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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Defendant/Appellee

On Appeal from the Kennebec County Superior Court

Brief of Defendant/Appellee

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INTRODUCTION

In Her Presence ("IHP") and Maine Equal Justice ("MEJ") appeal the Kennebec County Superior Court's (*Murphy, J.*) October 3, 2023 decision dismissing their March 6, 2023 First Amended Complaint for Declaratory Judgment (the "Amended Complaint"). The Amended Complaint brought pursuant to 5 M.R.S.A. § 8058 (2013), alleges the Maine Department of Health and Human Services (the "Department" or "DHHS") failed to adopt certain rules required by Maine's Temporary Assistance for Needy Families ("TANF") statutes since the inception of the TANF program in 1997. IHP and MEJ further claim that the TANF rules the Department *has* adopted violate Maine law. The Superior Court dismissed the Amended Complaint for failure to state a claim upon which relief may be granted pursuant to M.R. Civ. P. 12(b)(6). The court ruled that there is no statute mandating that the Department implement the rule (or provide the services) that IHP and MEJ seek. This Court should affirm the Superior Court order dismissing the Amended Complaint.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Department. The Department is the state governmental agency responsible for administering Maine's TANF program. 22 M.R.S.A. § 3762 (Supp. 2023); (Appendix ("App.") 22.) The Department is charged with "administer[ing] and operat[ing] a program of aid to needy dependent children,

called 'Temporary Assistance for Needy Families' or 'TANF' in accordance with the United States Social Security Act, as amended by PRWORA and DRA, and this Title."[1] *Id*. § 3762(3). The Department is charged with adopting rules to implement Title 22 Chapter 1053-B (TANF). 22 M.R.S.A. § 3769-A (2019); *see* 10-144 C.M.R. ch. 331, the Maine Public Assistance Manual ("MPAM") (App. 187-227).

The federal government provides funding block grants to states that they may use to aid families in need of assistance. 42 U.S.C. § 604 (2021). States have flexibility to use the federal TANF block grant funds to promote the four objectives listed in section 601:

> (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families.

42 U.S.C. § 601 (2021).[2]

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[1] "PRWORA" is the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; "DRA" is the Deficit Reduction Act of 2005. 22 M.R.S.A. § 3762(1).

[2] Maine programs funded or partially funded by the federal TANF block grant include: the TANF Program, 22 M.R.S.A. § 3762(3); Additional Support for People in Retraining and Employment-TANF ("ASPIRE-TANF") Program, 22 M.R.S.A. § 3782-A (2019); Parents as Scholars ("PaS"), 22 M.R.S.A. § 3790 (Supp. 2023); Higher Opportunity for Pathways to

Title IV of PRWORA generally prohibits states from providing "state public benefits" to a noncitizen who is not considered a "qualified alien" under PRWORA,[3] a "nonimmigrant" under the Immigration and Nationality Act ("INA"),[4] or an alien who is paroled into the United States under section 212(d)(5) of the INA for less than one year. 8 U.S.C. § 1621(a) (2022). The definition of "state public benefit" includes:

> [A]ny retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

Id. § 1621(c).

A state may "opt out" of this prohibition in PRWORA and provide public benefits to noncitizens by enacting legislation with language that affirmatively provides eligibility for such benefits. *Id.* § 1621(d). The Maine Legislature created a separate TANF program for certain noncitizens that uses only State funds. 22 M.R.S.A. § 3762(3)(B)(2). This solely State-funded TANF program is

Employment ("HOPE") Program, 22 M.R.S.A. § 3790-A (Supp. 2023); Whole Family Services, 22 M.R.S.A. § 3769-G (Supp. 2023); Emergency Assistance, 22 M.R.S.A. § 3763(9) (Supp. 2023); Alternative Aid, 22 M.R.S.A. § 3763(8); and Transitional Support Services, 22 M.R.S.A. § 3762(8).

[3] 8 U.S.C. § 1641(b) (2022) lists the categories of "Qualified Aliens."

[4] 8 U.S.C. § 1101(a)(15) (2022).

limited to noncitizens who would be eligible for the TANF program but for their ineligible status under PRWORA. *Id.*; s*ee also* 8 U.S.C. §§ 1611-1613, 1621, & 1641 (2022). To be eligible for this State-funded TANF program, a potentially eligible noncitizens must also meet one of four conditions. 22 M.R.S.A. § 3762(3)(B)(2)(a)-(d).[5]

While eligible for State-funded TANF, noncitizens are able to access services and other opportunities comparable to those available to other TANF participants. 22 M.R.S.A. § 3762(3)(B)(2); (Blue Br. 12-14.) The State-funded TANF program includes the ability to participate in the ASPIRE-TANF and PaS programs that also are available to active TANF participants. *See* 22 M.R.S.A. §§ 3781-A (2019)(3) & 3790(2).

Since the inception of TANF in 1997, the Department has also provided Transitional Support Services, described in 22 M.R.S.A. § 3762(8), to eligible individuals who previously qualified for TANF. 22 M.R.S.A. § 3762(8) (App. 210-12.) The Transitional Support Services program includes transitional

[5] These conditions are:

> (a) Elderly or disabled, as described under the laws governing supplemental security income in 42 United States Code, Sections 1381 to 1383f (2010);
> (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.

22 M.R.S.A. § 3762(3)(B)(2)(a)-(d).

transportation benefits and transitional childcare services. 22 M.R.S.A. § 3762(8). Transitional Support Services offer reimbursement to the participant (or direct payments to childcare providers) for covered services. 10-144 C.M.R. ch. 331, MPAM, ch. V; (App. 210-12). These services do not guarantee access to transportation or childcare. *See id.* In most cases, to be eligible for Transitional Support Services, an applicant must have previously received TANF assistance but lost eligibility due to employment. 22 M.R.S.A. § 3762(8)(B)-(C). The Department has never provided Transitional Support Services to noncitizens. (App. 23-24.)

In 2021, the Legislature amended 22 M.R.S.A. § 3762(8) to create a new eligibility category for Transitional Support Services:

> For the purposes of 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 or are a 2-parent household who request termination of TANF benefits when at least one adult is working, the department may use up to $1,400,000 annually from the federal TANF block grant for expenditures under this program.

