



Drug Testing: A Solution Looking for a Problem

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Michigan is currently contemplating creating a drug testing policy for recipients of cash assistance. The evidence of widespread drug use among those who receive benefits is unsupported by the data and the legality of such policies is also questionable. No proposed or current policy in any state has been able to show that drug testing policies save any state dollars and, in fact, they are actually very expensive to implement and run. Considering that two-thirds of the cash assistance population are children and the multiple barriers to employment that those receiving benefits face, Michigan should be crafting policies that help families achieve economic security. If the state does find that drug testing is a necessary policy, it should only

be implemented as a way to identify those with substance abuse issues and help support them through recovery.

Evidence of Widespread Drug Use Among Cash Assistance Recipients Does Not Exist

Estimates on the prevalence of drug use among those receiving cash assistance vary widely, but rarely find significantly greater substance use among recipients than that of the general population.¹ In 2010, approximately 8.95 percent of Michiganians reported using illicit drugs.² When Michigan implemented a drug testing policy in 1999, it tested 435 applicants and 10.3 percent tested positive.³ Drug testing policies in other states,

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¹ Rukmalie Jayakody, Sheldon Danziger, Harold Pollack, *Welfare Reform, Substance Use, and Mental Health*. Journal of Health Politics, Policy and Law, August 2000; *Substance Abuse and Welfare Reform*, National Poverty Center, Policy Brief #2, April 2004.; ASPE Issue Brief, *Drug Testing Welfare Recipients: Recent Proposals and Continuing Controversies*, October 2011; *National Longitudinal Alcohol Epidemiologic Survey (NLAES) 1992*, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, U.S. Department of Health and Human Services; Mary Beth Vogel-Ferguson, *Family Employment Program (FEP) Study of Utah: A Snapshot in Time - 2008: Wave 3*, Social Research Institute, College of Social Work, University of Utah, January 2009.; Bridget Grant and Deborah Dawson, *Alcohol and Drug Use, Abuse, and Dependency, Among Welfare Recipients*. American Journal of Public Health. Vol. 86, p. 1450 (1996).
² Michigan Drug Control Update, Executive Office of the President, Office of National Drug Control Policy, http://www.whitehouse.gov/sites/default/files/docs/state_profile_-_michigan.pdf. Accessed January 30, 2012.
³ Michigan Department of Human Services Report to Legislature on the feasibility of a drug testing policy. http://media.mlive.com/saginawnews_impact/other/dhsreport.pdf.

where a significantly larger number of people were tested, showed an exceptionally low rate of drug use. During the few months that drug testing was used, Florida tested 7,030 applicants and 2 percent tested positive. Indiana tested 1,240 applicants and found only 1 percent tested positive. Arizona screened 64,000 people for recent drug use and found less than 1 percent were identified as using illicit drugs.⁴

In fact, nationally most drug users actually work—65.9 percent of those with drug dependence or who abused alcohol were employed part or full time.⁵ Additionally, drug use has not been shown to be a major barrier to employment for recipients of cash assistance. Research in this area has shown that there was very little difference in employment and earnings between those who tested positive for drugs and those who tested negative.⁶

People Do Not Stay on Cash Assistance for Long Periods of Time

The stereotype of the long-addled drug user receiving welfare is not based in fact. Despite anecdotal stories, the vast majority of people use Michigan’s Family Independence Program as a short-term work support until they are able to become economically stable. Two-thirds of Michigianians who receive FIP are on the program for 12 months or less. Even before recent legislation that tightened the 48-month time limit, the FIP caseload had dropped 42 percent since 2001 and it has remained remarkably stable during the recession.⁷

FIP Already has Built-In Mechanisms that Discourage Drug Use

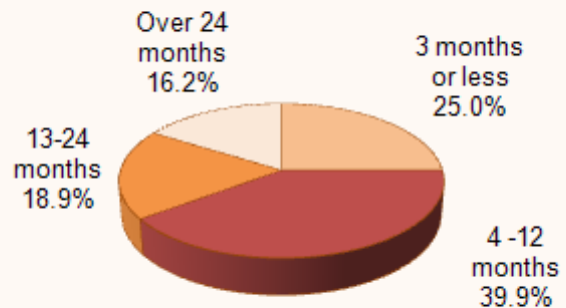
The maximum amount of cash assistance that a family of three in Michigan can receive is \$492 a month, only one-third of the poverty level. The Fair Market Rent for a two-bedroom apartment is \$745. Analysis done by the Department of Human Services calculated that

