denied to single men solely on the ground that they were *theoretically* "employable," even if they were not employed and there was no indication that a job awaited them. (*Mooney, supra*, 4 Cal.3d at pp. 679-680.)[18]

These cases rejected rules that denied or reduced aid based on theoretical employability, receipt of noncash economic benefits from individuals under no legal duty to provide support, the value of unliquidated property that was unable to be sold, or "qualification" for aid that the applicant was foreclosed from receiving by law. The Department's policy with respect to child obligations does none of those things. Bruce Christensen received a steady stream of income from his wages and unemployment insurance benefits. (AR 3.) There is nothing "theoretical" or "fictional" about those sources of income.

Christensen argues that the availability principle requires the Department to consider as income *only* those funds that are "available to feed, clothe or shelter the children" in *her* home. (OB 28.) She is incorrect for at least two reasons. First, Christensen wrongly assumes that the only relevant consideration when applying the availability principle to the CalWORKs program is whether garnished income is available to meet the needs of children. (See OB 24, 26.) But the CalWORKs program aids both

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[18] The Court of Appeal decisions cited by Christensen reach similar results. *Galster v. Woods* (1985) 173 Cal.App.3d 529 held that the Department could not "conclusively presum[e]" that the value of real property was an available resource even where "good faith efforts to convert those resources" had failed. (*Id.* at p. 544.) *McCormick v. County of Alameda* (2011) 193 Cal.App.4th 201 invalidated a regulation to the extent it denied General Assistance to a child on the grounds that the child "qualified" for CalWORKs, even though a separate regulation prevented that child from actually receiving CalWORKs benefits. (*Id.* at pp. 217-218.)

children and needy adult relatives living with children, as exemplified by Christensen's application for CalWORKs aid for Bruce, the payor of child support, in addition to three of her children from a prior marriage. (See, e.g., §§ 11203, subd. (a); 11450, subd. (a)(1)(A); AR 3.) And, as the court below and multiple federal courts have recognized, satisfying any legal debt, including child support obligations, benefits the obligor. (See *Christensen, supra*, 15 Cal.App.5th at p. 1257, citing *Peura v. Mala* (9th Cir. 1992) 977 F.2d 484, 491; *Cervantez v. Sullivan* (9th Cir. 1992) 963 F.2d 229, 234, citing *Martin v. Sullivan* (9th Cir. 1990) 932 F.2d 1273, 1276; *Emerson v. Steffen* (8th Cir. 1992) 959 F.2d 119, 122.)

Second, the argument that the availability principle precludes considering as income funds that are not "available to feed, clothe or shelter" children in the home was rejected by the United States Supreme Court in *Turner* and by various federal appellate courts, and has never been adopted by this Court. In *Turner*, plaintiffs challenged a California regulation implementing a $75 work-expense disregard added to the AFDC program by Congress. (*Turner, supra*, 470 U.S. at p. 187.) The regulation required counties to deduct the work-expense disregard from an applicant or recipient's gross income, without separately deducting tax withholdings or other work-related expenses. (*Id.* at pp. 187-188.) The United States Supreme Court held that the availability principle did not prohibit counting income that was withheld for taxes as income, subject to the work-expense disregard. (*Id.* at pp. 200-204.) The Court rejected plaintiffs' contention that mandatory tax withholdings rendered the withheld income unavailable. (*Id.* at pp. 199-204.) For income to be "available" to the household, the Court explained, there is no requirement that it pass through the wage earner's hands. (*Id.* at p. 202.) "[T]he time of payment seems . . . but a superficial distinction; all necessary expenses must be met sometime." (*Ibid.*)

Christensen attempts to distinguish the tax withholdings at issue in *Turner* from the garnished child support at issue here. (OB 27-28.) But *Turner* rejected a similar effort to distinguish tax withholdings from "non-governmental" paycheck withholdings. (*Turner*, *supra*, 470 U.S. at pp. 201-202.) *Turner* explained that income withheld for taxes is "no less available for living expenses than other sums mandatorily withheld from the worker's paycheck and other expenses necessarily incurred while employed." (*Id.* at p. 201.) Christensen attempts to avoid this language in *Turner* by asserting that "child support withholdings *are* less available for living expenses" because "[t]hey will never, by any means, be available to feed, clothe or shelter the children in homes like the Christensens." (OB 27-28.) She implies that income consumed for work-related expenses and taxes, unlike income garnished for child support, is somehow available for use by the family, albeit indirectly. But *Turner* rejected that view as well, concluding that "the expenditure of funds on other work-related expenses, such as transportation, meals, and uniforms, just as effectively precludes their use for the *needs of the family*." (*Turner*, *supra*, 470 U.S. at p. 202, italics added.)

Following *Turner*, federal appellate courts have rejected arguments that the availability principle demands "literal availability" of income or resources. (*Deel*, *supra*, 862 F.2d at p. 1085.) Consequently, many courts have specifically held that the principle does not preclude treating income garnished for child support as available income for purposes of federal aid programs.

