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Commissioner Clark
Office of the Commissioner
Department of Community Based Services
275 E. Main St. 3W-A
Frankfort, KY 40621
via email

October 24, 2018

Dear Commissioner Clark and DCBS & DIS staff,

Thank you so much for taking the time to meet with us last week. We appreciate your commitment of time and resources to the meeting; it was extremely helpful to have a lot of people who will be responsible for implementing and running the systems that will support the contemplated regulation change in the room. We learned a lot and, again, appreciate your willingness to meet with us.

As we said at the meeting, our organizations share your goal of increasing the amount of money custodial parents have available to support children in Kentucky. Our allies are writing a separate letter on the issue in which you expressed a particularly keen interest: amending the regulation to provide a “window of opportunity” for people reentering our communities after a period of incarceration. We share the sentiments expressed in that letter, and write today to express some basic concerns about the utility of the contemplated policy, provide additional ideas and concerns regarding implementation, and request more information regarding the implementation of 921 KAR 3:025.

The regulation is based on a flawed assumption.

DCBS proposes to disqualify a noncustodial parent who is more than \$500 behind on his or her child support obligations from receiving SNAP benefits (Supplemental Nutrition Assistance Program). We believe the proposal is based on a fundamentally flawed assumption that many noncustodial parents who fall behind on their child support payments have the ability to make those payments but are instead *choosing* to forgo those payments for other expenditures. According to this perspective, the prospect of losing their SNAP benefits will “incentivize” these parents to make their child support payments.

Based on our experience advocating on behalf of low-income people and children and the available data about parents who owe child support arrears, we must disagree with this assessment. For the vast majority of noncustodial parents who have fallen behind on their child support obligations, the problem is not poor choices but being poor. Most parents

who fall behind on their child support obligations do so because they do not have enough money, not because they are not properly incentivized.¹ According to a report done by the Department for Health and Human Services' Office of the Assistant Secretary for Planning and Evaluation, 70% of late child support payments are owed by parents who make \$10,000 or less a year.² For these extremely poor parents, the average child support obligation equals about 83% of their reported income.

Taking away parents' SNAP benefits (about \$122/month³) will not increase the amount of money these parents have and will make it more difficult for them to meet their child support obligations. This point is articulated in the Center for Budget and Policy Priorities memo on the proposed regulation that we have attached as **Exhibit 1**. Furthermore, terminating noncustodial parents' SNAP benefits may have the unintended consequence of *increasing* food insecurity in Kentucky, especially in eastern Kentucky, where 25% of children in many counties are already experiencing food insecurity.

House Bill 363 (text), passed in April of this year, required the Cabinet for Health and Family Services to "examine the question of requiring noncustodial parents to cooperate with the Department for Income Support as a condition of eligibility for the food stamps program and, by October 1, 2018" report the Cabinet's findings to two joint legislative committees. It appears that the Cabinet chose to promulgate a regulation *first* before finishing and delivering its report to the legislature. The report is overdue and the regulation is premature.

The regulation is duplicative, unnecessary, and a poor investment of taxpayer dollars.

As you know, County Attorneys in each of Kentucky's 120 counties have the statutory authority and obligation to collect child support from noncustodial parents. As we discussed in Footnote 1, these officials have the authority to pursue *criminal* charges against a parent who fails to pay child support when a person "fails to provide support which [the parent] can reasonably provide."

The regulation contemplates imposing an additional layer of bureaucratic review to, as Brian Hubbard said, inquire into "the underlying factors of each individual case." This review is already occurring on a case-by-case basis in each county across Kentucky by people who have the power to "incentivize" parents to "provide support which [the

¹ Falling more than \$1,000 behind on a child support obligation can be prosecuted as a criminal matter. Nonsupport is a misdemeanor, punishable by 7-30 days in jail. Flagrant nonsupport is a *felony*. KRS 530.050. If the prospect of imprisonment is not incentive, it is hard to imagine the loss of \$122/month producing the funds to support the child we all want to see.

² See "Assessing Child Support arrears in Nine Large States and the Nation—Executive Summary" by the Office of the Assistant Secretary for Planning and Evaluation at **Exhibit 2**, p. 7-8.

³ Kentuckians receiving SNAP benefits receive \$1.36 per person per meal. \$1.36 x 3 meals a day x 30 days = \$122.40.

parent] can reasonably provide” with the threat and reality of incarceration. An additional review by the Division of Income Support is not necessary and will impose significant administrative costs on taxpayers without producing the compliance toward which everyone is working.