FIP recipients, even if they also receive food assistance, are still short at least \$150 a month to pay for shelter costs.⁸

FIP also has time limits and work-requirements. A recipient must participate in work activities for 30-40 hours a week. It would be very difficult for a person with a substance abuse problems to meet these requirements.

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Length of Time Households Receive Cash Assistance in Michigan, June 2011



Source: Information Packet, DHS Budget Division, Michigan Department of Human Services, DHS-PUB-0790, August 2011. Created by Michigan League for Human Services

⁴ Arthur Delaney, *1 Percent Fail Indiana Job Training Drug Test*, Huffington Post, Jan. 14, 2012.; A.G. Sulzberger, *States Adding Drug Test as Hurdle for Welfare*, The New York Times, Oct. 10, 2011

⁵ Results from the 2010 *National Survey on Drug Use and Health: Summary of National Findings*. Substance Abuse and Mental Health Services Administration Center for Behavioral Health Statistics and Quality, U.S. Department of Health and Human Services.

⁶ ASPE Issue Brief, *Drug Testing Welfare Recipients: Recent Proposals and Continuing Controversies*, October 2011. Robert E. Crew and Belinda Creel Davis. *Assessing the Effects of Substance Abuse among Applicants for TANF Benefits: The Outcome of a Demonstration Project in Florida*. Journal of Health and Social Policy. Volume 17, Issue 1, 2003.

⁷ Information Packet, DHS Budget Division, Michigan Department of Human Services, DHS-PUB-0790, August 2011.

⁸ Id.

FIP Makes up a Very Small Portion of the Budget, but is the Only Program that is Being Targeted

According to the Michigan.gov Transparency and Accountability website, Michigan currently has \$28.9 billion committed to more than 11,000 contracts, though there are no drug testing requirements for these funds.⁹ The only tax dollars that the Legislature is considering requiring a drug test for are those that go to families that make less than \$814 a month for a family of three. The entire state appropriation to the Department of Human Services is \$1.2 billion, while only \$340 million is appropriated to the FIP program—4 percent of the total General Fund budget for FY 12.

People on Cash Assistance Have Multiple Barriers to Work Beyond Substance Abuse

“The goal of the Family Independence Program is to help maintain and strengthen family life for children and the parents or other caretakers with whom they are living, and to help the family achieve the maximum possible self-sufficiency and personal independence.”¹⁰ Studies that have identified a slightly higher demographic of substance abuse among cash assistance recipients have found that it is due to the many barriers that those on cash assistance face in getting jobs and financial security, thus resulting in families with the most barriers needing assistance the longest.¹¹ DHS concluded in a

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report to the Legislature on the feasibility of a drug testing policy that “one of the primary goals of a suspicion based drug testing program for FIP families should be removing any barriers associated with job readiness and family self-sufficiency.”¹² With two-thirds of the FIP caseload being children, the state should be committed to helping families succeed.

Drug Testing Policies Do Not Provide States with Any Savings and are a Poor Use of Taxpayer Dollars

Implementing a drug testing policy is costly and not a good use of taxpayer dollars. The U.S. Department of Health and Human Services analyzed the cost of drug tests among 12 states that have a drug screening program, and found that the costs for these policies were anywhere between \$92,487 and \$20 million. Most notably, however, is that not one of the state estimates for the cost of a drug screening program showed a net savings.¹³

If Michigan were truly interested in saving money, a much better use of tax dollars would be to invest in treatment. State investments in substance abuse treatment can substantially reduce public costs such as criminal justice, public assistance, child welfare, health care services and food assistance.¹⁴ Michigan should be seeking a permanent solution, not just a Band Aid that simply shifts the problem to other state mechanisms.

