STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. KEN-23-420

IN HER PRESENCE, AND MAINE EQUAL JUSTICE

Plaintiffs/Appellants

v.

COMMISSIONER, MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Defendant/Appellee

ON APPEAL FROM THE
KENNEBEC COUNTY SUPERIOR COURT

BRIEF OF PLAINTIFFS-APPELLANTS

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Center on Budget and Policy Priorities, *Policy Basics: Temporary Assistance for Needy Families*, (Mar. 1, 2022), https://www.cbpp.org/research/family-income-support/policy-basics-an-introduction-to-tanf 15

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INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal concerns the rights of immigrants in Maine and their exclusion from certain benefits in Maine's Temporary Assistance for Needy Families (TANF) program. Since 1997, Maine law has authorized and required the use of state funds to provide certain noncitizens who are barred from receiving federally funded public benefits by federal law access to Maine's TANF program on equal footing with U.S. citizens and other "qualified aliens." However, the Department of Health and Human Services ("the Department") has never provided those noncitizens access to transitional support services, a TANF benefit that helps families who lose TANF eligibility due to increased employment and earnings defray their childcare and transportation costs and alleviates the "cliff effect." The Department's exclusion of those noncitizens from transitional support services violates Maine law.

The Plaintiff-Appellants In Her Presence and Maine Equal Justice are nonprofit organizations in Maine. In Her Presence is a nonprofit organization that seeks to empower immigrant women in Maine through the provision of resources to teach English and leadership skills. Maine Equal Justice is a nonprofit civil legal aid and economic justice organization working to increase economic security, opportunity, and equity for people in Maine.

At issue is whether In Her Presence and Maine Equal Justice have stated a claim upon which relief may be granted. In their action for declaratory judgment,

In Her Presence and Maine Equal Justice sought relief pursuant to 5 M.R.S. § 8058 and 14 M.R.S. §§ 5951, *et seq.*, on two grounds: (1) that the Department's failure to adopt a rule providing access to transitional support services for noncitizens eligible for TANF under 22 M.R.S. § 3762(3)(B)(2) violates the applicable Maine TANF laws, and (2) that the Department's adoption of TANF Rule #119A which does not provide access to transitional support services for those noncitizens likewise violates the applicable Maine TANF laws (App. 30-31). Therefore, the sole question before the Court is whether Maine law requires the Department to grant access to transitional support services to TANF participants who are noncitizens eligible for state-funded TANF under 22 M.R.S. § 3762(3)(B)(2). A plain reading of the TANF statute and its related chapters demonstrates that the Maine Legislature affirmatively provided state-funded TANF assistance to certain noncitizens on equal footing as U.S. citizens and other "qualified aliens" who are eligible for the TANF program. The TANF statute also requires the Department to provide transitional childcare and transportation services (collectively referred to as "transitional support services") to all TANF program participants who lose eligibility for TANF assistance due to employment. Accordingly, noncitizens receiving state-funded TANF are eligible for transitional support services to the same extent as all other TANF program participants, and the Department's TANF Rule #119A violates Maine law because it excludes them.

STATEMENT OF FACTS

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA") prohibits immigrants who are not "qualified aliens" as defined in 8 U.S.C. § 1641 from receiving public benefits, including TANF benefits, by appropriated funds of the United States. (App. 23); 8 U.S.C. § 1611.[1] However, under Maine law, certain noncitizens are eligible for state-funded TANF benefits: the Department is required to expend state funds to provide financial assistance to certain "categories of noncitizens who would be eligible for the TANF programs but for their status as aliens under PRWORA." (App. 22); 22 M.R.S. § 3762(3)(B)(2). "Eligibility for the TANF program for these categories of noncitizens must be determined using the criteria applicable to other recipients of assistance from the TANF program." (App. 23); 22 M.R.S. § 3762(3)(B)(2).

The Department is obligated to adopt rules and implement the TANF program in accordance with federal and state law. (App. 22); 22 M.R.S. § 3769-A; 22 M.R.S. § 3762(3)(A). The services the Department must provide under this chapter include transitional childcare and transportation services. (App. 23); 22 M.R.S. § 3762(8). Maine law requires the Department to provide transitional support services to

[1] In Her Presence and Maine Equal Justice use "noncitizen" to refer to those eligible for TANF under 22 M.R.S. § 3762(3)(B)(2), "qualified alien" to refer to the specific immigration status requirements in PRWORA, and "immigrant" to refer to the broader group of immigrants in Maine who In Her Presence and Maine Equal Justice serve, which includes noncitizens eligible for TANF under 22 M.R.S. § 3762(3)(B)(2), "qualified aliens" under PRWORA, and others.

families who participated in the TANF program but lose eligibility for TANF assistance because of employment, increased earnings, or an increase in the number of hours worked. (App. 23-24); 22 M.R.S. § 3762(8).

Despite this statutory mandate, the Department has never provided transitional support services to noncitizens eligible for state-funded TANF (App. 24). On December 10, 2022, the Department enacted Rule #119A, which revised the TANF rules in the Maine Public Assistance Manual, 10-144 C.M.R. ch. 331 (App. 24; App. 100-111). These rules include eligibility criteria for the receipt of TANF benefits and provide separate eligibility criteria for transitional transportation and childcare support services (App. 100-111). In Rule #119A, the Department changed certain eligibility criteria for transitional support services but continued its longstanding policy, in violation of Maine law, to exclude certain noncitizens from transitional support services who otherwise meet the eligibility criteria, *i.e.*, who lose TANF eligibility because of increased employment, earnings, or number of hours worked, solely because they are recipients of state-funded TANF.[2] (App. 24-25).

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[2] The relevant eligibility criteria for participation in transitional transportation services are as follows:

> Eligibility Criteria: The family must meet the following criteria: . . . (a) Non-Financial Requirements: . . . (a) The child(ren) must be a U.S. Citizen or qualified alien as defined in Chapter II.

10-144 C.M.R. ch. 331 § V(A)(2)(c)(ii). For transitional childcare services, the Department similarly excludes state-funded TANF recipients:

Superior Court Proceedings

In Her Presence and Maine Equal Justice filed an Amended Complaint against the Department requesting relief pursuant to 5 M.R.S. § 8085 and 14 M.R.S. § 5951, *et seq.*, (the "Complaint") on March 6, 2023. (App. 21-32.) In Her Presence and Maine Equal Justice sought declaratory relief and an order requiring the Department to adopt a rule providing transitional support services to all TANF participants who previously received TANF benefits under 22 M.R.S. § 3762(3)(B)(2) and otherwise meet eligibility criteria for transitional support services. (App. 30-31) The Department filed a Motion to Dismiss the Amended Complaint (the "Motion to Dismiss") on March 27, 2023. (App. 33-52.) By an order dated October 3, 2023, the Superior Court (*Murphy, J.*) granted the Department's Motion to Dismiss and dismissed the Complaint (the "Order"). (App. 1-10.) The Superior Court determined that at least one plaintiff has standing in this matter, but the Complaint failed to state a claim for relief pursuant to M.R. Civ. P. 12(b)(6) and dismissed the Complaint on that basis.[3] *Id.* In Her Presence and Maine Equal Justice timely appealed.