We hope that your forthcoming report will outline the cost/benefit analysis of the contemplated regulatory change, and (as we will discuss below), we expect that any implementation of the regulation will include collecting and reporting the data to know whether this program is producing good return on investment (ROI) for Kentucky taxpayers. Currently, only two states—Maine and Mississippi—have chosen to implement programs that disqualify a noncustodial parent from the SNAP program if the parent has child support arrears.⁴ That more states have not chosen to impose this policy on a class of people (parents who owe child support) who have little political or popular support⁵ suggests that the remaining 47 states have looked at this policy and determined that it was not a good use of taxpayer funds.

The regulations are incomplete, unclear, and may not give hearing officers the latitude they need to find a wide array of good causes for nonpayment.

As we discussed last week, the threshold determinants the state will use to decide whether an “individual is delinquent in payment of court-ordered support” are not contained in the regulation. We learned in our meeting that the plan is to pursue any noncustodial parent who is more than \$500 delinquent. The \$500 threshold is not in the regulation. Will DIS be promulgating separate regulations to implement this regulatory change and provide the transparency necessary for fair and uniform application of the government’s power?

Next, the proposed regulation creates short-term exemptions for illness, job change, or pendency of unemployment benefits. However, it is not clear whether these exemptions are intended to be the *only* exemptions or are intended to be the *only mandatory* exemptions among a broader universe of “good cause” exemptions the hearing officer might find in an individual case. The regulation says that a person will be disqualified “unless the individual...meets good cause for nonpayment. Good cause shall include temporary situations of thirty (30) days or less resulting from illness, job change, or pendency of unemployment benefits.”

There are two ways to interpret this language:

⁴ The USDA’s state-by-state survey of each state’s implementation of the SNAP program is available [here](#). Page 19 of the report shows that only Maine and Mississippi have programs that terminate SNAP benefits when a noncustodial parent is behind on child support.

⁵ To our knowledge, no one ever has been elected on the platform of being the voice of parents who are behind on their child support.

1. unless the individual...meets good cause for nonpayment. Good cause shall **ONLY** include temporary situations of thirty (30) days or less resulting from illness, job change, or pendency of unemployment benefits.
2. unless the individual...meets good cause for nonpayment. Good cause shall include **BUT IS NOT LIMITED TO** temporary situations of thirty (30) days or less resulting from illness, job change, or pendency of unemployment benefits.

Under the first interpretation, the list of illness, job change, or pendency of unemployment benefits are the exclusive exemptions a hearing officer might find. Under the second interpretation, "illness, job change, or pendency of unemployment benefits" are a list of reasons that would limit the hearing officer's discretion and mandate that the individual's SNAP benefits be preserved, but those reasons are not the only reasons that might be "good cause" in the judgment of the hearing officer.

Because we believe the list of reasons that a person might have that would justify being in arrears on child support extend well beyond "illness, job change, and pendency of unemployment benefits" and because DIS said in our meeting that the revocation of SNAP benefits would "depend on the underlying factors of each individual case," we believe the regulation should be amended to make clear that a hearing officer can find good cause exists beyond the reasons listed in committed to a case-by-case review.

If the regulation is implemented, we would recommend adding a "catch-all" provision to allow individual hearing officers to find additional exigent circumstances justify exempting an individual from the loss of his or her benefits.⁶ (For example, the regulation lists "illness" as a qualifying exemption. Is that illness *only* the individual's illness? What about an illness of a child the person has custody of? An ailing parent? As an additional example, someone at the meeting last Wednesday acknowledged that issues exist related to individuals' ability to access drug treatment programs. Because it is often difficult to find space in a drug treatment program, how will the program be run with respect to individuals who are ready and willing to enroll in a drug treatment program but who—through no fault of their own—are not able to access that service? Will they be exempted from termination of their SNAP benefits?)

The regulation should be amended to make it clear that the three reasons listed in 921 KAR 3:025 Sec. 3(11)3 are not the only reasons a DCBS caseworker or an administrative hearing officer might find good cause not to terminate an individual's SNAP benefits.

⁶ For example, Section 5 of 921 KAR 3:025 contemplates additional situations that would qualify as "good cause" for failing to meet the work requirement, including the illness of another household member, the presence of a child who otherwise lacks adequate childcare, and a household emergency. The regulation regarding child support arrearage should be expanded to include, at minimum, the exemptions in Section 4, but ideally contain a provision which allows the hearing officer to exercise some discretion so that each case can be evaluated on its own unique facts.