P.L. 2021, ch. 1, Part N. Effective December 10, 2022, in response to this legislative change, the Department revised the MPAM, 10-144 C.M.R. ch. 331 (2022). (App. 24.) These MPAM revisions were labeled "TANF Rule 119" ("TANF 119"). (App. 24.) Because P.L. 2021, ch. 1, was silent with respect to

noncitizens, TANF 119 made no changes with respect to noncitizens' ineligibility for Transitional Support Services. (App. 24-25.)

In Her Presence. IHP is a nonprofit organization that offers free programs to immigrant women on topics including English language learning and professional and leadership development.[6] (App. 22, 23). Most women who participate in IHP programs are seeking asylum in the United States, have not yet been granted asylum status, and have young children below age five. (App. 25.) Many women who participate in IHP programs are participants in the State-funded TANF program as they are not "qualified aliens" under the PRWORA but are waiting for work authorization or unemployed. (App. 25.) Additionally, many women who participate in IHP programs are no longer eligible for State-funded TANF because they have received work authorization and found employment. (App. 26.) Women routinely seek IHP's assistance with transportation and childcare so they can participate in IHP programs. (App. 26.)

Maine Equal Justice. MEJ is a nonprofit civil legal services organization that assists low-income people in Maine in accessing economic security

[6] These facts, taken from the Amended Complaint, are assumed to be true for the purpose of determining the legal sufficiency of the Amended Complaint pursuant to M.R. Civ. P. 12(b)(6). *See Thompson v. Dep't of Inland Fisheries & Wildlife*, 2002 ME 78, ¶ 4, 796 A.2d 674.

programs, including TANF. (App. 22, 27.) MEJ routinely receives requests for help from immigrants regarding TANF. (App. 28.)

Procedural History. On January 6, 2023, IHP and MEJ filed a complaint challenging the legality of TANF 119. The Department filed a motion to dismiss pursuant to M.R. Civ. P. 12(b)(1) and 12(b)(6) on the grounds that IHP and MEJ lacked standing and that, in any event, TANF 119 was not required to extend eligibility for transitional support services to noncitizens. (App. 2.)

In response, IHP and MEJ filed the Amended Complaint to add a challenge to the Department's *failure* to adopt a rule providing Transitional Support Services to individuals previously eligible for State-funded TANF. (App. 21.) The Department then moved to dismiss the Amended Complaint, arguing, again, that IHP and MEJ lacked standing and that, in any event, the Amended Complaint failed to state a claim for relief because the Department is not required to provide Transitional Support Services to noncitizens who were previously eligible for State-funded TANF. (App. 33.)

The Superior Court issued an Order on Motion to Dismiss dated October 3, 2023. (App. 5.) Although the court held that MEJ had standing, it granted the Department's motion and dismissed the Amended Complaint pursuant to M.R. Civ. P. 12(b)(6). The court decided that the Department is not required to provide Transitional Support Services to noncitizens who were previously

eligible for State-funded TANF. (App 14.) IHP and MEJ filed a notice of appeal.

ISSUES PRESENTED FOR REVIEW

I. Whether the Superior Court properly held that the Department is not required to adopt rules providing Transitional Support Services to noncitizens who were previously eligible for State-funded TANF.

II. Whether, in the alternative, the decision dismissing the Amended Complaint should be affirmed because IHP and MEJ lack standing.[7]

SUMMARY OF THE ARGUMENT

Under the applicable statutes, noncitizens who have received State-funded TANF do not become eligible for Transitional Support Services when they lose their State-funded TANF eligibility. 22 M.R.S.A. § 3762(8). Transitional Support Services are not TANF benefits, and the Legislature has not affirmatively provided noncitizen eligibility for Transitional Support

[7] Contrary to IHP's and MEJ's arguments, *see* Blue Br. 5-6 n.3, the Department was not required to cross-appeal in order to preserve this argument for consideration by this Court. *See* M.R. App. P. 2C(a)(1) ("An appellee need not file a notice of appeal if no change in the judgment is sought. An appellee may, without filing a cross-appeal, argue that alternative grounds support the judgment that is on appeal."). The Department does not seek any change to the Superior Court's judgment; IHP's and MEJ's lack of standing merely provides alternate grounds upon which this Court could affirm the dismissal. *See Argereow v. Weisberg*, 2018 ME 140, ¶ 11 n.4, 195 A.3d 1210 ("[Appellee]'s cross-appeal was unnecessary because—as we now clarify—an appellee is not required to cross-appeal if it argues in favor of affirming the decision in every respect but simply contends that the same result should have been reached through different legal reasoning." (quotation marks omitted)). The July 2022 Advisory Notes to Rule 2C and this Court's recent guidance demonstrate that no cross-appeal was needed here. *See Gaudette v. Mainely Media, LLC*, 2023 ME 36, ¶ 1 n.2, 296 A.3d 923.

Services. *Id.* As the Superior Court explained, nothing in the TANF statute suggests that the eligibility criteria set forth in 22 M.R.S.A. § 3762(3) must also apply to services that an individual can only receive once they no longer receive or qualify for TANF benefits. The Amended Complaint seeks an order that would be contrary to state law and a violation of federal law.

Alternatively, this Court may affirm the Superior Court's dismissal of the Amended Complaint on the grounds that IHP and MEJ are not aggrieved parties within the meaning of 5 M.R.S.A. § 8058(1) and therefore lack standing. *See Bocko v. Univ. of Me. Sys.*, 2024 ME 8, ¶ 34, --- A.3d --- (affirming the trial court's ruling on alternative reasoning).

ARGUMENT

I. In Her Presence and Maine Equal Justice failed to state a claim upon which relief may be granted because the Department is not required to adopt a rule extending Transitional Support Services to noncitizens.

Whether a complaint is legally sufficient is a question of law that this Court reviews *de novo*. *Bean v. Cummings*, 2008 ME 18, ¶ 7, 939 A.2d 676. A motion to dismiss under M.R. Civ. P. 12(b)(6) tests the legal sufficiency of the allegations in a complaint. *Thompson*, 2002 ME 78, ¶ 4, 796 A.2d 674. On review of the trial court's grant of a motion to dismiss, this Court "examine[s] the complaint in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the

plaintiff to relief pursuant to some legal theory." *Id* (internal quotation marks omitted).