> Eligibility Criteria: The family must meet one of the following criteria: (a) TANF/PaS Closure: The TANF/PaS case must have closed because—(i) There was an increase in earned income except in the following situations: . . . (c) The adult member(s) of the TANF/PaS assistance group are no longer eligible for TANF/PaS due to not being a U.S. Citizen or qualified alien as defined in Chapter II.

10-144 C.M.R. ch. 331 §V(B)(2)(a)(i)(c).

[3] The Superior Court ruled in favor of In Her Presence and Maine Equal Justice on the Department's 12(b)(1) standing argument, determining that at least one plaintiff has standing to maintain the claim. (App.

STATEMENT OF ISSUES

1. Whether the State of Maine Legislature has affirmatively provided for state-funded TANF benefits for certain noncitizens in Maine.

2. Whether the transitional support services described at 22 M.R.S. § 3627(8) are TANF benefits for which noncitizen TANF participants who receive state-funded TANF benefits are eligible.

3. Whether the transitional childcare support services described at 22 M.R.S. § 3627(8)(B) are available to all TANF participants who lose TANF eligibility due to employment, including TANF participants who receive state-funded TANF.

4. Whether the transitional transportation support services set forth at 22 M.R.S. § 3627(8)(C) are available to all TANF-ASPIRE participants who lose TANF eligibility due to increased earnings or an increase in the number of hours worked, including TANF participants who receive state-funded TANF.

9) That decision was not cross-appealed by the Department and is therefore not before the Court. A cross-appeal must be filed within fourteen days of the first notice of appeal or twenty-one days of the judgment, whichever period expires later. M.R. App. P. 2(b)(3). "A cross-appeal is essential if a party other than the appellant wishes to raise an issue and modify a judgment in a manner that is different from the change in the judgment sought by the appellant." Alexander, *Maine Appellate Practice* § 2.7(a) at 39 (4th ed. 2013); *see also Costa v. Vogel*, 2001 ME 131, ¶ 1 n.1, 777 A.2d 827.

5. Whether the Department's TANF Rule #119A violates Maine law by excluding those noncitizens who receive state-funded TANF benefits from receiving transitional childcare and transportation support services.

STANDARD OF REVIEW

In an appeal from an order on a motion to dismiss pursuant to M.R. Civ. P. 12(b)(6), the Law Court reviews the legal sufficiency of the complaint *de novo*. *Doe v. Bd. of Osteopathic Licensure*, 2020 ME 134, ¶ 6, 242 A.3d 182. The Court views the complaint "in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action that would entitle the plaintiff to relief pursuant to some legal theory." *Id.* (quoting *Johanson v. Dunnington*, 2001 ME 169, ¶ 5, 785 A.2d 1244). Accordingly, "[a] dismissal should only occur when it appears 'beyond doubt that a plaintiff is entitled to no relief under any set of facts that [they] might prove in support of [their] claim.'" *McAfee v. Cole*, 637 A.2d 463, 465 (Me. 1994) (quoting *Hall v. Bd. of Envtl. Prot.*, 498 A.2d 260, 266 (Me. 1985)). In a challenge to the validity of an agency rule raised in a declaratory judgment action, the Law Court reviews the rule using the standard set forth in the Maine Administrative Procedure Act at 5 M.R.S. § 8058(1). While the Superior Court (Murphy, J.) found that In Her Presence and Maine Equal Justice had not stated a claim upon which declaratory relief pursuant to 5 M.R.S.A. § 8058 could be granted, the Law Court does not accord deference to the Superior Court's determination. *Conservation Law*

Found. v. Dep't of Envtl. Prot., 2003 ME 62, ¶ 21, 823 A.2d 551 (citing *DeMello v. Dep't of Envtl. Prot*., 611 A.2d 985, 986 (Me. 1992)). Instead, the Court directly reviews the rule to determine whether it is arbitrary or contrary to law. *Id.* (citing *Cumberland Farms N., Inc. v. Me. Milk Comm'n*, 428 A.2d 869, 874 (Me. 1981)).

ARGUMENT

In Her Presence and Maine Equal Justice's Complaint states a claim for declaratory relief because the Department's TANF Rule #119A bars noncitizens eligible for TANF under 22 M.R.S. § 3762(3)(B)(2) from receiving transitional support services in violation of Maine law. The Maine Legislature affirmatively provided access to all the benefits and services of Maine's TANF program to noncitizens eligible for TANF under 22 M.R.S. § 3762(3)(B)(2), and 22 M.R.S. § 3762(8) unambiguously requires the Department to provide transitional support services to all TANF participants who lose TANF eligibility because of employment without any limitation based on immigration status. By its own admission, the Department has never promulgated a rule providing transitional support services to noncitizens eligible for state-funded TANF under 22 M.R.S. § 3762(3)(B)(2) and has instead explicitly excluded them, most recently in TANF Rule #119A. Therefore, In Her Presence and Maine Equal Justice have stated a claim upon which relief can be granted and the Order of the Superior Court should be reversed.

I. Maine law requires the Department to grant certain noncitizens access to the TANF program on equal footing with U.S. citizens and other "qualified aliens."

There is no dispute that Maine law affirmatively provides state-funded TANF assistance for certain non-citizens in Maine. In accordance with federal law, the Maine Legislature affirmatively provided TANF eligibility for certain noncitizens

when it enacted 22 M.R.S. § 3762(3)(B)(2) in 1997. P.L. 1997, c. 530. In 1996, with the passage of the PRWORA, Congress prohibited certain immigrants who did not meet PRWORA's new definition of "qualified alien"[4] from accessing federally funded public benefits. 8 U.S.C. § 1611. However, Congress left the door open for states to provide "state and local public benefits," *i.e.*, state-funded benefits, for immigrants otherwise ineligible for federally funded benefits through the enactment of a state law:

> A state may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which an alien would otherwise be ineligible under subsection (a) only through the enactment of a state law after August 22, 1996, which affirmatively provides for such eligibility.

8 U.S.C. § 1621(d). That is exactly what the Maine Legislature did for Maine's TANF program when, one year after the passage of PRWORA, it enacted a law requiring that the Department "must" expend funds for the purpose of providing "financial assistance to . . . the categories of noncitizens who would be eligible for the TANF programs but for their status as aliens under PRWORA." 22 M.R.S. § 3762(3)(B)(2)*; see Maine Municipal Ass'n v. Maine Dep't of Health & Human Servs.*, No. AP-14-39, 2015 Me. Super. LEXIS 197, at *20-21 (Me. Super. Ct. June 9, 2015) (finding 22 M.R.S. § 3762(3)(B)(2) affirmatively provides TANF benefits

[4] *See* 8 U.S.C. § 1641 for the definition of "qualified alien." In Maine, most families seeking TANF benefits who are not "qualified aliens" under PRWORA are immigrants with pending applications for asylum.

to noncitizens ineligible for TANF under federal law). Following the restrictions put in place by PRWORA, the Legislature authorized the Department to use appropriated state funds to provide TANF assistance to those noncitizens. 22 M.R.S. § 3762(3)(B).