⁹ Official State of Michigan web site Transparency and Accountability, Vendor Payments, <http://apps.michigan.gov/MiTransparency/Home/Search>, accessed Feb. 7, 2012.

¹⁰ TANF State Plan, State of Michigan, Department of Human Services, Amended 10/1/11.

¹¹ Gretchen Kirby and Jacquelyn Anderson. *Addressing Substance Abuse Problems Among TANF Recipients: A Guide for Program Administrators: Final Report*. Mathematica Policy Research Inc., July 19, 2000.

¹² Michigan Department of Human Services Report to Legislature on the feasibility of a drug testing policy. http://media.mlive.com/saginawnews_impact/other/dhsreport.pdf.

¹³ ASPE Issue Brief, *Drug Testing Welfare Recipients: Recent Proposals and Continuing Controversies*, October 2011.

¹⁴ Gretchen Kirby and Jacquelyn Anderson. *Addressing Substance Abuse Problems among TANF Recipients: A Guide for Program Administrators: Final Report*. Mathematica Policy Research Inc., July 19, 2000.

The State has Continually Defunded Substance Abuse Treatment in Michigan

Michigan has repeatedly cut funding to the very programs that can help treat substance abuse. The number of treatment facilities in the state has gone from 562 in 2002 to 475 in 2010. More drastic is the cut in state and locally operated facilities, from 56 in 2002 to 32 in 2010. During this time, the number of people receiving treatment has remained consistent.¹⁵

Even if a recipient is identified as having a substance abuse problem, there are limits to the treatment options that are available. Michigan law “[r]equires DCH to assure that substance abuse treatment is provided to

applicants and recipients of public assistance through the DHS who are required to obtain substance abuse treatment as a condition of eligibility for public assistance.”¹⁶ However, only 41 percent of substance abuse treatment facilities in the state provide treatment at no charge if clients cannot afford to pay.¹⁷

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A Policy that Terminates Benefits for People Who Have Substance Abuse Issues Does Not Help Anyone

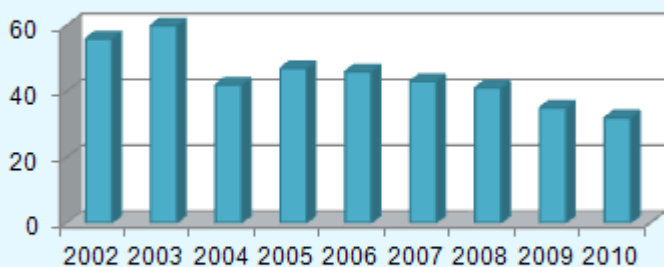
A punitive policy that seeks only to terminate benefits for people who have substance abuse issues only sets people up for failure. Substance abuse is not an acute illness and in order to successfully address substance abuse, families need long-term support.¹⁸ Relapse is a part of the process; about six of every 10

people will experience a relapse during substance abuse treatment.¹⁹ Successful treatment outcomes require some basic supports, such as child care, transportation and housing. Taking these things away will only further discourage a person’s success.²⁰

The Government, in this Case, is not an Employer and is Bound by the Protections of the Fourth Amendment

The U.S. Supreme Court has established that drug testing is an invasion of privacy that is protected by the Constitution.²¹ The Constitution is designed to protect people from government intrusion, not from the intrusion of private companies where someone is seeking

State or Locally Funded Substance Abuse Facilities in Michigan



Source: National Survey of Substance Abuse Treatments Services (N-SSATS), Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services. Created by Michigan League for Human Services

¹⁵ National Survey of Substance Abuse Treatments Services (N-SSATS), Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services.

¹⁶ H.B. 4526 (2011) Public Act 63 of 2011 (Effective 6/21/2011).

¹⁷ National Survey of Substance Abuse Treatments Services (N-SSATS), Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services.

¹⁸ *Understanding Drug Abuse and Addiction, NIDA InfoFacts*, National Institute on Drug Abuse, National Institutes of Health, U.S. Department of Health and Human Services. March 2011.; Bureau of Substance Abuse and Addiction Services, Annual Report for Fiscal Year 2010, Michigan Department of Community Health, Behavior Health and Developmental Disabilities Administration.