A. No statute requires the Department to adopt rules extending Transitional Support Services to noncitizens formerly eligible for State-funded TANF.

The applicable federal and state laws do not require the rule sought by IHP and MEJ. Thus, the Superior Court properly dismissed the Amended Complaint pursuant to Rule 12(b)(6). *See* 5 M.R.S.A. § 8058.

This Court recently described the standard applicable to a section 8058 challenge to a rule:

> First, if we find that a rule exceeds the rule-making authority of the agency or is void for the agency's failure to follow the procedural processes of the Maine Administrative Procedure Act, see 5 M.R.S. § 8057(1), (2) (2023), we must declare the rule invalid, 5 M.R.S. § 8058(1). . . . Finally, if a procedural error does not invalidate the rule, we review the rule substantively to determine whether the rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

Bocko, 2024 ME 8, ¶ 26, --- A.3d --- (internal citations and quotation marks omitted). IHP and MEJ have not alleged that the Department committed any procedural violations of MAPA in promulgating TANF 119. The Amended Complaint alleges only that the Department's MPAM, found at 10-144 C.M.R. ch. 331, is "otherwise not in accordance with law." *See Bocko*, 2024 ME 8, ¶ 27, ---

A.3d ---; *see also* Blue Br. 1-2 ("[T]he Department's failure to adopt a rule providing access to Transitional Support Services for [certain] noncitizens . . . violates the applicable Maine TANF laws[.]"); (App. 30.) As the Superior Court explained, "[a]ll of [IHP's and MEJ's] requests for relief are predicated on DHHS's failure to promulgate a rule extending transitional support services to noncitizens who previously received TANF benefits." (App. 10). For IHP and MEJ to prevail, this Court must conclude that the TANF statutes *require* the Department to extend Transitional Support Services to noncitizens who were previously eligible for State-funded TANF – not merely that the Department could adopt such a rule if it so chose. *See e.g.*, *Lingley v. Me. Workers' Comp. Bd.*, 2003 ME 32, ¶ 7, 819 A.2d 327 (ruling 8058(a) inapplicable where an agency could adopt the rule requested by the plaintiff but was not required to do so).

In *Lingley*, this Court scrutinized whether a state Board was "required by law" to adopt a proposed rule in a challenge brought under 5 M.R.S.A. § 8058. 2003 ME 32, 819 A.2d 327 (reviewing and upholding a Superior Court's order to dismiss a claim similar to IHP's and MEJ's). The process that the Board in *Lingley* followed satisfied various requirements for rulemaking, so this Court further reviewed the underlying substantive law to determine whether the Board ran afoul of the third prong of the analysis under section 8058: whether the Board refused or failed to adopt a rule "where the adoption of a rule is

required by law." *Id*. ¶ 6 (citing 5 M.R.S.A. § 8058(1)). This Court determined that the substantive statutes did not require the Board to promulgate a rule. "Because the Board was not required to promulgate a rule, the provisions of section 8058(1) are not applicable. The Appellants, therefore, have no right to judicial review under section 8058(1)." *Id*. ¶ 7 (internal citation omitted).

Similarly, no statute mandates that the Department implement the rule (and services) IHP and MEJ seek. Moreover, federal law prohibits the Department from doing so. *See* 8 U.S.C. § 1621. Thus, IHP and MEJ have no right to judicial review of the Department's failure to adopt such a rule, and their claim under section 8058(1) fails as a matter of law.

B. <u>The Department's rules comply with the plain language of the TANF statute.</u>

The Department correctly provides State-funded TANF benefits to noncitizens who meet the criteria set forth in 22 M.R.S.A. § 3762(3)(B)(2). (Blue Br. 9-14.) Transitional Support Services are not TANF benefits within the meaning of section 3762(3)(B)(2), and the Transitional Support Services statute does not provide for noncitizen eligibility. IHP's and MEJ's argument that the plain language of the TANF statutes require the Department to provide noncitizens with Transitional Support Services is unsupported by, and contradicts, the relevant statutes.

Statutes should be interpreted "according to [their] unambiguous meaning if the plain language is not reasonably susceptible to different interpretations." *Caiazzo v. Sec'y of State*, 2021 ME 42, ¶ 16, 256 A.3d 260 (internal quotation marks omitted). A statute is reviewed "in the context of the entire statutory scheme to achieve a harmonious result." *Id.* If there is any ambiguity, this Court defers to the agency that is entrusted with administering the statute as long as the agency's interpretation is reasonable and the statutory language does not plainly compel a different result. *Bocko*, 2024 ME 8 ¶ 12, --- A.3d ---; *Centamore v. Dep't of Human Servs.*, 664 A.2d 369, 371 (Me. 1995).

As explained below, the Department's rule complies with the plain meaning of the TANF statutes.

i. The Transitional Support Services statute does not create a category of eligibility for noncitizens.

Section 3762(8) on its own makes no mention of eligibility for noncitizens. 22 M.R.S.A. § 3762(8). It provides 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 and to employed families with children with income less than 200% of the federal poverty level.
>
> . . .
>
> 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.

Id. § 3762(8)(B)-(C).

Furthermore, section 3762(1) provides that, "unless the context otherwise indicates," "TANF" is defined as "the Temporary Assistance for Needy Families program, under the United States Social Security Act, as amended by PRWORA." *Id.* § 3762(1)(E). In other words, "TANF" as used in Chapter 1053-B, which includes section 3762(8), means the Federal TANF program. IHP and MEJ contend that section 3762(3)(B)(2) was intended to permanently modify the definition of "TANF" throughout the entire chapter, thus mandating eligibility for Transitional Support Services. Contrary to their contentions, section 3762(3)(B) does not alter the provided definition of "TANF" as used throughout Chapter 1053-B of Title 22.

ii. The statute creating State-funded TANF does not provide eligibility for noncitizens to receive post-TANF Transitional Support Services.

Section 3762(3)(B)(2) provides eligibility only for the State-funded TANF program that is established in that subsection. The eligibility created there is limited to an equivalent TANF program and does not extend to the post-TANF Transitional Support Services program established in section 3762(8).