Though 22 M.R.S. § 3762(3)(B)(2) specifically defines which noncitizens may be eligible for the TANF program, it uses broad language as to which benefits and services those noncitizens may receive in the TANF program.[5] The statute defines a noncitizen eligible for state-funded TANF as one "legally admitted to the United States who is neither receiving assistance on July 1, 2011 nor has an application pending for assistance on July 1, 2011 that is later approved" and is either:

> (a) Elderly or disabled, as described under the laws governing supplemental security income . . .
> (b) A victim of domestic violence;
> (c) Experiencing other hardship, such as time necessary to obtain proper work documentation, as defined by the department by rule. . . . or
> (d) Unemployed but has obtained proper work documentation, as defined by the department by rule. . . .

[5] The TANF statute and its related chapters use "benefits" and "services" interchangeably, but generally both may be understood as benefits of financial value to TANF participants, *e.g.* payments made by the Department to third-party childcare providers to cover TANF participants' childcare costs, distinct from the monthly cash assistance participants receive in the TANF program. Section II below contains a more detailed description of the TANF program's benefits and services.

Id.[6] While noncitizens must meet one of these particular criteria, the statue requires that the Department must otherwise determine noncitizens' eligibility for TANF "using the criteria applicable to other recipients of assistance from the TANF program." *Id.* Once a noncitizen is determined eligible under the TANF program criteria, the statute provides no limitation on which benefits and services they may receive.

Indeed, the broad, plain language in 22 M.R.S. § 3762(3)(B)(2), shows that the noncitizens eligible for state-funded TANF are eligible for all benefits and services under Maine's TANF program throughout section 3762 and chapter 1053-B. First, the Department is required to provide "financial assistance" to noncitizens eligible under 22 M.R.S. § 3762(3)(B)(2). The statute's use of the general term "financial assistance" evinces the Legislature's broad intent and contradicts the Department's argument that the Legislature limited the benefits for noncitizens solely to monthly cash assistance. (*See* App. 48-49.) The Legislature knows how to distinguish cash assistance from the other benefits and services in the TANF program, and therefore could have limited state-funded TANF for noncitizens to cash assistance, but it did not do so here. *See, e.g.*, 22 M.R.S. § 3762(3)(B)(9) ("In cases where the TANF recipient has no child care costs, the department shall

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[6] These criteria were not part of the original law authorizing state-funded TANF for noncitizens, P.L. 1997, c. 530, but were added in 2011, P.L. 2011, c. 380, Pt. KK, § 4.

determine a *total benefit package, including TANF cash assistance* . . .") (emphasis added); *id.* § 3762(9)(C) (setting a floor on "cash assistance levels" with no floor for the levels of other TANF benefits and services); *see also Degrosseilliers v. Auburn Sheet Metal*, 2021 ME 63, ¶ 14, 264 A.3d 1237 (when statutory language exists allowing one intended result, the absence of that language in another provision demonstrates the Legislature's intent to provide for a different result).[7] Moreover, the Department is required to expend funds on financial assistance for noncitizens "to provide assistance to families *under this chapter*," as opposed to under this subsection or paragraph. 22 M.R.S. § 3762(3)(B) (emphasis added); *see* Office of the Revisor of Statutes, *Maine Legislative Drafting Manual*, at 34 (1st ed. Oct. 1990, rev. Oct. 2016) ("chapter" distinct from "title," "subtitle," or "part" is a term of art describing a subunit of the Maine Revised Statutes). Finally, the Legislature's structural decision to place the provision about state-funded TANF eligibility in subsection 3's administration provision—which applies to the entire chapter—illustrates the intent to provide all benefits and services under the TANF program to noncitizens, including transitional support services.

[7] Elsewhere in chapter 1053-B, monthly cash assistance is referred to using terms such as "monthly benefit," "monthly assistance," or "maximum payment." *See, e.g.*, 22 M.R.S. § 3762(3)(B)(8) ("the monthly TANF benefit is the maximum payment level or the difference between the countable earnings and the standard of need established by rule . . . whichever is lower"); 22 M.R.S. § 3769-C(1) (discussing annual increases to the "maximum amount of monthly TANF assistance"). However, none of those terms is used to limit the provision of TANF benefits and services to noncitizens in 22 M.R.S. § 3762(3)(B)(2) to cash or monthly payments.

In addition, Maine's TANF program includes an array of benefits and services of financial value to low-income families with children beyond monthly cash assistance. Other benefits and services are set forth in section 3762, elsewhere in chapter 1053-B, and in related chapters, and include, but are not limited to:

- A special housing allowance of $300 per month for TANF families whose shelter expenses exceed 50% of their monthly income, 22 M.R.S. § 3672(3)(B)(6);
- Childcare assistance necessary to cover TANF recipients' childcare costs up to a maximum amount, paid directly to the TANF participant or to their designated childcare provider, 22 M.R.S. § 3762(3)(B)(9);
- Comprehensive assessments for participants with physical or mental health impairments, learning disabilities, cognitive impairments, or limitations related to providing care for a family member with a disabling condition, 22 M.R.S. § 3788(3-A);
- Support services to enable participants to participate in approved education, training, or employment plans, 22 M.R.S. § 3788(5);
- Education, training, and employment services, 22 M.R.S. § 3788(6);
- Pre-matriculation services for participants interested in applying for the Parents as Scholars program, 22 M.R.S. § 3788(6-A).

And, of course, at issue in this case, transitional support services, which are set forth at 22 M.R.S. § 3762(8).

Accordingly, a plain reading of the 22 M.R.S. § 3762(3)(B)(2) can lead to no other conclusion: Maine law requires the Department to provide noncitizens who qualify for state-funded TANF access to all benefits and services of the TANF program on equal footing with all other TANF participants.

II. Under Maine law, the transitional support services program is a part of the TANF program, notwithstanding the Department's characterization of it as separate from the TANF program.

When PRWORA replaced Aid to Families with Dependent Children (AFDC), a federal program that provided cash assistance to low-income families with children, with the TANF program in 1996, one of the hallmarks of TANF was increased "flexibility" for each state to design and operate its own program. *See* 42 U.S.C. § 601(a); *see also* Policy Basics: Temporary Assistance for Needy Families, Center on Budget and Policy Priorities (Mar. 1, 2022), https://www.cbpp.org/research/family-income-support/policy-basics-an-introduction-to-tanf (last accessed January 10, 2024). TANF has a "block grant" structure wherein the federal government provides each state a fixed amount of federal funds to operate its own program. *Id.* PRWORA prescribes certain rules for states' use of the funds, *see generally* 42 U.S.C. §§ 601, *et seq.*, but leaves states significant room to spend funds in "any manner reasonably calculated to accomplish the purpose [of the TANF program]," 42 U.S.C. § 604(a).