In *Peura v. Mala*, for example, the Ninth Circuit held that the availability principle does not preclude garnished child support payments from being considered "available" income for purposes of Medicaid. (*Peura*, *supra*, 977 F.2d at pp. 491-492; see also *Himes v. Shalala* (2d. Cir. 1993) 999 F.2d 684, 689 [applying the availability principle and reaching

the same conclusion]; *Emerson*, *supra*, 959 F.2d at pp. 123-124 [reaching the same conclusion on statutory interpretation grounds]; *Cervantez*, *supra*, 963 F.2d at pp. 232-235 [funds garnished from Social Security Disability Insurance benefits to pay child support could be considered income in determining eligibility for SSI].) Citing *Turner*, the *Peura* court explained that the availability principle under Medicaid and AFDC are motivated by the "same concerns." (*Peura*, *supra*, 977 F.2d at p. 492.) And just as "tax withholding did not render unavailable the income" at issue in *Turner*, neither does a wage garnishment for child support render the garnished sums unavailable. (*Ibid.*) These cases confirm that the availability principle is concerned with ensuring that States do not attribute hypothetical sources of income to applicants for aid, and not with whether income that has been put to a particular use by the applicant is still available for other purposes.

Under the availability principle, the entirety of Bruce's earned and unearned income was available to support his family. That he satisfied his support obligations through wage garnishment does not render the garnished sums unavailable.[19]

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[19] Under Christensen's argument, it appears that had Bruce voluntarily paid child support after receiving his monthly paycheck, instead of being subject to a court garnishment order, the income used to make those payments could be considered "available." (See OB 23-25.) There is no principled reason to treat garnished child support payments as "unavailable," but voluntary child support payments as "available," based solely on the timing of the payment. And doing so would mean that a noncustodial parent subject to wage garnishment would be more likely to qualify for CalWORKs than a parent who voluntarily paid the same amount of support, a result the Legislature could not have intended.

3. Child support obligations cannot meaningfully be distinguished from any other debt that triggers garnishment

Christensen's arguments should be rejected for another reason: "she cannot meaningfully distinguish child support obligations from any other debt that may lead to garnishment of income." (*Christensen*, *supra*, 15 Cal.App.5th at p. 1257.) Her argument that the Court should create an extra-statutory exemption for garnished child support, but not other garnished debts (OB 25-26), lacks a reasonable limiting principle. If income garnished to pay child support must be exempted because it is not available to meet her family's needs, income garnished to pay other types of debt logically should be exempted as well—a result the Legislature clearly did not intend.

Christensen argues that income garnished to pay child support is unique and unlike other amounts garnished from income. (OB 25-26.) Specifically, she asserts that: (1) CalWORKs and the child support program "operate together" to ensure that all children receive sufficient support; (2) child support must be paid before other debts owed to creditors; (3) a compromise of child support payments must receive approval from the child support enforcement agency; (4) child support debt may not be discharged in bankruptcy; and (5) whenever there is a child support order, wage garnishment is mandatory. (*Ibid.*) But none of these characteristics makes the amounts garnished to pay child support any less available to the payor than amounts garnished to satisfy other debts. Christensen therefore offers no principled basis to distinguish child support payments from other wage garnishments for purposes of applying the availability principle.

Christensen also argues that "most" other debt owed by a family is for items that have benefitted the family, but that "child support that a parent pays to another family can *never* benefit the children in his current

household." (OB 26.) Yet she offers no support for the assumption that most income garnished for debt is for items that *have* in fact benefitted the children in the noncustodial parent's home. For example, a parent's wages could be garnished to satisfy a debt he or she incurred before becoming a parent or stepparent, such as for back taxes, purchases that do not benefit the family, or a judgment arising from a car accident.

In sum, neither section 11265.2 nor the availability principle requires the Department to exempt income garnished for child support.

C. The Department's Policy is Fully Consistent with the Statutory History and Purpose of CalWORKs

Christensen argues next that the legislative history of CalWORKs and legislative policy requires the Department to exempt from income wages and unemployment insurance benefits garnished for child support. (OB 18-22, 28-29.) Because the text of the CalWORKs statutes directs the Department to make eligibility determinations based on the applicant's full non-exempt income, and because no statute or principle of welfare benefits law requires the Department to exempt wages or other sources of income garnished for child support, the Court need not consult these extrinsic aids to uphold the Department's policy. (See *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) But, in any event, the Department's interpretation is fully consistent with the statutory history and purpose of CalWORKs.

1. The Department adjusted its policy 20 years ago, in response to welfare reform and the establishment of a broad earned-income exemption

Christensen seeks to benefit from an income exemption that the Department repealed 20 years ago, but fails to acknowledge the substantial change in welfare law that led to that repeal, and that is reflected in the

Department's longstanding policy regarding child support obligations under CalWORKs.