IHP and MEJ argue that, because section 3762(3)(B)(2) is located in the

subsection titled "Administration," it overrides any contradictory language in other subsections of section 3762, including section 3762(8). IHP and MEJ rely upon section 3762(3)(B) to support their position that State TANF funds must be expended to provide Transitional Support Services to noncitizens who would otherwise be ineligible for TANF under PRWORA.

Section 3762(3)(B) provides:

> The department may use 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. In addition to assistance for families described in this subsection, funds must be expended for the following purposes . . .

22 M.R.S.A. § 3762(3)(B). It goes on to describe specific services that the Department must provide, including the State-funded TANF program for certain noncitizens. *Id.* However, the general proclamation in section 3762(3)(B) that the Department may use both state and federal funds to provide assistance to families "under this chapter" does not override the specific and limited directive in section 3762(3)(B)(2) creating a State-funded TANF program for noncitizens who would be eligible for the TANF program but for their immigration status. *See Houlton Water Co. v. Pub. Utils. Comm'n*, 2016 ME 168, ¶ 21, 150 A.3d 1284 ("As a familiar principle of statutory construction,

specific statutes prevail over general ones when the two are inconsistent.").

Accepting IHP's and MEJ's assertion that those noncitizens eligible for State-funded TANF by virtue of 3762(3)(B)(2) must also be eligible for Transitional Support Services would also lead to absurd, illogical results, which this Court avoids. *E.g., Wood v. Dep't of Inland Fisheries & Wildlife*, 2023 ME 61, ¶ 14, 302 A.3d 18. State-funded TANF provides TANF eligibility only for noncitizens who are (1) elderly or disabled as defined by 42 U.S.C. §§ 1381-1383f; (2) victims of domestic violence; (3) experiencing hardship such as time necessary to obtain proper work documentation; or (4) unemployed but have obtained proper work documentation. 22 M.R.S.A. § 3762(3)(B)(2)(a)-(d).

And State-funded TANF eligibility extends to noncitizens only during the time that they meet one of those four conditions – not after. *Id.* ("A noncitizen legally admitted to the United States . . . is <u>not eligible</u> for financial assistance through a State-funded program <u>unless</u> that noncitizen is" in one of the four conditions. (emphasis added.)) Transitional Support Services are available exclusively to employed individuals. *See id.* § 3762(8). Consequently, noncitizens potentially eligible for State-funded TANF due to being unemployed or awaiting employment authorization would necessarily lose any potential eligibility for State-funded TANF once they gain employment.

In other words, in most cases a noncitizen cannot meet the requirements

of both section 3762(3)(B)(2) and section 3762(8). A noncitizen is either (1) unemployed (or awaiting employment authorization), making them potentially eligible for State-funded TANF under section 3762(3)(B)(2) but ineligible for Transitional Support Services under section 3762(8) because they are not employed; or (2) employed and potentially eligible for Transitional Support Services under section 3762(8), in which case they no longer meet eligibility criteria for State-funded TANF as they no longer possess a required condition under section 3762(3)(B)(2).[8] An interpretation that would make noncitizens eligible for State-funded TANF also eligible for Transitional Support Servies is therefore illogical and must be avoided. *Wood*, 2023 ME 61, ¶ 14, 302 A.3d 18.

iii. Transitional Support Services are not TANF benefits within the meaning of section 3762(3)(B)(2).

Transitional Support Services are a separate program of support that is distinct from TANF assistance. Transitional Support Services are intended to ease the transition between receiving TANF and receiving no assistance. They can be provided only to an individual who is not eligible for, or is not receiving, TANF. *E.g.,* 22 M.R.S.A. § 3762(8)(B) (transitional transportation benefits may be provided to, *inter alia*, a family that "lose[s] eligibility for TANF assistance

[8] The issues described in this paragraph would not necessarily apply to those whose State-funded TANF eligibility was based on being elderly, disabled, or a victim of domestic violence. *See* 22 M.R.S.A. § 3762(3)(B)(2)(a)-(b).

due to employment" and a family that "remain[s] financially eligible for TANF benefits" but "request[s] that their benefits be terminated"). IHP and MEJ urge the Court to conclude that Transitional Support Services are part of the TANF program and therefore have eligibility criteria that are identical to the TANF program. (Blue Br. 9-19.) Their position should be rejected because a primary condition of eligibility for Transitional Support Services is that the individual *not* be eligible for or actively receiving TANF. 22 M.R.S.A. § 3762(8)(B), (C). As shown below, a careful analysis of the text of section 3762 shows that it is impossible for the two programs to be one in the same, as IHP and MEJ argue.

Transitional Support Services have their own eligibility criteria and do not carry restrictions that are similar to those of the TANF program. *Id*. § 3762(8). For example, if IHP's and MEJ's interpretation conflating the TANF program and Transitional Support Services were adopted, then the Department would be required to count Transitional Support Services eligibility months toward an individual's 60-month limit for receiving TANF. *See id.* § 3762(18). Such an interpretation would frustrate the purpose of Transitional Support Services, which is intended to be an *additional* program of assistance for individuals no longer eligible for TANF due to employment. (*See* Blue Br. 18-19.) The Transitional Support Services program carries its own time limit of 18 months. *See* 22 M.R.S.A. § 3762(8)(B), (C). These two programs are related, but

they are not the same.

Also, Transitional Support Services are provided to "meet employment-related costs to ASPIRE-TANF program participants who lose eligibility for TANF assistance due to employment." 22 M.R.S.A. § 3762(8)(B). The structure of section 3762 demonstrates that TANF benefits that are received via eligibility established under section 3762(3) are separate from the post-TANF Transitional Support Services established under section 3762(8). *Id.* Highlighting this separation is the fact that both sections 3762(3) and 3762(8) begin with similar language directing the Department to administer the respective programs. *Compare* 22 M.R.S.A. § 3762(3) ("The department may administer and operate a program of aid to needy dependent children, called 'Temporary Assistance for Needy Families' or 'TANF,' in accordance with the United States Social Security Act, as amended by PRWORA and DRA, and this Title.") *with id*. § 3762(8) ("The department shall administer a program of Transitional Support Services in accordance with PRWORA, DRA and this subsection."). IHP's and MEJ's contention should be rejected because it would create an unharmonious reading of the statutory framework. *Caiazzo*, 2021 ME 42, ¶ 16, 256 A.3d 260; *see also State v. Dubois Livestock, Inc.*, 2017 ME 223, ¶ 6, 174 A.3d 308 ("[The Law Court] reject[s] interpretations that render some language mere surplusage.").