To that end, Maine has designed its TANF program to "promote family economic self-support." 22 M.R.S. § 3762. The Department is required to provide non-cash benefits that are part of the TANF program, including transitional transportation and childcare services for TANF participants who lose eligibility for

TANF due to employment, increased earnings, or increased hours worked to all TANF-ASPIRE recipients. *Id.*

The Superior Court held that the affirmative provision of TANF benefits to noncitizens in subsection 3 of section 3762 does not extend to the transitional support services program in subsection 8. The Superior Court's conclusion turned on the determination that the transitional support services program is separate from the TANF program because it is offset in subsection 8; is prefaced with similar language as subsection 3; contains its own eligibility requirements; and does not independently reference eligibility for immigrants who do not qualify for federally funded benefits under PRWORA. This interpretation contravenes the text and structure of section 3762 and its related chapters. The transitional support services program is a part of Maine's TANF program, despite the Department's characterization; accordingly, the affirmative provision of eligibility for noncitizens in 22 M.R.S. § 3762(3)(B)(2) extends to these services.

A. The text and structure of the TANF statute supports the interpretation that the transitional support services program is part of the TANF program.

The legal requirements of the TANF program are set forth throughout title 22, chapter 1053-B, not merely in subsection 3 of section 3762, which provides for the "administration" or governance of the TANF program. In subsection 3, the Department is authorized to use its funds "insofar as resources permit, provided

under and in accordance with the United States Social Security Act or state funds appropriated for this purpose or a combination of state and federal funds to provide assistance to families *under this chapter*," not under that section or subsection. 22 M.R.S. § 3762(3)(B) (emphasis added). While there are many references to other "programs" in chapter 1053-B, these are parts of the TANF program—that the Department is required to administer and authorized to fund under subsection 3—not separate programs. *Compare* 22 M.R.S. § 3762(8) ("The department shall administer a program of transitional support services . . . .") *with* 22 M.R.S. § 3762(3)(B)(4) ("[The department must provide] an assistance program for needy children, 19 to 21 years of age, who are in full-time attendance in secondary school.") *and* 22 M.R.S. § 3763(9) ("The department shall establish and operate a program of emergency assistance to needy families with children.").[8] Because they are part of the TANF program, the Department administers each of these programs under 10-144 C.M.R. ch. 331, the "Maine Public Assistance Manual" or TANF rule in the Code of Maine Regulations, rather than by separate rules. *See* 10-144 C.M.R. ch. 331, § V (Transitional Benefits); *id.* § II(A)(2) (providing state-funded assistance to full time students ages 19-21); *id.* § VIII (Emergency Assistance). Accordingly, the structure and text of the TANF statute and its related chapters does not support

[8] The ASPIRE-TANF program ("ASPIRE program"), defined and cross-referenced in 22 M.R.S. § 3762(1)(A), is another "program" established in relation to the TANF program at 22 M.R.S. § 3781-A.

the interpretation that the transitional support services program is somehow unique and separate from the TANF program despite being contained in chapter 1053-B, section 3762. Rather, subsection 3 of section 3762 extends to all the programs, benefits, and services described throughout chapter 1053-B, including the transitional support services program.

Moreover, transitional support services are elsewhere explicitly referred to as a TANF service. In 22 M.R.S. § 3788, which sets forth the requirements of the ASPIRE program, the Department is required to give all TANF participants notice of the availability transitional support services:

> provide written notice to all applicants for and recipients of the Temporary Assistance for Needy Families program of the range of education, employment and training opportunities, and the types of support services, *including transitional support services* and medical assistance, available under the ASPIRE-TANF program, together with a statement that all participants may apply for those opportunities and services.

22 M.R.S. § 3788(1) (emphasis added). Reading sections 3762 and 3788 together, there can be no doubt that the transitional support services program, like the various other benefits, services, and programs referenced throughout chapter 1053-B, is part of the TANF program. That it supports parents who "lose TANF eligibility" due to increased employment and earnings, 22 M.R.S. § 3762(8), makes good sense: the purpose of Maine's TANF program is to promote "family economic self-support," 22 M.R.S. § 3762, specifically through employment, 22 M.R.S. § 3781-A ("The purpose of [the ASPIRE] program is to provide services and support to recipients of

TANF and reduce their dependence on public assistance . . . . The principal goal is to focus on helping people obtain *and retain* employment that sustains their families." (emphasis added)). Providing support to low-income working parents by offsetting their work-related transportation and childcare costs is an effective means of promoting self-sufficiency because it mitigates the well-documented "cliff effect"[9] and the potential that a parent would not be able to sustain employment and need to return to the TANF for further monthly income support. And because 22 M.R.S. § 3762(3)(B)(2) provides noncitizen eligibility for all benefits and services of the TANF program, that eligibility must extend to transitional support services.

B. Federal law does not require the Maine Legislature to repeat the affirmative provision of state-funded TANF assistance for noncitizens to each benefit and service of the TANF program.

The Law Court has often said that "in interpreting a statute, [the Court seeks] to effectuate the intent of the Legislature, which is ordinarily gleaned from the plain language of the statute." *Doherty v. Merck & Co.*, 2017 ME 19, ¶ 11, 154 A.3d 1202 (cleaned up). Here, the Court should effectuate the Legislature's intent, as described above, to provide all TANF benefits and services to noncitizens who qualify under 22 M.R.S. § 3762(3)(B)(2) and should not impose requirements on the Legislature

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[9] "Benefits cliffs (the "cliff effect") refer to the sudden and often unexpected decrease in public benefits that can occur with a small increase in earnings. This happens when families receive benefits through a public assistance program, earn a raise and then become ineligible to continue receiving benefits despite being unable to sustain their household." Introduction to Benefits Cliffs and Public Assistance Programs, National Conference of State Legislatures (Nov. 29, 2023), https://www.ncsl.org/human-services/introduction-to-benefits-cliffs-and-public-assistance-programs (last accessed Jan. 16, 2024).

that do not exist in federal law. There is no requirement in federal law at 8 U.S.C. § 1621(d) that the Maine Legislature repeat itself throughout the TANF statute that it intends to affirmatively provide noncitizen eligibility for each and every TANF benefit and service.[10] Courts in other jurisdictions have specifically rejected arguments that would require state legislatures to be hyper-specific in statutory language to effectuate the provision of state-funded benefits under 8 U.S.C. § 1621(d). For example, in *Martinez v. Regents of University of California*, the Supreme Court of California cautioned against reading into 8 U.S.C. § 1621(d) "language it does not contain or elements that do not appear on its face," noting that Congress "has shown it knows how to require a state specifically reference a federal law when it wishes to do so because it has done just that numerous times." 241 P.3d 855, 867 (Cal. 2010). In *Kaider v. Hamos*, an Illinois appellate court, following *Martinez*, likewise reasoned that 8 U.S.C. § 1621(d) simply requires "positive expression of intent to opt out of section 1621(a) and provide benefits to unlawful aliens" without "specific words" prescribed by section 1621(d). 975 N.E.2d 667, 674-675 (Ill. App. Ct. 2012) (cleaned up), *petition for appeal denied by* 981 N.E.2d