Under the AFDC program, federal law directed States to recognize specific income disregards. (Former 42 U.S.C. § 602(a)(8), (a)(31).) These included the $30 and one-third earned-income disregard, a flat $90 work-expense disregard, a disregard of up to $175 for child-care costs actually incurred, and a disregard for income of a stepparent used to pay "alimony or child support with respect to individuals not living in [the applicant's household]," among others. (See, e.g., *id.* § 602(a)(8)(A)(ii) [work-expense disregard]; (a)(8)(A)(iii) [child-care disregard], (a)(8)(A)(iv) [$30 and one-third disregard], (a)(31) [stepparent child support disregard].) TANF dramatically increased the flexibility of States in operating their welfare programs by substituting section 602's detailed requirements with a requirement that a state simply submit a plan explaining "how [it] intends" to conduct a welfare program that furthers several broad purposes. (Compare former 42 U.S.C. § 602(a) (1994) with 42 U.S.C. § 602 (a)(1)(A).)

The California Legislature responded by establishing a "simplified grant calculation method . . . designed to create a greater incentive for welfare recipients to earn additional income." (*Sneed v. Saenz* (2004) 120 Cal.App.4th 1220, 1240.) That incentive primarily took the form of the expanded disregard for earned income. Shortly after CalWORKs became law, the Department concluded that the new earned-income disregard replaced not only the child support disregard, but also the prior $30 and one-third earned-income disregard, the work-expense disregard, the child-care disregard, and the disregard for support paid by non-assistance-unit members to federal tax dependents not living in the home. (CT 322.)

That conclusion was reasonable. Each of the repealed disregards relates to earned income, a substantial porton of which will already be exempt under the expanded earned-income disregard.[20] Under the former AFDC program, the earned-income, work-expense, and child-care disregards could be deducted *only* from "earned income." (See former 42 U.S.C. § 602(a)(8)(A)(ii) [work-expense disregard], (a)(8)(A)(iii) [child-care disregard], (a)(8)(A)(iv) [$30 and one-third disregard]; CT 154-156.) Although the disregards for support obligations were not expressly limited to earned income, such obligations will predictably vary depending on the amount of income one earns. (See Fam. Code §§ 4055, 4058, 4059.)

It is true that the increased earned-income disregard provides an imperfect substitute for the child support disregard when support is garnished from *unearned* income. And of course, some applicants or recipients would benefit from the other AFDC disregards that the Department eliminated along with the $30 and one-third disregard. But the two primary purposes of welfare reform were to *simplify* the grant calculation process and establish a "greater incentive for welfare recipients to earn additional income." (*Sneed*, *supra*, 120 Cal.App.4th at p. 1240; see also 42 U.S.C. § 601.) Swapping the numerous but narrower AFDC income disregards for a single, more generous CalWORKs earned-income disregard accomplishes both goals. By contrast, "the grant calculation would not be more simplified if new exemptions were adopted yet all the prior deductions remained in effect." (*Christensen*, *supra*, 15 Cal.App.5th at p. 1262.)

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[20] In Bruce's case, for example, San Mateo County disregarded $412.58, or 69%, of his earned income in calculating the Christensens' non-exempt income. (AR 15.)

Christensen also argues that because the AFDC child support disregard took the form of a regulation, not a statute, this Court should infer little from the Legislature's statutory reforms. (OB 28.) Christensen even posits that the Legislature may have intended to incorporate the AFDC child support disregard into the CalWORKs program. (OB 28-29.) This Court generally presumes that the Legislature is aware of an agency's interpretation of the statutes it administers. (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1015.) But any implication that the Legislature intends to incorporate those regulatory interpretations in reenacting or amending a statute falls away when the amendment affects a "substantial modification[]" to the underlying statute. (See *Gerawan Farming, Inc. v. Agricultural Labor Relations Board* (2017) 3 Cal.5th 1118, 1156, quoting *Thornton v. Carlson* (1992) 4 Cal.App.4th 1249, 1257.) Here, the Legislature comprehensively reviewed the AFDC program and adopted a new superseding one, CalWORKs, that provided for a simplified grant-calculation process and significantly higher earned-income disregard. (See § 11451.5; *Sneed, supra*, 120 Cal.App.4th at p. 1240.) Consistent with the changes from AFDC to CalWORKs, the Department concluded that the AFDC child support disregard, along with other income disregards, did not survive that change.[21] The Department's interpretation of CalWORKs is

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[21] To bolster her incorporation argument, Christensen relies on section 11157. (OB 29.) That section provides that under CalWORKs, "'income' shall be deemed to be the same as applied under the [AFDC] program." (§ 11157, subd. (b).) Christensen's reliance on section 11157 is misplaced. (OB 29.) Under AFDC, as under CalWORKs, "income" generally meant "gross income" *before* applying any income disregards. (See CT 250, 259; Department's COA Reply Br. 27-29.) As the Court of Appeal correctly concluded, "[a] provision that the definition of 'income' remains the same does not mean the deductions, disregards, and exemptions remain the same." (*Christensen, supra*, 15 Cal.App.5th at p. 1262.)

entitled to great weight and is not clearly erroneous. (See *Yamaha*, *supra*, 19 Cal.4th at pp. 7, 12-13; *Sara M.*, *supra*, 36 Cal.4th at pp. 1012-1014.)