IHP and MEJ argue that section 3762(3)(B)(4) is the equivalent of the directive in section 3762(8) and contend that this alleged equivalency undercuts the Department's interpretation. (Blue Br. 17.) These two provisions are not equivalent, however. Section 3762(3)(B)(4) provides that the Department will:

> provide an assistance program for needy children, 19 to 21 years of age, who are in full-time attendance in secondary school. The program is operated for those individuals who qualify for TANF under the United States Social Security Act, except that they fail to meet the age requirement, and is also operated for the parent or caretaker relative of those individuals.

(emphasis added). This provision is not similar to the provision establishing Transitional Support Services, but rather is more akin to the provision creating a State-funded TANF program for noncitizens, as section 3762(3)(B)(4) also creates special eligibility for the TANF program for individuals who would normally not be eligible for TANF. Additionally, section 3762(3)(B)(4) is unlike the Transitional Support Services because it falls in the same "Administration" subsection as the State-funded TANF program for noncitizens, not in a separate subsection like Transitional Support Services does (i.e., Section 3762(8)).[9]

[9] IHP and MEJ also seek to rely on the Emergency Assistance Program. (Blue Br. 17). However, that, too, is a separate program from TANF, *see* 10-144 C.M.R. ch. 331, MPAM ch. VIII, p. 1 ("In addition to the basic TANF and PaS programs, the Department of Health and Human Services administers a limited program of Emergency Assistance.") (App. 220.)

Section 3762(8) contains its own distinct conditions for eligibility apart from the TANF program. The post-TANF Transitional Support Services program is not available to current TANF participants. 22 M.R.S.A. § 3762(8). ASPIRE-TANF, by contrast, is for current participants of the TANF program, in many cases is mandatory for current TANF program participants, and counts towards a participant's 60-month TANF limit. *See id*. § 3785 (2019). Additionally, the ASPIRE-TANF program does not have eligibility requirements that are separate from the TANF program. *See id*. § 3781-A(3)

IHP and MEJ argue that the reference to Transitional Support Services in section 22 M.R.S.A. § 3788(1) (Supp. 2023) provides a basis to conclude that these services constitute part of the TANF program. (Blue Br. 18.) Their argument misinterprets the statutory text, which provides:

> The department shall 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, <u>including transitional support services and medical assistance</u>, available under the ASPIRE-TANF program, together with a statement that all participants may apply for those opportunities and services.

22 M.R.S.A. § 3788(1). Contrary to their assertion, this provision, which is intended to ensure that TANF recipients and applicants have information about State programs for which they may <u>potentially</u> be eligible, does not have the

effect of transforming Transitional Support Services and "medical assistance" into TANF benefits. This provision groups Transitional Support Services with "medical assistance." *Id.* "Medical assistance" is a reference to MaineCare, which is unequivocally not part of the TANF program. *See* 42 U.S.C. § 608(a)(6) (2021) (providing that the TANF block grant cannot be used to provide medical services). The Legislature recognized that these two programs (i.e., Transitional Support Services and medical assistance) were outside of the typical ASPIRE-TANF support programs and thus grouped them together in their own separate clause. In section 3788(1), the Legislature conveyed its intention to ensure that the Department provided notice to TANF applicants and recipients of the wide range of programs for which they may qualify – including those, like MaineCare, that fall outside of the TANF program itself.

iv. Legislative Acquiescence

Because the statutory language is unambiguous in its failure to affirmatively provide eligibility for Transitional Support Services to noncitizens, the Court need not consider IHP's and MEJ's arguments regarding the legislative history. *State v. Tripp*, 2024 ME 12, ¶ 18, --- A.3d --- ("We look to the legislative history only if [the statute's] language is ambiguous."). (Blue Br. 36-39). Nevertheless, the legislative history supports the Superior Court's conclusion that noncitizen TANF eligibility in 22 M.R.S.A. § 3762(3)(B)(2) does

not extend to post-TANF Transitional Support Services in 22 M.R.S.A. § 3762(8). Transitional Support Services were established by statute in 1997. P.L. 1997, c. 530. The Legislature has updated this section as recently as last year; yet, it has not taken any action to clarify its intent or to extend eligibility for Transitional Support Services to noncitizens.

The Department's interpretation in this case was enshrined in a MAPA rule that it promulgated in 2020. Thus, the Department's interpretation was promulgated to the public through MAPA, and notice of the Department's interpretation was sent to the Legislature before it revisited section 3762 in years 2021 and 2023. *See* 5 M.R.S.A. § 8053-A (Supp. 2023). Thus, the Legislature acquiesced in the Department's interpretation. *See also Bocko*, 2024 ME 8, ¶ 31 n.7, --- A.3d --- (concluding that the absence of a legislative change after a promulgated rule indicates the Legislature acquiesced to agency interpretation).

As this Court has also explained:

> It is a well-accepted 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.

See e.g., *Thompson v. Shaw's Supermarkets, Inc.*, 2004 ME 63, ¶ 7, 847 A.2d 406

(internal quotation marks omitted). This legislative acquiescence supports the trial court's decision.

C. Federal law prohibits providing state public benefits to certain noncitizens.

Generally, a state may not provide a "state public benefit" to a noncitizen who is not considered a "qualified alien" under PRWORA. 8 U.S.C. § 1621(a). To provide a "state public benefit" as defined at 8 U.S.C. § 1621(c) to a noncitizen who does not fall into one of the permissible categories, a state must enact a "State law after August 22, 1996, which affirmatively provides for such eligibility." *Id*. § 1621(d).

Transitional Support Services provided by the Department are "state public benefits" as prescribed by PRWORA. As such, absent an affirmative law passed after August 22, 1996, Maine is prohibited from providing these services to noncitizens not listed in 8 U.S.C. § 1621(a).[10] For example, in creating the separate State-funded TANF, the Maine Legislature complied with PRWORA's requirement and affirmatively created a solely State-funded TANF for certain noncitizens who would otherwise be ineligible for state public benefits under 8 U.S.C. § 1621(a). *See* 22 M.R.S.A. § 3762(3)(B)(2).