[10] A more reasonable limitation to read into 22 M.R.S. § 3762(3)(B)(2) is that the Maine Legislature understood the affirmative provision for noncitizen eligibility in TANF to be limited to the TANF program distinct from other programs administered by the Department. In *Maine Municipal Association v. Maine Department of Health and Human Services*, the Superior Court (Warren, J.) noted that the Maine Legislature has enacted separate laws affirmatively providing for noncitizen eligibility in different programs operated by the Department such as TANF and the Supplemental Nutrition Assistance Program (SNAP) but not the General Assistance program. No. AP-14-39, 2015 Me. Super. LEXIS 197, at *20-21 (Me. Super. Ct. June 9, 2015); *see* 22 M.R.S. § 3104-A (SNAP eligibility for certain noncitizens); *see also* 22 M.R.S. § 3174-FFF (MaineCare and CHIP eligibility for certain noncitizens).

997 (Ill. 2012). The Court should follow these well-reasoned decisions from other jurisdictions and reject the Department's formalistic interpretation of 8 U.S.C. § 1621(d) here, requiring the Legislature's repetition of noncitizen eligibility language for each benefit and service in the TANF program, and specifically in subsection 8 regarding the transitional support services program.

The preface language to 22 M.R.S. § 3762(8) makes no difference in this analysis and should not be read as language limiting eligibility based on immigration status. Before the Superior Court, the Department argued that subsection 8 begins with the directive to administer the transitional support services program "in accordance with PRWORA," and argued that PRWORA prohibits the Department from using federal funds to provide TANF program benefits to immigrants who are not "qualified aliens" under federal law. (App. 49-52.) As the Legislature has recognized, however, the Department acts perfectly in accordance with PRWORA by providing benefits to those who are not "qualified aliens" with state, rather than federal, funds. That is why the Legislature authorized the Department to use "funds provided under and in accordance with the United States Social Security Act *or* state funds appropriated for this purpose *or* a combination of state and federal funds to provide assistance to families under this chapter," 22 M.R.S.A § 3762(3)(B) (emphasis added), when it required that the Department "must" expend funds to provide financial assistance to those noncitizens eligible for TANF under 22 M.R.S.

§ 3762(3)(B)(2). The Department does not violate federal law by providing benefits and services under the TANF program—including transitional support services—to noncitizens with state funds.

In fact, the Department follows the Legislature's command to provided state-funded benefits and services to noncitizens in other parts of the TANF program beyond monthly cash assistance and outside the benefits and services described in subsection 3. Maine's TANF program includes mandatory participation in an education, training, and employment program. *See* 22 M.R.S. § 3763(2). The ASPIRE-TANF program ("ASPIRE program"), established in title 22, chapter 1054-A, provides education, training, and employment opportunities to TANF participants and provides benefits and services necessary to their participation in the program.[11] *See generally* 22 M.R.S. § 3788. Among those are "support services" required by 22 M.R.S. § 3788, which the Department has defined as "services such as childcare, transportation, eye and dental care, which enable the participant to complete the [ASPIRE program activities] and take employment." 10-144 C.M.R. ch. 607, § 1. Notwithstanding the reference to PRWORA in the preface language establishing the

[11] The Legislature's placement of the ASPIRE program, plainly a part of the TANF program, in a separate chapter of the Maine Revised Statutes also undermines the Department's argument that the transitional support services program, placed in section 3762, is uniquely separate from the TANF program and contradicts the Superior Court's conclusion that the benefits and services of the TANF program are limited to those described in section 3762, subsection 3. (*See* App. 13) The Court must look to the entire chapter 1053-B and its related chapters to determine which benefits and services are a part of Maine's TANF program.

ASPIRE program in 22 M.R.S. § 3781-A (nearly identical to the preface language in 22 M.R.S. § 3782(8)), the Department requires all noncitizens who qualify for TANF under 22 M.R.S. § 3762(3)(B)(2) to participate in ASPIRE *and* provides support services to them, absent any affirmative provision of noncitizen eligibility in the ASPIRE program statutory language at 22 M.R.S. § 3781-A. *Compare* 10-144 C.M.R. ch. 331, § II(H) (mandatory ASPIRE participation for TANF participants regardless of immigration status) *and* 10-144 C.M.R. ch. 607, § 14 (no immigration status qualifications for ASPIRE support services) *with* 10-144 C.M.R. ch. 331 § V(A)(2)(c)(ii) & *id.* § V(B)(2)(a)(i)(c) (excluding immigrants who are not eligible for federally funded TANF assistance from transitional childcare and transportation support services). In the ASPIRE program, the Department correctly complies, without objection and without federal penalty, with Maine law at 22 M.R.S. § 3762(3)(B)(2) to provide certain noncitizens access to all the benefits and services in Maine's TANF program using state funds. These include ASPIRE support services for childcare and transportation, among other benefits. *See* 10-144 C.M.R. ch. 607, § 14. This is perfectly consonant with the requirements of federal law in 8 U.S.C. § 1621(d).

However, once those noncitizens lose TANF eligibility due to increased employment, earnings, and hours worked, the Department ceases to use "the criteria applicable to other recipients of assistance from the TANF program," 22 M.R.S. §

3762(3)(B)(2), and has unlawfully excluded them from transitional support services. Given the plain language of Maine law and the Department's failure to provide transitional support services for noncitizens who are eligible for TANF under 22 M.R.S. § 3762(3)(B)(2), In Her Presence and Maine Equal Justice have stated a claim upon which declaratory relief may be granted.

C. Even if transitional support services are not part of the TANF program, the Department is still required to provide those benefits to noncitizen state-funded TANF recipients.

The central question in this appeal is whether Maine law "affirmatively provides" eligibility for transitional support services to noncitizen TANF participants who receive state-funded TANF benefits pursuant to 22 M.R.S. § 3762(3)(B)(2). Even if the Court determines that the transitional support services program is separate from the TANF program, it must still find that the noncitizen eligibility provision in 22 M.R.S. § 3762(3)(B)(2) extends to transitional support services because the transitional support services program is available to all former TANF participants who lose eligibility due to employment, which includes state-funded TANF recipients who lose eligibility due to employment. This reading of Maine law in no way runs afoul of federal law at 8 U.S.C. § 1621(d). As detailed above, under PRWORA, Congress did not require state legislatures to use any specific language to provide state-funded public benefits to immigrants who are not "qualified aliens." Courts have found that 8 U.S.C. § 1621(d) is satisfied "by any

state law that conveys a positive expression of legislative intent to opt out of 1621(a) by extending state or local benefits to unlawful aliens." *Kaider*, 975 N.E.2d at 674.