This program should provide SNAP recipients more notice than is required under federal regulations and an opportunity to cure.

We understand that DCBS intends to provide SNAP recipients with notices of termination that would terminate the monthly benefit no sooner than 10 days from the date of the notice. Because this program uses the termination of SNAP benefits to incentivize noncustodial parents to make child support payments, we want to encourage the state to make any terminations under this program effective after the recipient has both 1) been given notice of termination and 2) had an opportunity to pay the next child support payment that is due.

While federal regulations only require the state to provide 10 days' notice prior to terminating a SNAP recipient's benefits, we believe providing noncustodial parents a longer period of time to "cure" the delinquency and preserve benefits could produce better compliance and save the state significant resources by obviating the need for some fairness hearings. We believe making the termination of benefits effective in the month after the month a noncustodial parent missed a child support payment after receiving notice of noncompliance makes sense. Under this workflow, the termination would look like this:

Month 1: Notice of Noncompliance

Month 2: Noncustodial parent either makes or misses the child support payment due in Month 2.

Month 3: Termination of SNAP benefits for noncustodial parents who did not make a payment in Month 2.

This enhanced notice and an opportunity to cure could be afforded by adding the following language at (11)(b):

(11) . . . (b) *The disqualification of an individual in accordance with paragraph (a) of this subsection:*

1. *Shall begin no sooner than the second month following the month in which Department for Community Based Services provides notice of potential disqualification for delinquency.*

2. *Shall begin only if the individual fails to meet the child support obligation due in the period following issuance of notice of potential disqualification, as determined by the Department for Income Support, Child Support Enforcement.*

Beyond encouraging you to provide an opportunity to cure following the notice, we would like to work with you to ensure that any notice contains the required information and uses language and formatting designed to be comprehensible and acted upon by the SNAP recipient. As you know, Kentucky has four federally-funded legal aid organizations that are available to provide free legal representation to SNAP recipients facing termination of their SNAP benefits. Which organization is available to assist a particular SNAP recipient,

however, will be based on the county in which the SNAP recipient resides. Therefore, we would like to work with you to build a system to ensure that recipients against whom the state is taking an adverse action have the correct information regarding which legal aid organization is available to assist that recipient.

How will the state measure the effectiveness of this regulation?

From our perspective, this regulation change is extremely costly. In the Regulatory Impact Statement, the state estimated the initial outlay for technological expenses to be more than \$233,000.⁷ The initial number of families expected to be impacted was more than 12,000, though we understand the Department has revised that estimate downward to around 4,000 recipients, with eastern Kentuckians constituting a disproportionately large segment of the affected population. The state estimates ongoing costs will be \$100,000. We believe the ongoing costs—in human effort and taxpayer dollars—will be much higher. As you said on Wednesday, DCBS will review each case on its individual facts and, certainly, when DCBS provides the proper notice and hearing opportunities to noncustodial parents facing termination of SNAP benefits, the state's hearing officers will experience increased caseloads.

We believe that any benefits that flow from the program—in the form of increased child support payments or a noncustodial parent's involvement in a drug treatment program or employment training program—will not be worth the effort, both in human effort and taxpayer dollars. How will the state determine whether this new effort is worth it? What metrics will it track and what data will it capture so that the Department, legislators, and taxpayers can determine whether they are getting good value from this program? We expect the Department to commit to gathering *at least* the following information and generating an annual report to determine the program's merit going forward:

- How many recipients received notice of termination of SNAP benefits for nonsupport?
- How many of these recipients requested a fairness hearing?
- How many recipients' benefits were terminated as a result of the nonsupport program?
- How many recipients who received notice were able to preserve their SNAP benefits?
- Of the recipients who maintained their SNAP benefits, how many maintained those benefits by paying child support arrearages as required by the program?
- In real dollars, how much additional child support has been paid after a recipient received notice of termination of SNAP benefits? After SNAP benefits were terminated?

⁷ Administrative costs are split 50/50 between the state and federal government, so the state anticipates spending more than \$100,000 on technology.