[10] There are exceptions to this prohibition such as emergency medical care, emergency disaster relief, and certain programs, services, or assistance specified by the United States Attorney General. 8 U.S.C. § 1621(b).

By comparison, the statutory provision establishing Transitional Support Services lacks any language affirmatively providing "state public benefits" for noncitizens. *See* 22 M.R.S.A. § 3762(8). In fact, section 3762(8) provides that the Transitional Support Services program will be administered "in accordance with PRWORA, the Deficit Reduction Act of 2005, and this subsection." *Id*. (emphasis added). If Transitional Support Services were covered by section 3762(3), as IHP and MEJ assert, the Legislature would not have repeated this language. *See Dubois Livestock, Inc.*, 2017 ME 223, ¶ 6, 174 A.3d 308 ("[The Law Court] reject[s] interpretations that render some language mere surplusage."). The Maine Legislature (1) understands how to create a separate state public benefit program for noncitizens in compliance with PRWORA, *see e.g.*, 22 M.R.S.A. § 3762(3)(B)(2); and (2) intended to provide Transitional Support Services only to individuals who are not ineligible pursuant to PRWORA.

Absent specific language in Maine law affirmatively providing that Transitional Support Services are permissible "state public benefits" for noncitizens, the Department is prohibited from adopting a rule change to 10-144 C.M.R. ch. 331 in the manner requested by IHP and MEJ. *See, e.g., Me. Municipal Ass'n v. Me. Dep't of Health & Human Servs.*, No. AP-14-39, 2015 WL 4070311, at *7 (Me. Super. Ct. June 9, 2015) ("The court is constrained to conclude that . . . section 1621(d) requires statutory language conveying a

positive expression of legislative intent to extend GA benefits to aliens who would otherwise be ineligible under § 1621(a)."); *see also E.M. v. Neb. Dep't of Health & Human Servs.*, 944 N.W.2d 252, 263 (Neb. 2020) ("We further agree that in order to 'affirmatively provide[ ],' there must be more than conferring a general benefit that would passively include unlawful aliens."); *Martinez v. Regents of Univ. of Calif.*, 241 P.3d 855, 868 (Cal. 2010) ("We agree with the Regents' argument that 'in order to comply, the state statute must expressly state that it applies to undocumented aliens, rather than conferring a benefit generally without specifying that its beneficiaries may include undocumented aliens.'"); *Kaider v. Hamos*, 975 N.E.2d 667, 675 (Ill. App. 1st Dist. 2012) ("[C]onferring a benefit generally, without any indication that the legislature intends to opt out of section 1621(d) and extend coverage to unlawful aliens, would not satisfy that statute.").

IHP and MEJ rely on *Martinez* and *Kaider*, which stand for the proposition that no special words are required to opt out of the prohibition in section 1621. (Blue Br. 20.) The Department agrees that no special words are required, but Congress mandated that there be a clear statement by the Legislature. *Martinez*, 241 P.3d at 868. There is no such clear statement here.

And contrary to IHP's and MEJ's contention, the Department is not arguing that the Legislature needs to repeat itself to provide State-funded

benefits over and over for each individual program. (Blue Br. 19-21.) The Legislature could comply with section 1621 through one clear and explicit statement naming multiple programs to which it wishes to extend State-funded benefits. But the Legislature did not do so here. *See* 22 M.R.S.A. § 3762(3)(B)(2).

Further, *Kaider* is unlike this case. (Blue Br. 25-26.) There, the Illinois court examined the Moms & Babies and All Kids programs to determine whether the broad statutory language establishing the intent of the program affirmatively extended this program to noncitizens. 975 N.E.2d at 669. Unlike 22 M.R.S.A. § 3762, the Illinois state law examined in *Kaider* provided that "it is important to enable all children of this State to access affordable health insurance." *Id.* at 678. The Illinois court focused on the Illinois Assembly's use of the word "all" and considered this usage in conjunction with the state's earlier extension of Medicaid and CHIP benefits to noncitizen children, concluding that, taken as a whole, the statutory language was sufficient to affirmatively demonstrate the legislature's intent to extend eligibility for these services to noncitizens. *Id.*

Here, there is no similar all-encompassing statutory language or indication of clear intent by the Maine Legislature. In section 3762(3)(B)(2), the Legislature makes certain noncitizens eligible for a State-funded TANF, but

it has remained silent as to whether noncitizens were eligible to receive post-TANF Transitional Support Services. 22 M.R.S. § 3762(3)(B)(2). The eligibility requirements for State-funded TANF require that a noncitizen fall into one of four conditions that focus on individuals who are not employed; section 3762(3)(B)(2) does not establish categorical eligibility for State-funded TANF for all noncitizens. *Id*.

Another difference between 22 M.R.S.A. § 3762 and the Illinois statute in *Kaider* is that the Maine Legislature directed the Department to operate the Transitional Support Services program in accordance with "PRWORA, DRA and this subsection." *Id*. § 3762(8) (emphasis added). It did not direct the Department to operate the program in accordance with 22 M.R.S.A. § 3762(3).

IHP and MEJ erroneously view noncitizen eligibility for state benefit programs as the rule, rather than the exception. Congress has dictated a different framework: when a state wants to issue benefits to noncitizens who do not qualify for benefits under PRWORA, the state legislature must affirmatively do so. *See* 8 U.S.C. § 1621; *see also E.M.*, 944 N.W.2d at 264 ("The federal statute requires a positive or express statement to include unlawful aliens for eligibility. An omission cannot qualify as a positive or express statement.").

The Department does not have discretion to provide public benefits to

noncitizens who are prohibited from receiving such benefits under PRWORA. It is a binary analysis: if the Legislature did not affirmatively provide that the Department must provide those benefits to noncitizens who are prohibited from receiving benefits under PRWORA, then the Department cannot do so.