In the matter of *Kaider v. Hamos*, an Illinois appellate court reviewed a case identical to the matter presented to this Court. *Id.* The issue in *Kaider* was whether Illinois statutes authorizing Medicaid coverage for immigrants who were not "qualified aliens" in the All Kids and Moms & Babies programs violated 8 U.S.C. § 1621(d) because the Illinois statutes did not "affirmatively provide" that "unlawful aliens" were eligible for state-funded healthcare benefits. *Id.* at 670-671. After determining that in 8 U.S.C. § 1621(d), Congress did not require state legislatures to specifically refer to "illegal aliens" or similar terms to put the public on notice of state-funded benefits for immigrants, *id.* at 675, the court reviewed the relevant Illinois statutes and found that the legislature had expressed its positive expression of Medicaid and CHIP coverage for noncitizen children in "sections 1-11 and 12-4.35" of state law which were enacted after the passage of PRWORA, *id.* at 676-77. Then, the court considered the plaintiff's argument seeking to invalidate state-funded healthcare coverage for uninsured immigrant children living in households with incomes 200% or 300% above federal poverty guidelines, an eligibility category that had been added to Illinois' Medicaid and CHIP programs under Illinois' All Kids Act in 2008. *Id.* at 677. The court rejected the argument that the

legislature was required to reiterate its intent to extend this coverage to noncitizen children:

> While the All Kids Act raised the income threshold for eligibility beyond the limits of Medicaid and CHIP, it also imposed no immigration or citizen requirements for the All Kids program. Instead, the All Kids Act used unlimited and broad language, referencing "all kids." When the [state legislature] used such broad and unmodified language, especially after extending Medicaid and CHIP benefits to noncitizen children under section 12-4.35, we conclude that the All Kids Act conveys the legislature's unambiguous and positive expression of intent to cover children who otherwise meet the income requirements of that act, regardless of immigration status.

Id. at 678. The Illinois Supreme Court denied a petition for appeal. *Kaider v. Hamos*, 981 N.E.2d 997 (Ill. 2012).

The same rationale applies here. The Department must provide transitional support services to TANF participants who receive state-funded TANF benefits even if transitional support services are not themselves a TANF benefit because transitional support services are available to <u>all</u> TANF participants who lose eligibility due to increased employment. The requirement that the Department provide transitional transportation benefits in 22 M.R.S. § 3762(8)(B) states:

> The department shall provide limited transitional transportation benefits to meet employment-related costs to ASPIRE-TANF program participants who lose eligibility for TANF assistance due to employment . . . .

And the similar requirement for transitional childcare benefits in 22 M.R.S. § 3762(8)(C) states:

> The department shall make available transitional child care services to families who lose eligibility for TANF as a result of increased earnings or an increase in the number of hours worked . . . .

According to the plain language of 22 M.R.S. § 3762(8), the Legislature has unambiguously commanded the Department to provide transitional childcare and transportation services to all TANF participants who lose eligibility for TANF because of employment. The Legislature did not exclude any group of TANF participants from the transitional support services program or include any limiting language based on immigration status. By using such broad, unmodified language after extending TANF benefits to noncitizens under 22 M.R.S. § 3762(3)(B)(2), the Court should conclude that Maine's TANF statutes conveys the Legislature's unambiguous and positive expression of intent to cover state-funded TANF participants in the transitional support services program who otherwise meet the eligibility criteria under 22 M.R.S. § 3762(8).

III. The Department's rules excluding noncitizens eligible for Maine's TANF program under 22 M.R.S. § 3762(3)(B)(2) from transitional support services are contrary to law.

There is no dispute that the Department's Rule #119A excludes noncitizens who receive state-funded TANF from receiving transitional support services. The Department's rule violates 22 M.R.S. § 3762(8) which unambiguously requires the Department to provide transitional support services to TANF participants whose eligibility ends due to increased employment, earnings, and/or hours worked without

any limitation on noncitizens eligible for state-funded TANF under 22 M.R.S. § 3762(3)(B)(2). In Her Presence and Maine Equal Justice have stated a claim for declaratory relief for each of its requests: (1) to declare the Department's promulgation of TANF Rule #119 violates Maine law because it excludes families who previously received TANF under 22 M.R.S. § 3762(3)(B)(2) from the transitional support services program; (2) to declare that the Department's failure to enact a rule providing for those noncitizens eligibility likewise violates Maine law; and (3) to order the Department to adopt a rule extending transitional support services to those noncitizens in accordance with Maine law. (App. 30-31.)

In an action for declaratory relief, the Court directly reviews the rule pursuant to 5 M.R.S. § 8058(1) to determine whether it is contrary to law. *Conservation Law Found.*, 2003 ME 62, ¶ 21, 823 A.2d 551. Moreover, relief from an agency's refusal or failure to adopt a rule is available when adoption of a rule is mandatory. *See* 5 M.R.S. § 8058(1). "In the event that the court finds that an agency has failed to adopt a rule as required by law, the court may issue such orders as are necessary and appropriate to remedy such failure." *Id.* Whether In Her Presence and Maine Equal Justice have sufficiently stated a claim pursuant to M.R. Civ. P. 12(b)(6) therefore turns on whether the Department is required by law to provide eligibility for transitional support services to include all people—including noncitizens—who

participate in the TANF program and lose eligibility for TANF because of employment, increased earnings, or an increase in the number of hours worked.

This question necessarily requires the Court to engage in statutory interpretation. The goal of statutory interpretation is to give effect to the Legislature's intent. *Manirakiza v. Dep't of Health & Hum. Servs.*, 2018 ME 10, ¶ 8, 177 A.3d 1264 (citing *Dickau v. Vt. Mut. Ins. Co.*, 2014 ME 158, ¶ 19, 107 A.3d 621). "When a case concerns the interpretation of a statute that an administrative agency administers and that is within its area of expertise," courts must first determine whether the statute is ambiguous. *Cobb v. Board of Counseling Prof'ls Licensure*, 2006 ME 48, ¶ 13, 896 A.2d 271 (adopting the two-step analysis developed by the United States Supreme Court in *Chevron v. U.S.A Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984) and noting that if a "statute is unambiguous, [courts] do not defer to the agency's construction, but we interpret the statute according to its plain language."). The Court must consider the statute within the context of the "the whole statutory scheme for which the section at issue forms a part." *State v. White*, 2001 ME 65, ¶ 4, 769 A.2d 827; *see also Scamman v. Shaw's Supermarkets, Inc.*, 2017 ME 41, ¶ 13, 157 A.3d 223. If the plain language of a statute is unambiguous, the Court relies on the language alone; if, however, the language of a statute is ambiguous, the Court "look[s] beyond that language to examine other indicia of legislative intent, such as legislative history."

Id. ¶ 14. "Statutory language is considered ambiguous if it is reasonably susceptible to different interpretations." *Samsara Mem'l Tr. v. Kelly, Remmel & Zimmerman*, 2014 ME 107, ¶ 42, 102 A.3d 757 (cleaned up).