2. The Legislature has ratified the Department's policy

The Department's conclusion that the CalWORKs program lacks a child support disregard finds support in subsequent statutory history. In the 20 years since the Department repealed the child support and other AFDC income disregards, the Legislature has not restored any of them, despite making numerous amendments to CalWORKs. (See, e.g., CT 433, 435 [Sen. Bill No. 1041 (2011-2012 Reg. Sess.) [amending income eligibility standards].) Although Legislative "inattention" or "inaction" may be of little guidance in discerning legislative intent, "[b]ecause the Legislature has specifically directed" the Department to implement CalWORKs, this Court "can presume it was aware of the administrative interpretation, which makes its acquiescence all the more significant." (*Sara M.*, *supra*, 36 Cal. 4th at p. 1015) [Legislature acquiesced to rule promulgated by Judicial Counsel by "fail[ing] to overturn" it, despite being "very active in this area of the law"]; see also, e.g., §§ 10554, 11209 [directing the Department to "implement, interpret, or make specific the law enforced by the department."].)

More significant still, the Legislature considered restoring the child support disregard in 1999, but decided against it. As originally introduced, AB 1233 (1999-2000) would have amended Welfare and Institutions Code section 11451.5 to add a child support disregard that Christensen claims was and is required. (CT 388, 401.) Although AB 1233 ultimately became law, it was amended to delete the provision restoring the child support disregard. (CT 427-432; see also CT 408, 420.)

AB 1233 affirmatively demonstrates that the Legislature knew the Department interpreted CalWORKs to not include a child support

disregard, "directly considered" adding one, but "explicitly rejected such a proposal." (*Cooper, supra*, 11 Cal.3d at p. 864.) Such considered rejection of language in a successful bill offers "the most obvious indication" that the Department's recognition of a child support disregard would not "conform to, or implement, the governing welfare statutes." (*Id.* at pp. 863-864.) CalWORKs should not be construed to now require an income disregard that the Legislature considered and rejected in amending the program. (See *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 178 [because Legislature acquiesced to a judicial interpretation of statute over many years, "it is up to the Legislature to change it if it is to be changed"].)

D. The Department's Policy Is Consistent with the Legislative Purposes Behind the CalWORKs Program and the Child Support Enforcement Program

Christensen argues that the Department's treatment of income used to satisfy child support payments thwarts the purposes behind CalWORKs and the child support enforcement system, which she claims are "intertwined" to "secure adequate financial support to all California children." (OB 10-11, 18.) To the contrary, the Department's policy is fully consistent with the purposes of both programs.

"Child support" includes court-ordered payments for the support and maintenance of a child or children. (Cal. Code Regs., tit. 22, § 110144.) The purpose of court-ordered child support is to enforce the obligation of parents to financially support their children. (See, e.g., Fam. Code, §§ 3900, 4000, 4001, 17400.) Child support is not government aid; it is a legal obligation imposed on noncustodial parents to support their children.

In contrast, CalWORKs provides government aid to "families with minor children who meet certain requirements, including limited income and resources, and are deprived of the support of one or both parents due to

factors such as absence, disability or unemployment." (*Sneed, supra*, 120 Cal.App.4th at p. 1231; § 11250.)[22] Section 11205 expresses the legislative findings for CalWORKs and declares that each family has the "right and responsibility to provide for its own economic security" and "to provide sufficient support and protection of its children." (§ 11205.) Consistent with these findings, a central goal of CalWORKs is to "increase personal responsibility and encourage financial self-sufficiency for families." (*Sneed, supra*, 120 Cal.App.4th at p. 1242.)

Counting income of the CalWORKs applicant, including wages and unemployment insurance benefits garnished for child support, as gross income subject to the earned-income disregard is consistent with the goal of promoting financial self-sufficiency through participation in the work force to the extent possible. (§ 11205.)

Here, the earned-income disregard encouraged Bruce Christensen to work because it allowed his family to retain more income. (See Background, Section III, *supra.*)[23] And, under the Family Code, he has a

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[22] It is true that CalWORKs and the child support enforcement system are connected in some ways, given that a family applying for CalWORKs must assign any rights to child support to the county as a condition of applying for CalWORKs. (Fam. Code, § 11477; see also *id.*, § 17402). But Christensen overstates the degree to which the programs are linked. The child support enforcement system exists separately from CalWORKs and applies to families of all income levels, not just those on aid. (See, e.g., Fam. Code, §§ 4000, 4001.) It also is not enforced by the Department of Social Services, which implements CalWORKs, but rather by the Department of Child Support Services and the courts. (Fam. Code, § 4000, 4001, 4002, 17200.) In any event, as discussed below, the Department's challenged policy here is consistent with the purposes of both programs.