In the Department's view, the result in this case is dictated by the unambiguous meaning of the plain language of the pertinent statutes. But even assuming there is room to debate the meaning of these statutes, section 3762(8) still does not contain the required clear affirmative statement of legislative intent to extend eligibility for Transitional Support Services to the same categories of noncitizens who may receive State-funded TANF. *See Kaider*, 2012 975 N.E.2d at 675 (statutes must "positively" and "unambiguously" evidence the legislature's intent to opt out of the prohibition on providing benefits to unlawful aliens). That is, any ambiguity cuts in favor of the Superior Court's conclusion that the Legislature has made no affirmative, unambiguous statement of intent to extend noncitizens' eligibility to post-TANF benefits. *See also Bocko*, 2024 ME 8, ¶ 12, --- A.3d --- (explaining that if a statute is ambiguous the courts defer to agency's reasonable construction).

IHP and MEJ also rely on the HOPE program's statute, 22 M.R.S.A. § 3790-A, asserting that the Legislature affirmatively excluded noncitizens eligible for State-funded TANF from that program by designating that HOPE be funded

solely from the TANF block grant (i.e., from federal funds). (Blue Br. 33-34.) IHP and MEJ argue that because the Maine Legislature did not similarly mandate, expressly, that Transitional Support Services be funded only by the federal TANF block grant, then previously eligible State-funded TANF participants are automatically included in the Transitional Support Services program. But this argument reverses the dictates of federal law. A state is not required to provide public benefits to noncitizens. The opposite is true: a state is prohibited from providing public benefits to noncitizens unless the state legislature affirmatively provides them. *See Hines v. Davidowitz*, 312 U.S. 52, 68 (1941) (holding that states must yield to the supremacy of the federal government when it has decided to exercise its power in the field of immigration.)[11]

Finally, IHP and MEJ raise an argument regarding the Legislature's use of the word "may" in 22 M.R.S.A. § 3762(8). (Blue Br. 33, 35-36.) As they correctly note, $1,400,000 of the TANF block grant is limited to the new eligibility category created in P.L. 2021, ch. 1 (i.e., 22 M.R.S.A. § 3762(8)(B)). The Department agrees that it is not prohibited from using state funds to fund Transitional Support Services. Contrary to IHP's and MEJ's conclusion,

[11] Furthermore, the HOPE provision on which IHP and MEJ rely is more akin to a funding mandate. While 22 M.R.S.A. § 3790-A did have the effect of prohibiting noncitizen participation, there is no mention of immigration status in that provision.

however, these points do not show that the Legislature affirmatively stated that the Department is required to extend Transitional Support Services to noncitizens who were previously eligible for State-funded TANF.

The Department's implementation of Transitional Support Services is consistent with federal and state law, and IHP and MEJ have failed to allege any other basis upon which the Court could conclude that the Department's actions were arbitrary and capricious or constituted an abuse of discretion. *See Bocko*, 2024 ME 8, ¶ 32, --- A.3d ---. The Superior Court properly dismissed the Amended Complaint.

II. In Her Presence and Maine Equal Justice failed to allege particularized injuries sufficient to establish their standing.

The Court may affirm the Superior Court's dismissal of the Amended Complaint on the alternative grounds that neither MEJ nor IHP have alleged particularized injuries sufficient to establish standing. *See Bocko*, 2024 ME 8, ¶ 34, --- A.3d ---.

This Court reviews the Superior Court's standing determination *de novo*. *Lindemann v. Comm'n on Governmental Ethics & Election Practices*, 2008 ME 187, ¶ 7, 961 A.2d 538. "Every plaintiff seeking to file a lawsuit in the courts must establish its standing to sue, no matter the causes of action asserted." *Bank of Am., N.A. v. Greenleaf*, 2014 ME 89, ¶ 8, 96 A.3d 700. "Because standing

is a threshold concept dealing with the necessity for the invocation of the court's power to decide true disputes, it is an issue cognizable at any stage of a legal proceeding, even after a completed trial." *Bank of Am., N.A. v. Greenleaf*, 2015 ME 127, ¶ 8, 124 A.3d 1122 (quotation marks and alterations omitted). Dismissal is appropriate when a party fails to allege a particularized injury sufficient to establish standing. M.R. Civ. P. 12(b)(1); *Dubois v. Town of Arundel*, 2019 ME 21, ¶ 7, 202 A.3d 524.

Section 8058(1) permits "any person who is aggrieved" by an agency rule – or by an agency's refusal to adopt a rule required by statute – to bring a claim under the Declaratory Judgments Act, 14 M.R.S.A. §§ 5951-5963 (Supp. 2023). Pursuant to Maine's Declaratory Judgments Act, "[a]ny person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising [thereunder] and obtain a declaration of rights, status, or other legal relations thereunder." 14 M.R.S.A. § 5954 (2003). A declaratory judgment action can only be brought to resolve a justiciable controversy; it cannot "create a cause of action that does not otherwise exist." *Sold, Inc. v. Town of Gorham*, 2005 ME 24, ¶ 10, 868 A.2d 172.

MEJ and IHP lack standing to bring a declaratory judgment action pursuant to 5 M.R.S.A. § 8058 because they are not aggrieved by TANF 119 or the Department's failure to adopt a rule extending Transitional Support

Services to noncitizens. To establish that they have standing, MEJ and IHP must show that the Department's action or inaction has operated "prejudicially and directly upon [their] property, pecuniary or personal rights." *Lindemann*, 2008 ME 187, ¶ 14, 961 A.2d 538 (internal quotation marks omitted); *Buck v. Town of Yarmouth*, 402 A.2d 860, 861 (Me. 1979) (plaintiff must aver a "particularized injury," independent of the public at large).

Abstract injuries are insufficient to establish standing to challenge government actions. *Collins v. State*, 2000 ME 85, ¶ 6, 750 A.2d 1257 ("One who suffers only an abstract injury does not gain standing to challenge governmental conduct."); *see also Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015) ("The court has distinguished between organizations that allege that their activities have been impeded from those that merely allege that their mission has been compromised." (internal quotation marks omitted)). As the Supreme Court of the United States held when evaluating a party's "aggrieved" status pursuant to the federal Administrative Procedure Act ("APA"), "a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the APA." *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972).