"When a statute administered by an agency is ambiguous, [the Court] review[s] whether the agency's interpretation of the statute is reasonable and uphold[s] its interpretation unless the statute plainly compels a contrary result." *Scamman*, 2017 ME 41, ¶ 14, 157 A.3d 223 (cleaned up); *see also Fuhrmann v. Staples the Office Superstore E., Inc.,* 2012 ME 135, ¶ 23, 53 A.3d 1083. Importantly, "[a]n agency cannot, by regulation, create an ambiguity in interpretation of a statute that does not otherwise exist." *Manirakiza v. Mayhew*, No. AP-16-07, 2017 WL 9807896, at *3 (Me. Super. Ct. Jan. 15, 2017).

The Department argued in its Motion to Dismiss that 22 M.R.S. § 3762(8) is unambiguous and prohibits the Department from providing transitional support services to noncitizens, and, that if there is ambiguity, the Department's interpretation is entitled to deference. (*See* App. 46-47) In Her Presence and Maine Equal Justice agree with the Department on one issue: the statute is not ambiguous. However, the Department's interpretation of the unambiguous language is incorrect.

A. Maine law unambiguously requires the Department to provide transitional childcare and transportation services to noncitizens.

Transitional Childcare Services

Under the plain language of 22 M.R.S. § 3762(8)(C), the Department is required to provide transitional childcare benefits to noncitizens eligible for TANF under 22 M.R.S. § 3762(3)(B)(2). The Legislature has unambiguously commanded the Department to provide transitional childcare services to all families who lose eligibility for TANF because of employment:

> The department *shall* make available transitional child care services to families who lose eligibility for TANF as a result of increased earnings or an increase in the number of hours worked. The department *shall* make available transitional child care services to families who lose eligibility for TANF as a result of increased earnings or an increase in the number of hours worked and whose gross income is equal to or less than 250% of the federal poverty guidelines.

22 M.R.S. § 3762(8)(C) (emphasis added). The Legislature's use of the word **"**shall**"** imposes a duty on the Department to provide these services.[12] Further, the Legislature identified precisely who is eligible for transitional childcare services in this section: all families who lose eligibility for TANF due to employment, subject to limitations based *only* on income and the reason for loss of TANF eligibility. *Id.* Notably, the Legislature did not include any limitations based on immigration status as the Department subsequently did in the TANF rules. *See* 10-144 C.M.R. ch. 331

[12] *See* Office of the Revisor of Statutes, *Maine Legislative Drafting Manual*, pt. III, ch. 2, § 1 at 99-101 (1st ed. Oct. 1990, rev. Oct. 2016) ("'[s]hall' is properly used to impose a duty on a person or body or to mandate action by a person or body. Use it to say a person or a body 'has a duty to' do something or 'has to' do something"); *Manirakiza v. Dep't Health Hum. Servs.*, 2018 ME 10, ¶ 10, 177 A.3d 1264 ("The Maine Legislative Drafting Manual is particularly informative in this case because it expresses what the Legislature generally intends when it allocates language to an existing statutory framework or chooses not to allocate the language to any statute . . . .").

§ V(B)(2)(a)(i)(c). As discussed below, if the Legislature had intended to exclude noncitizens from transitional childcare benefits, it knew how to do so either explicitly or by limiting the funds to pay for transitional childcare services to federal dollars. Instead, the Legislature affirmatively provided financial assistance to noncitizens under 22 M.R.S. § 3762(3)(B)(2) "*using the criteria applicable to other recipients of assistance from the TANF program*" and then commanded the Department to provide transitional childcare services to families who lose eligibility for TANF due to their employment. The Department's promulgation of eligibility requirements excluding noncitizens violates Maine law by excluding a group of people for whom the Legislature unambiguously provided transitional childcare services.

Transitional Transportation Services

The same rationale applies to transitional transportation services under 22 M.R.S. § 3762(8)(B), which requires, without any limitations based on immigration status, that the Department "*shall* provide limited transitional transportation benefits to meet employment-related costs to ASPIRE-TANF program participants who lose eligibility for TANF assistance due to employment . . . ." *Id.* (emphasis added). However, 22 M.R.S. § 3762(8)(B) includes a provision related to funding that is not present in section 3762(8)(C). In its Motion to Dismiss, the Department noted that the Legislature "specifically allocated federal TANF funds for [the purpose of

providing transitional benefits]." (*See* App. 36.) The inclusion of the "TANF block grant" funding language in 22 M.R.S. § 3762(8)(B) does not prohibit the Department from using state funds to provide transitional transportation benefits to noncitizens who receive state-funded TANF benefits and whose TANF closes due to employment. However, this language does clearly demonstrate that if the Legislature wanted to prohibit the provision of TANF transitional benefits by not "using the criteria applicable to other recipients of assistance from the TANF program" as required by 22 M.R.S. § 3762(3)(B)(2), the Legislature was aware of how to implement that policy.

First, section 3762(8)(B) provides that the Department *may* use federal TANF block grant funds for expenditures under this program but does not limit funding for transitional transportation support services to these funds. The Legislature's use of the word "may" rather than "shall" shows its intent that funding for transitional transportation benefits <u>not</u> be limited to federal funds from the TANF block grant. *See* Office of the Revisor of Statutes, *Maine Legislative Drafting Manual*, pt. III, ch. 2, § 1 at 99-101 (1st ed. Oct. 1990, rev. Oct. 2016) ("may authorizes or permits rather than commands"). In contrast, the Legislature has used different language in other statutes to limit a program's funding to federal funds thereby necessarily excluding immigrants who are not "qualified aliens." For example, in 22 M.R.S. § 3790-A, the Legislature used the word "must" to expressly limit funding for the HOPE

program,[13] preventing the Department from using any discretion to extend eligibility to noncitizens. 22 M.R.S §3790-A ("The [HOPE] program must be supported with funds provided under the Temporary Assistance for Needy Families block grant that are available under Title IVA of the United States Social Security Act . . .") (emphasis added). With respect to the HOPE program, the Department has lawfully excluded immigrants who are not "qualified aliens" under PRWORA per the Legislature's express limitation regarding the use of federal funds. *See* 10-144 C.M.R. ch. 330, § 3(A)(4) ("Each HOPE Applicant or Participant must be a U.S. Citizen or a qualifying non-citizen as defined in [PRWORA]"). The presence of the distinction between state and federal TANF funds in other statutes—particularly regarding compliance with PRWORA—demonstrates that the Legislature rejected a limitation on transitional transportation services to funds solely from the federal block grant so that state funds could be used as needed to comply with the command in 22 M.R.S. § 3762(3)(B)(2) to provide TANF benefits to certain noncitizens who are not "qualified aliens" under PRWORA. *See Degrosseilliers*, 2021 ME 63, ¶ 14, 264 A.3d 1237 (when statutory language exists allowing one intended result, the absence of that language in another provision demonstrates the Legislature's intent to provide for a different result).

[13] The HOPE program is a higher education program for low-income parents.