- Of the recipients who maintained their SNAP benefits, how many maintained those benefits by paying child support arrearages as required by the program?
- Of the recipients who maintained their SNAP benefits, how many maintained those benefits by participating in an employment training program? A drug treatment program?
- Of the recipients who maintained their SNAP benefits, how many maintained those benefits under a “good cause” exemption?
- How many hearings were held?
- How many hours of state employee time were committed to administering the noncustodial nonsupport aspect of the SNAP program? What is the money-value of that time when multiplied by the hourly cost of the state employee’s salary and benefits?

Don’t pursue this regulatory change; but, if you choose to implement it, consider the changes we suggest to make implementation as useful and fair as possible.

We believe this regulation is a bad idea based on an inaccurate assessment of why and how parents fall behind on their child support payments. We encourage you in the strongest possible terms not to pursue a program that we believe will harm vulnerable children and families while simultaneously wasting taxpayer dollars.

However, if the state is determined to pursue this regulatory change and implement this program, we hope you will incorporate the changes we suggest to ensure the program’s implementation is fair to current and future SNAP recipients and gets the outcomes for which the state is hoping.

Sincerely,



Ben Carter
Senior Litigation and Advocacy Counsel
Kentucky Equal Justice Center

on behalf of:
Kentucky Voices for Health
Kentucky Center for Economic Policy

EXHIBIT 1

Kentucky's Pending Regulations Would Strip Critical Food Assistance from Poor, Non-Custodial Parents, Heightening Instability and Potentially Making Children Worse Off

- **Topline:** Taking food assistance away from poor, non-custodial parents that struggle to make child support payments will only increase their instability and make them less capable of providing financial support to their children, no matter how much they may want to meet their obligations.
- **The majority of parents with child support debt are extremely poor, making it hard to keep up with payments and meet their basic needs.** A lack of regular, reliable income or accrued debt can make it difficult for many poor, non-custodial parents to pay child support regularly no matter how much they want to support their children. Evidence suggests that about 70 percent of child support debt is held by those with no income or income of \$10,000 a year or less.¹ Mandatory cooperation does nothing to promote their economic stability.
- **Threatening parents' food is unproven to result in higher child support payments, and Kentucky has not sufficiently studied the question to make such a sweeping policy change.** Very few states have taken up this option, in part because there is no evidence to suggest taking SNAP away from parents with child support debt is the best way to drive additional resources to vulnerable children, especially when many low-income non-custodial parents are financially unstable and unable to provide regular support. HB 363 required the Cabinet for Health and Family Services to examine the question of requiring noncustodial parents to cooperate with the Department for Income Support as a condition of SNAP eligibility by October 1, 2018. To date, this mandate has not been met - there has been no comprehensive study of this issue. Putting people's food security and health at risk without more evidence is dangerous.
- **The policy could increase food insecurity for low-income children.** Even when non-custodial parents cannot pay the full amount of their order, many provide some financial or in-kind support (e.g. meals, childcare, diapers). Taking away their food assistance will restrain their ability to provide any support, ultimately threatening the wellbeing of their children. Furthermore, many Kentucky parents with child support orders live in households with other minor children. When a low-income households' limited food budgets are reduced, there is less for everyone to eat, including children. This policy could leave some of Kentucky's most vulnerable children hungrier.
- **The punitive nature of the policy sets parents trying to do the right thing up to fail.** The new rules would take away SNAP benefits from anyone with arrears over \$500 if they are delinquent on their most recent payment. This means that a father who has been working to pay down his child support debt and has been making regular payments would lose food assistance if he missed a single payment because he got sick and couldn't work enough hours. It would punish those trying to get on the right path, setting them back from achieving self-sufficiency – a goal we all share.

¹ Elaine Sorensen, *et. al.*, "Assessing Child Support Arrears in Nine Large States and the Nation," The Urban Institute, July 11, 2007, <http://www.urban.org/sites/default/files/publication/29736/1001242-Assessing-Child-Support-Arrears-in-Nine-Large-States-and-the-Nation.PDF>.

- **This policy will disproportionately harm certain vulnerable populations, including the formerly incarcerated.** Many parents leaving prison have significant child support debt. This policy would make it difficult for many to qualify for SNAP when they need it most, as they are working to successfully reintegrate into their communities, reconnect with their families, and seize a second chance.
- **SNAP already includes an important incentive for non-custodial parents to make child support payment.** In Kentucky, child support payments are deducted from a household's net income to account for the fact that those resources are not available for the household to buy groceries. Being able to deduct child support payments, increases household SNAP benefits.