[23] Christensen argues that the Department's policy provides an incentive for her and her husband to separate, so her children would qualify for CalWORKs. (OB 21-22.) However, if she separates from him, she and

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legal obligation to use some of his earnings to support his three children from prior relationships who live in other homes. (Fam. Code, § 3900.) His wages and unemployment insurance benefits are garnished as a result. (See, e.g, *id.*, § 5230.) Christensen's argument that not only should her husband's income be subject to the earned-income disregard, but that the Department also must deduct the entirety of the amount of his income garnished to pay child support in determining aid eligibility, in effect seeks to shift her husband's child support obligation onto the State. (Cf. *Cervantez*, *supra*, 963 F.2d at p. 235 [exempting garnished child support payments from the payor's income in computing SSI benefits would "shift[] the cost" of child support to the government because "the SSI program would replace garnished income a dollar-for-a-dollar, favoring SSI claimants who did not pay their debts"]; *Peura*, *supra*, 977 F.2d at p. 490 [recognizing same subsidization concern with respect to treatment of child support obligations for purposes of determining Medicaid eligibility].) Requiring the State to subsidize Bruce's child support obligations would run counter to the intent of both the child support system and CalWORKs that parents have the responsibility to provide sufficient support for their children, which, of course, includes minor children who do not live in their home. (§ 11205; Fam. Code, §§ 3900, 4000, 4001.) Thus, contrary to

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her children would benefit less from his earned income and unemployment insurance benefits. For example, at the time Christensen applied for CalWORKs, Bruce earned $600 per month from his job (but only $188 was counted as income by the County), and $793.12 from unemployment. (AR 15.) In any event, as the United States Supreme Court previously observed in the AFDC context, even though the eligibility requirements for the program may create an incentive for some parents to live separately, "these types of incentives are the unintended consequences of many social welfare programs, and do not call the legitimacy of the programs into question." (*Bowen v. Gilliard* (1987) 483 U.S. 587, 602, fn. 17.)

Christensen's argument (OB 20), section 11205's legislative statement regarding parents' personal responsibility to raise and support their children in no way requires that income garnished to pay child support be deemed exempt when calculating family income under CalWORKS.

III. CALCULATING INCOME WITHOUT EXEMPTING PORTIONS GARNISHED FOR CHILD SUPPORT IN DETERMINING ELIGIBILITY FOR CALWORKS AID DOES NOT RESULT IN "DOUBLE COUNTING" IN VIOLATION OF SECTION 11005.5

Christensen argues that the Department's policy of counting wages and unemployment insurance benefits, which are garnished to pay child support, as the paying parent's income in determining CalWORKs eligibility violates Welfare and Institutions Code section 11005.5, because it "results in counting the same income twice in many instances." (OB 29.) Christensen misunderstands the function and application of section 11005.5, generally and in the circumstances of this case. The provision primarily serves to ensure that government aid paid to one person or group does not affect the eligibility for aid of another person or group. (§ 11005.5.)

In addition, Christensen's argument that the Department is counting the same "income" twice rests on the flawed premise that the Department is treating child support *payments* as his own income. Instead, the Department treats Bruce's wages and unemployment insurance benefits as his income, and simply does not exempt portions of that income garnished to pay child support. There is no "double counting."

In any event, there is no actual or potential "double counting" of government aid or income in this case. Specifically, only one of Bruce's non-custodial children was receiving CalWORKs aid during the relevant time period, and Christensen has never alleged that the aid to that child was being counted as income to the Christensen family. Further, the child support payments for Bruce's child receiving CalWORKs aid were not being counted as income to any person or family because by law these

payments were assigned to the State. There is no actual or potential violation of section 11005.5.

A. Section 11005.5 Does Not Prohibit the Department's Policy of Calculating Income Without Exempting Funds Garnished to Pay Child Support

Christensen's "double counting" argument suffers from a fundamental logical flaw: it assumes that the income of one family in the form of wages or unemployment insurance benefits takes on the form of any garnishment for child support, and that the same "child support payment" is therefore counted as both the income to the paying parent's household, and as income to the receiving household. But, in fact, in this scenario, the Department would simply count the first family's gross wages and unemployment insurance benefits as income to that family, and count the child support payment as income to the second family. The child support *payment* is not counted as income to both families.

The Department considered Bruce's wages and unemployment insurance benefits to be his income in determining CalWORKs eligibility without exempting various *expenditures* from that income, including child support payments. Stated another way, Bruce does not receive child support *payments* as part of his income; rather child support is paid by him, and such payments are treated as an expenditure like any other, whether it be for food, utilities, or rent. Accordingly, his child support payments would not in any circumstances be treated as *income* to two separate households.[24]

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[24] The point is further illustrated by the example of one CalWORKs recipient purchasing a used car from another CalWORKs recipient, to be paid for in monthly installments. It is not "double counting" to consider any wages or unearned income used by the purchaser to make those payments as the purchaser's income, while considering the payments received by the seller as the seller's income.

In *Cervantez v. Sullivan* (9th Cir. 1992) 963 F.2d 229, the Ninth Circuit rejected a "double counting" argument nearly identical to the one advanced here. Plaintiffs there challenged a federal regulation under the SSI program that declined to recognize an income exemption for funds garnished to pay child support. (*Id.* at pp. 230-231.) They argued that "because child support payments are being counted by the Social Security Act, at least in part, as income to the recipient," the child support payments "cannot also be counted as income to the payor." (*Id.* at p. 234, fn. 10.) The court rejected that argument as "based on a flawed premise." (*Ibid.*) "The garnishment regulation does not count child support as income to the payor; it counts as income the funds used by the payor to make the child support payments." (*Ibid.*)

So too here. In defining income for purposes of determining eligibility, CalWORKs is concerned with income flowing into a family, not with expenses and debts that the family must pay out of its income. The fact that child support obligations are met through wage garnishment, instead of being paid voluntarily from income does not change their nature as an expenditure to the payor. Because there is a distinction between the child support received by Bruce's noncustodial child, and the funds used to pay that support obligation, section 11005.5 does not prohibit the Department's policy at issue here.