An even more relevant example of how the Legislature knows how to exclude recipients of state-funded TANF benefits from certain transitional support services is found in the provisions of 22 M.R.S. § 3762(8)(A) itself. The legislature expanded the transitional transportation program to provide benefits to "*employed families whose household income is less than 200% of the federal poverty level and who do not qualify based on the loss of TANF eligibility due to earnings.*" 22 M.R.S. § 3762(8)(A); *see also* P.L. 2021, c. 1, Pt. N, § 1. Transportation services for this category of people are funded by the TANF block grant. 22 M.R.S. § 3762(8)(A) ("the department may use up to $1,400,000 annually from the federal TANF block grant for expenditures under this program."); *see also* P.L. 2021, c. 1, Pt. N, § 1. These families need not have received TANF in the past to qualify for work-related transportation benefits. *See* 10-144 C.M.R. ch. 331, § V(B)(2)(b) (eligibility criteria for "Non-TANF/PAS Closure Families"). They are eligible separately and in addition to TANF program participants "who lose eligibility for TANF assistance due to employment." *Id.* § V(B)(2)(a) (eligibility for "TANF/PAS Closure Families").

In Her Presence and Maine Equal Justice have not argued that noncitizens eligible for state-funded TANF are eligible for transitional transportation services under the category of "employed families whose household income is less than 200% of the federal poverty level" created in 2021 for which federal funds were

provided by P.L. 2021, c. 1, Pt. N, § 1, and the Court need not reach that question. In contrast, noncitizens who received state-funded TANF benefits are eligible for transitional transportation services on equal footing with all other TANF program participants who lose eligibility for TANF assistance due to employment.

B. If the Court finds that the statute is ambiguous, it must find that the Department's interpretation denying noncitizens access to transitional support services is unreasonable.

If the Court finds the statute is susceptible of different meanings, it may turn to the second step of the analysis to review the reasonableness of the Department's construction of the statute. *Competitive Energy Servs. LLC v. Public Utilities Com'n*, 2003 ME 12, ¶ 18, 818 A.2d 1039. For the reasons set forth in Section II, the Legislature's intent to provide TANF benefits to noncitizens eligible under 22 M.R.S. § 3762(3)(B)(2) on equal footing as those eligible under PRWORA is evident from the TANF statutory language and structure. The Department's interpretation that those noncitizens should be excluded from transitional support services, distinct from all other benefits in the TANF program, is arbitrary absent any statutory language to support it and therefore unreasonable.

Moreover, the legislative history supports the finding that the Department's interpretation is unreasonable. *See Samsara Mem'l Tr.*, 2014 ME 107, ¶ 42, 102 A.3d 757 ("We will consider legislative history when the statute's language is ambiguous."). The Legislature enacted the noncitizen eligibility provision for

TANF and created transitional support services at the same time in P.L. 1997, c. 530, when it passed a comprehensive bill creating Maine's TANF program after the passage of PRWORA. On the House floor, the first question about the lengthy bill was whether it committed the State to new obligations not required by PRWORA or heretofore by state law. Representative Mitchell answered on behalf of the Health and Human Services Committee:

> Madam Speaker, Men and Women of the House. That is not quite as simple of a question as I wish it was. This is a very complicated bill. However, it is a unanimous report and I think one of the greatest accomplishments of our committee. Our committee reflects the wide range of political beliefs and we all came to agreement on the issues in this bill. As you all know, we received from Congress, they passed the buck and said design your own welfare program. That is what we have done. We have stayed within the goals that we had established. We expect people to work. We expect people to get training. We expect people to prepare for self-sufficiency and we will help them to do that. We have, however, added as was expected of the states, what we have considered to be incentives and support for people that do that. We have tailored this to Maine, but we feel that it is an excellent package and we hope for your support. Thank you.

2 Legis Rec. H-1301 (1st Spec. Sess. 1997). The Legislature that created transitional support services saw it as part of a larger TANF program that it was designing to provide "incentives and support" tailored to get low-income parents in Maine into jobs. There was no floor debate about whether immigrants should be eligible for this full package of TANF benefits, *see id.*, nor any limiting language added to any particular TANF benefit excluding noncitizens , P.L. 1997, c. 530. Instead, the Legislature passed the bill creating Maine's new TANF program, electing to use

state funds to extend TANF benefits to noncitizens who had been barred from federal benefits by PRWORA and required the Department to determine their eligibility "using the criteria applicable to other recipients of assistance from [the TANF program]." *Id.* There can be no doubt that the Legislature intended transitional support services to be one of the benefits extended to those noncitizens, and the Department's interpretation to the contrary is unreasonable.

The Department argued below that because the Legislature's amendments to 22 M.R.S. § 3762(8) since 1997 have not corrected the Department's interpretation, this indicates that the Legislature approves of the Department's decision to exclude noncitizens from transitional support services. (App. 50-51.) However, in the case cited in the Department's Motion to Dismiss (*see* App. 51), *Thompson v. Shaw's Supermarkets, Inc.*, 2004 ME 63, 847 A.2d 406, the Law Court described a principle of statutory construction that "when an administrative body has carried out a reasonable and practical interpretation of a statute *and this has been called to the attention of the Legislature*, the Legislature's failure to act to change the interpretation is evidence that the Legislature has acquiesced in the interpretation." *Thompson*, 2004 ME 63, ¶7, 847 A.2d 406. In *Thompson,* the Law Court relied not on repeated amendments to the statute but instead significant record evidence that the regulatory interpretation at issue had been "called to the attention of the Legislature" through "written correspondence between state representatives and

[agency leadership]" and that the agency and Legislature had relied on written interpretation of the law from the Attorney General in its twelve statutory amendments "dealing specifically with the [provision in question]." *Id.* In this case, at the motion to dismiss stage, there is no comparable evidence in the record and the Department's argument that the Legislature approves of or has acquiesced to its unreasonable interpretation is unpersuasive.

CONCLUSION

In Her Presence and Maine Equal Justice have not asked the Court to supplant the Department or the Legislature's policy judgment but rather seek to effectuate the Legislature's policy judgment as written in Maine law. The Legislature has decided that immigrants in Maine who qualify for state-funded TANF may access the full scope of the TANF program's benefits and services on equal footing with all other TANF participants. The Legislature has also made clear that Maine's TANF program involves support for low-income parents to achieve self-sufficiency through employment. This includes transitional support services for transportation and childcare. By excluding noncitizens from transitional support services, the Department has failed to follow the statutory command of 22 M.R.S. § 3762(3)(B)(2) and 22 M.R.S. § 3762(8). Therefore, In Her Presence and Maine Equal Justice have stated a claim for declaratory relief, and the Court should reverse the Order of the Superior Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ellen Masalsky, hereby certify that I have caused two copies of Plaintiff-Appellants' Brief to be served on Brendan D. Kreckel, Esq. and Margaret Machaiek, Esq., counsel for Defendant, by depositing conformed copies thereof in the U.S. mail, first class and postage prepaid, to the following address:

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