¹⁹ 2009 Annual Report, Michigan Department of Community Health, Mental Health and Substance Abuse, Bureau of Substance Abuse and Addiction Services.

²⁰ Gretchen Kirby and Jacquelyn Anderson. *Addressing Substance Abuse Problems Among TANF Recipients: A Guide for Program Administrators: Final Report*. Mathematica Policy Research Inc., July 19, 2000.

²¹ *Skinner v. Railway Labor Executives' Association*, 489 U.S. 602 (1989).

employment. The allowance of employer drug testing is founded in the idea that employers have a legitimate interest in workplace safety.²² The employment relationship comes from the common law doctrine of “employment at will”—that both parties to the employment contract can terminate the contract for any reason, at any time, unless otherwise specified in the contract.²³ These policies do not apply to state or federal government dissemination of public assistance.

We do not have tiered citizenship in the United States; every citizen is afforded the same protections under the law. Drug testing policies try to put families seeking temporary assistance in the same category as convicts, non-citizens and children, who do have limits on constitutional protections.

Suspicion-Based Drug Testing Policies are Burdensome and Costly

The legality of a random or universal drug testing policy for cash assistance recipients is questionable, and Michigan would be wise to stay away from such a contentious policy, as it would almost surely be challenged in court. Arizona, Missouri and Oklahoma have all passed bills to create suspicion-based drug testing policies, though the costs are high and not likely to save the states any money. Arizona estimated that it would cost \$3.4 million to just do the initial test for applicants and recipients, Oklahoma assumed a cost of \$2.16 million for its program and Missouri expects to spend \$1.9 million during FY12 and another \$2.2 million in FY13.²⁴ Suspicion-based drug testing policies have additional costs beyond the actual testing, such as the

administrative costs of proper staff training, an increase in administrative hearings, finding a contractor that can administer tests, the modification of computer programs and increased costs to the child welfare system.

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A Policy that Works

If Michigan truly has the goal of getting people off of cash assistance and, despite evidence to the contrary, thinks that substance abuse is a serious barrier to that goal, the solution should be to fix the problem, not exacerbate it. Some states have developed successful policies that assist families struggling with substance abuse.²⁵ Should there be an indication of substance abuse and, after screening and a

positive drug test, substance abuse treatment can be included as part of the family self-sufficiency plan that identifies the multiple barriers that face families in becoming independent.

At the very least, a family should be given three months to enroll in a drug treatment program and then have their participation measured as part of their success in meeting their family self-sufficiency plan requirements, and not just be cut off from benefits due to a failed drug test. Failure to comply with any element of the family self-sufficiency plan is grounds for penalty or termination of benefits, as is already established in DHS policy.²⁶ Sanctioning FIP recipients will only inhibit the few with substance abuse issues from getting treatment, as they will be burdened with no money or support, nor will they have the ability to get access to treatment.²⁷

²² Id.

²³ LaFollette, Hugh., *Mandatory Drug Testing, Drugs, Morality, and the Law*, Garland Press, 1994, 283-99.

²⁴ ASPE Issue Brief, *Drug Testing Welfare Recipients: Recent Proposals and Continuing Controversies*, October 2011.

²⁵ New York’s drug screening program requires that those that test positive get treatment as a condition of receiving benefits, failure to do so will result in a termination of benefits; Arizona requires drug treatment after a positive drug test as part of the self-sufficiency plan, though benefits do continue while the individual is in treatment; California requires a person who tested positive for drug use to commit to a one-year treatment program in order to continue to receive benefits; North Carolina, Oregon and Louisiana have similar programs that make treatment a requirement of continued receipt of benefits.

²⁶ TANF State Plan, State of Michigan, Department of Human Services, Amended 10/1/11.

²⁷ Matt Lewis and Elizabeth Kenefick, *TANF Policy Brief: Random Drug Testing of TANF Recipients is Costly, Ineffective and Hurts Families*, Center for Law and Social Policy, February 3, 2012.