B. Section 11005.5 Is Focused on Ensuring that Government "Aid" Granted to One Person or Group Is Not Considered in Determining the Eligibility for "Aid" of Another Person or Group

Christensen's argument is flawed for another reason. The case law and legislative history suggest that the purpose of section 11005.5 is to ensure that government *aid* is attributed only to the recipient or recipient group and should not be deemed to be for the benefit of any other person or group, or treated as income available to any other person or group. (See *Rogers v. Detrich* (1976) 58 Cal.App.3d 90, 101; see also *Cooper v. Swoap*, *supra*, 11 Cal.3d at pp. 869-870 [applying section 11005.5's predecessor].) Section 11005.5 provides that "[a]ll money paid to a recipient or recipient group as aid is intended to help the recipient meet his individual needs or, in the case of a recipient group, the needs of the recipient group, and is not for the benefit of any other person." (§ 11005.5.) As discussed above, it further clarifies that:

> *Aid* granted . . . to a recipient or recipient group *and* the income or resources of such recipient or recipient group shall not be considered in determining eligibility for or the amount of aid of any other recipient or recipient group.

(*Id.*, italics added.)[25] Section 11005.5 was preceded by former section 11006, which provided: "Aid granted shall not be construed as income to any person other than the recipient or, in the case of a recipient group, the recipient group." (*Rogers*, *supra*, 58 Cal.App.3d at p. 100; *Cooper*, *supra*,

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[25] Section 11005.5 applies to aid granted under Part 3 of Division 9 of the Welfare and Institutions Code, which includes the CalWORKs program and various other public aid and medical assistance programs (see § 11000 et seq.) and Part A of Title XVI of the Social Security Act, which includes Supplemental Security Income (SSI) benefits, which are payments made to blind, elderly, or completely disabled individuals who have a demonstrated financial need. (42 U.S.C. § 1382 et seq.)

11 Cal.3d at pp. 869-870.) In 1973, legislation divided section 11006 into two sections, one of which is section 11005.5. (*Rogers*, *supra*, 58 Cal.App.3d at p. 100.) The Legislature's intent in enacting section 11005.5 was "to insure that aid paid (1) is for the individual needs of its recipient, (2) is not for the benefit of any other person, and (3) shall not be viewed or treated as income available to any other person." (*Id.* at p. 101.)

As confirmed by the cases addressing section 11005.5 and former section 11006, the intent of these sections is to prevent government aid granted to one recipient or recipient group from being construed to meet the needs of any other person or group in determining eligibility for aid. (See, e.g., *Cooper*, *supra*, 11 Cal.3d at pp. 869-870 [Department's policy of reducing AFDC grant of children residing in same household as recipient of "adult aid" violated former section 11006, as it improperly construed adult's benefits as income to the children]; *Rogers*, *supra*, 58 Cal.App.3d at pp. 95-96, 101 [SSI aid received by household member should not be considered in determining eligibility for General Assistance for other household members, because "to treat one person's aid as a reason to deny eligibility or to reduce assistance to which another is entitled amounts to defiance of the legislative proscription" in section 11005.5]; *McCormick v. County of Alameda* (2011) 193 Cal.App.4th 201, 214, fn. 2 [Section 11005.5 would prohibit using mother's SSI income as a basis for denying General Assistance to her son].)

The facts here are easily distinguished from those in *Cooper*, *Rogers,* and *McCormick.* Unlike SSI and adult aid benefits, Bruce's child support payments are not government aid to his noncustodial children.[26]

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[26] Under the relevant statutory definition applicable to public social services, "aid" means "financial assistance provided to or on behalf of needy persons under the terms of *this division*," referring to Division 9 of

(continued...)

CalWORKs benefits are the only government aid at issue here, and the Department's policy did not treat any CalWORKs aid received by Bruce's sole noncustodial child on CalWORKs as the Christensens' income in determining their eligibility for aid.

C. Under the Facts of This Case, There Could Be No "Double Counting," Because the Child Support Payments at Issue Were Assigned to the State

Even if Christensen were correct that section 11005.5 prevents the Department from counting as income the wages of one CalWORKs applicant or recipient that are garnished to pay child support owed to another CalWORKs applicant or recipient (which it does not), that did not occur under the facts presented here.

Child support payments are not generally received by the custodial parent's family, nor considered income of that family in determining its eligibility for or amount of CalWORKs aid. (§§ 11457, subd. (a), 11477, subd. (a)(1)(B), 11487, 11487.1; CT 318-319, ¶¶ 21-22.)[27] This is because under federal and state law, in order to be eligible for CalWORKs aid, a family must assign any right to child support to the county, to be distributed among the county, state, and federal government. (§ 11477, subd.

(...continued)
the Welfare and Institutions Code. (§ 10052 [italics added].) Child support payments are not public "aid" provided under the terms of Division 9; they are "payments by a *noncustodial* parent to the custodial parent for the child's support and maintenance." (*Sneed v. Saenz* (2004) 120 Cal.App. 4th 1220, 1245; see also Cal. Code Regs., tit. 22, § 110144;.)

[27] When a county collects child support that has been assigned to it, it pays the first $50 to the custodial parent's family, but the $50 is not counted as income of the recipient family in determining its eligibility for or amount of CalWORKs aid. (Fam. Code, § 17504; MPP §§ 44-111.47, 44-111.471 [CT 530].)

(a)(1)(B); 42 U.S.C. § 608(a)(3).) This "[m]oney from noncustodial parents for child or spousal support . . . shall be paid directly to the local child support agency and shall not be paid directly to the family." (§ 11457, subd. (a), italics added.) Thus, the Department's policy does not count child support payments as the income of the custodial parent's family in determining its eligibility for or amount of CalWORKs aid.

Christensen argues that section 11005.5 prohibits counting amounts garnished as child support as income of the payor even when that child support is assigned to the State because "the state uses those payments to offset the amount it pays towards the custodial family's CalWORKs grant." (OB 34-35.) Citing no authority, she asserts that the custodial family "effectively receives less from the state's CalWORKs pot because a private child support payment covers part of the family's need." (OB 35.) Christensen does not explain how this results in "double counting" income. In any event, Christensen's claim that a family receives less CalWORKs *aid* because of child support assignment is incorrect. When the amount of collected child support payments fully reimburses a month of CalWORKs aid, the county does not count that month as a month in which the custodial parent received aid. (§ 11454.5, subd. (a)(3).) This is significant because adults on CalWORKs are limited to a total of 48 months of aid. (§ 11454, subd. (a).) So, if the monthly CalWORKs grant for a family consisting of a parent and her child is $1,000, when the amount of child support collected by the county adds up to $1,000, one month of aid will be "unticked" from the parent's 48-month time-on-aid clock. The custodial parent's family effectively is not on CalWORKs aid for that month, but rather is treated as if it directly received child support instead of CalWORKs aid. (See § 11454.5, subd. (a)(3).) Thus, the family does not receive less CalWORKs aid.

Although there are two exceptions to the general rule requiring assignment to the State of child support payments, neither applies under the facts here. The first exception applies in cases where child support arrears accumulate during a period when the custodial parent's family is not receiving CalWORKs aid. If the custodial family later applies for CalWORKs, the arrears are paid directly to the family and treated as income in determining eligibility for and amount of CalWORKs aid. (CT 318, ¶ 21; All County Letter No. 10-29 (July 16, 2010), p. 2, < http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2010/10-29.pdf> [as of June 18, 2018].) Here, the administrative record confirms that the only child for whom Bruce was paying arrears at the time of Christensen's application for CalWORKs was already an adult, and not receiving CalWORKs aid at the time Christensen applied. (AR 3, 41:2-7; see also § 11250 [CalWORKs aid is for families with children under the age of 18 (subject to narrow exceptions, none of which are alleged to have applied here)].)

The second exception applies where *only* the children in the household are being supported with cash aid under CalWORKs, because no adult in the household is eligible. In those circumstances, child support payments for that child are paid directly to the family, not the county, and—aside from the first $50—are treated as the family's income for purposes of CalWORKs. (§ 11477, subd. (c); Fam. Code, § 17504; CT 318 ¶ 21, 530.) Those cases, where only the children in the family are receiving CalWORKs aid, typically because the parent has received 48 months of cash aid, are referred to as "safety-net" cases. (CT 318, ¶ 21.)

The safety-net exception could not have applied here. San Mateo County denied Christensen's CalWORKs application in 2010. (AR 3.) The legislation creating this exception to the general rule requiring assignment of child support payments to the county was not enacted until

2014. (See Sen. Bill No. 855 (2013-2014 Reg. Sess.) pp. 4-7, § 75, subds. (c), (d), attached as Exhibit E to COA RJN; § 11477, subd. (c); see also All County Letter No. 14-78 (Oct. 23, 2014), pp. 3-4, <http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2014/14-78.pdf> [as of June 18, 2018].) The applicable law when Christensen applied for CalWORKs required all families receiving CalWORKs aid to assign any child support they received to the State. (See Sen. Bill No. 855, pp. 4-5, attached as Exhibit E to COA RJN; All County Letter No. 14-100, p. 6, attached as Exhibit D to COA RJN; All County Letter No. 14-78, *supra*, at p. 4.) Accordingly, when Christensen applied for CalWORKs, child support payments were not directly received by safety-net families and were not considered the income of those families in determining eligibility for or amount of aid.

Christensen argues that Bruce's child on CalWORKs aid *may* have been a safety-net child in 2010. (OB 33.) But whether his child was a safety-net child in 2010 is irrelevant because the exception to the general rule that was created for safety-net cases was not in effect at the time. In other words, even if Bruce's child were a safety-net child in 2010—an assertion Christensen does not support with any citation to the record—any support owed to that child in 2010 could not have counted as the child's family's income under then-applicable law. (See Sen. Bill No. 855, pp. 4-5, attached as Exhibit E to COA RJN, pp. 4-5, § 75.)[28]

Thus, even if Christensen's "double counting" rule were supported by section 11005.5, which it is not, the child support payments that Bruce Christensen made were not counted as income of his child on CalWORKs

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[28] In any event, the administrative record suggests that Bruce's child was *not* a safety-net child because he or she was receiving aid "with the child's mother." (AR 3; see also OB 15 [Bruce provided child support for "one child whose mother also received CalWORKs"].)

aid living in another home. There is no violation of section 11005.5 under any reading of that provision.

D. The Court of Appeal Correctly Declined to Address Whether Section 11005.5 Would Be Violated Under a Hypothetical Situation Not Presented in this Case

Even though there was no "double counting" under the facts of her case, Christensen argues that the Court of Appeal should have ruled on the possibility that "double counting" may occur in some context not presented here. (OB 31-32.) Specifically, she argues that alleged "double counting" is somehow established by the fact that there are more than 80,000 safety-net families in the State. (OB 31.)

As discussed, Christensen's argument is based on a misunderstanding of section 11005.5. But even under Christensen's incorrect characterization of that provision, for "double counting" to actually occur: (1) the safety-net child must be entitled to child support from a noncustodial parent pursuant to court order or otherwise; (2) the noncustodial parent must actually be paying child support to the safety-net child; and (3) the household of the noncustodial parent who is paying child support to the safety-net child must also be applying for or receiving CalWORKs. Thus, the total number of safety-net families is not evidence that "double counting" occurs in any significant number of cases, if at all.

In any event, Christensen's claim is not justiciable because it is based on a hypothetical injury. (See, e.g., *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.) Justiciability involves intertwined concepts of standing and ripeness. (*Ibid.*) Christensen lacks standing because she has not shown any injury to herself or her family with

respect to section 11005.5, as discussed above.[29] And the hypothetical circumstances she argues would violate section 11005.5 pose a factual scenario not before the Court. Any claim based on hypothetical circumstances is not ripe. (*Ibid.*)[30]

Moreover, where, as here, the claim is for declaratory relief, courts should use their discretion to avoid issuing an advisory opinion based on hypothetical facts. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170-171, 188 [declining to issue "an opinion advising what the law would be upon a hypothetical set of facts"]; *Selby Reality Co v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117-118 [declining to issue declaratory relief where dispute between plaintiff and county regarding application of county's general plan was not yet concrete, any possible harm depended on unpredictable future events, and plaintiff could challenge county's action in the future if actually affected by it.])

The Court of Appeal's refusal to speculate about whether "double counting" may occur in any safety-net or pre-aid arrears cases was proper.[31]

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[29] There is an exception to the beneficial interest standing requirement where the "the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty." (*Green v. Obledo* (1981) 29 Cal.3d 126, 144.) However, courts have applied this "public interest exception" only in cases seeking a writ of mandate under to Code of Civil Procedure section 1085, and not where only a declaratory relief claim is at issue. (See, e.g., *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 873-874.)

[30] Christensen points out that the ripeness doctrine does not prevent courts from "resolving a concrete dispute if the consequence of a deferred decision will be lingering uncertainty in the law" (OB 33), but here the dispute is not concrete because it is based on a hypothetical set of facts, for which there is no supporting evidence.

[31] Christensen argues that in declaratory relief cases, if justiciability is in doubt, "it should be resolved in favor of justiciability in cases of great

(continued...)

CONCLUSION

For the foregoing reasons, the Court should affirm the Court of Appeal's decision.

Dated: June 19, 2018

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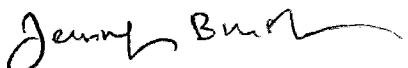

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(...continued)
public interest." (OB 32.) But, as explained above, the lack of justiciability is not in doubt here.

CERTIFICATE OF COMPLIANCE

I certify that the attached Answer Brief on the Merits uses a 13 point Times New Roman font and contains 12, 278 words.

Dated: June 19, 2018

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **ANGIE CHRISTENSEN v. WILL LIGHTBOURNE, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES**

Supreme Court Case No.: **S245395**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

On June 19, 2018, I served the attached **ANSWER BRIEFS ON MERITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

Richard A. Rothschild, SBN 67356 Alexander Prieto, SBN 270864 **Western Center on Law & Poverty** 3701 Wilshire Boulevard, Suite 208 Los Angeles, CA 90010	Hope G. Nakamura, SBN 126901 **Legal Aid Society of San Mateo County** 330 Twin Dolphin Drive, Suite 123 Redwood City, CA 94065
Clerk of the Court Superior Court for the County of San Francisco 400 McAllister Street San Francisco, CA 94102	Clerk of the Court Court of Appeal of the State of California First Appellate District, Division Two 350 McAllister Street San Francisco, CA 94102-7421

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 19, 2018, at San Francisco, California.

M. Dubonnet
Declarant

Signature

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