In contrast, an allegation that the government's conduct "perceptibly impaired the organization's ability to provide services" – or, in other words, that the government conduct has caused "an inhibition of the organization's daily operations" – may be sufficient to establish an injury in fact. *Food & Water Watch, Inc.*, 808 F.3d at 919 (internal quotation marks omitted). "[A]n organization does not suffer an injury in fact where it expends resources to educate its members and others unless doing so subjects the organization to operational costs beyond those normally expended." *Id*. at 920 (internal quotation marks omitted.)

For example, in a case involving the government's failure to provide complete translations of all exclusion or deportation proceedings, the Ninth Circuit concluded that a legal aid organization sufficiently alleged that its activities had been perceptibly impaired by the government action because it directly affected the organization's mission of providing effective legal representation in the immigration proceedings at issue. *El Rescate Legal Servs., Inc. v. Executive Office of Immigration Review*, 959 F.2d 742, 748 (9th Cir. 1991). There, the plaintiff organization's allegation that failure to fully transcribe all such proceedings perceptibly impaired the organization's "ability to provide the services it was formed to provide" was sufficient to establish standing. *Id.* (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)).

Similarly, in a case involving a legal aid organization providing services to low-income and unemployed workers, detailed allegations demonstrated that the Michigan Unemployment Agency's practice of failing to provide notice of the particular basis for fraud allegations against workers claiming unemployment benefits caused injury by requiring additional time, effort, and resources to defend against such accusations. *Zynda v. Arwood*, 175 F. Supp. 3d 791, 805 (E.D. Mich. 2016). The court determined that these allegations were sufficient at the pleading stage to show that "[b]etter notice provisions would streamline [plaintiff]'s intake and review process, and more accurate initial fraud determinations would lessen the number of cases referred to the organization." *Id*. at 806.

Even if MEJ and IHP could establish that they have been injured, "[t]o have standing, a party must show that they suffered an injury that is fairly traceable to the challenged action (or inaction) and that is likely to be redressed by the judicial relief sought." *Collins*, 2000 ME 85, ¶ 6, 750 A.2d 1257. Merely being "affected by a governmental action is insufficient to confer standing in the absence of any showing that the effect is an injury." *Id*. ¶ 7.

Specifically, IHP's claims are not justiciable because the Amended Complaint fails to allege that IHP has suffered a particularized injury, let alone one that is fairly traceable to the Department's action or inaction. *See id*. ¶ 6.

IHP allegedly provides free classes and individual coaching to women who are working and therefore no longer eligible to receive TANF benefits. (App. 26.) IHP also asserts that it routinely receives requests from "immigrant women to assist them in finding and paying for transportation and childcare so that they can participate in [IHP] programs and pursue their personal goals." (App. 26.) IHP's two full-time employees allegedly "spend significant time and financial resources helping immigrant women find and pay for transportation to its in-person programs and childcare for all its programs." (App. 26.)

IHP has not alleged that these requests come primarily from women who have lost TANF eligibility due to employment. (App. 26.) Nor does IHP allege that expanding eligibility for the Department's Transitional Support Services would alleviate IHP's need to expend resources responding to requests for assistance from the community it serves.

In fact, it is unlikely that the alleged injury suffered by IHP would be resolved by the implementation of services sought by IHP. Based on the allegations in the Amended Complaint, transportation to and from IHP programs or childcare to attend IHP's classes would not be covered by Transitional Support Services, which are intended to cover only employment-related costs. 22 M.R.S.A. § 3762(8); *see also* 10-144 C.M.R. ch. 331, MPAM, ch. V, § A(1)(A) (transitional child care benefits are "only available during the time

the specified relative works[.]") (App. 210); 10-144 C.M.R. ch. 331, MPAM ch. V, § B(4)(a)(NOTE) (transitional transportation benefit is a mileage reimbursement for "the most direct route to and from the recipient's home and their place of employment.") (App. 212.)

The only harm that IHP alleges is that the "exclusion of many IHP participants from TANF Transitional Support Services detracts from IHP's mission to empower immigrant women's personal ambitions and, due to its limited resources, from other services and advocacy IHP could provide to and on behalf of immigrant women in Maine." (App. 27.) IHP identifies no legal right upon which the Department's action or inaction "prejudicially and directly" operates. *Lindemann*, 2008 ME 187, ¶ 14, 961 A.2d 538. IHP's operations are not impeded by either TANF 119 or the Department's failure to expand eligibility for Transitional Support Services to immigrants who are not "qualified aliens" under PRWORA.

MEJ's claims are likewise not justiciable because the Amended Complaint fails to allege that MEJ has suffered a particularized injury sufficient to confer standing. MEJ alleges that it is the only civil legal services organization in the State of Maine that advises "immigrants who are not 'qualified aliens' under PRWORA about which public benefits they may qualify for under Maine law." (App 27.) MEJ allegedly expends significant resources "providing advice,

representation, and referrals" when "low-income people" are "facing barriers or denials for public benefits that they should lawfully be entitled to." (App. 28.) A mere increase in demand from services is different in kind from the types of injuries alleged in *El Rescate* and *Zynda*, which directly affected the manner in which services were provided. 959 F.2d at 748; 175 F. Supp. 3d at 805.

Although MEJ's activities may *include* the provision of advice or services to noncitizens who previously received TANF benefits pursuant to 22 M.R.S.A. § 3762(3)(B)(2), the Amended Complaint stops short of claiming that this category of prospective clients *in particular* has caused MEJ to expend significant resources.

MEJ asserts that the Department's failure to provide Transitional Support Services to noncitizens previously eligible for TANF pursuant to 22 M.R.S.A. § 3762(3)(B)(2) "results in immigrants and community-based organizations contacting Maine Equal Justice to ask for information and help regarding TANF benefits[, including] advice on whether certain immigrants were correctly terminated from Maine's TANF programs" and requests for referrals to sources of economic support, and that it must "devote significant staff resources to evaluate and respond to such ask for help." (App. 28.) But neither category of these inquiries pertains to the existence or nonexistence of a rule expanding eligibility for Transitional Support Services to noncitizens other than qualified

aliens. By definition, in most cases termination from TANF is a necessary prerequisite to applying for and receiving post-TANF Transitional Support Services. *See generally* 10-144 C.M.R. ch. 331, MPAM, ch. V (App. 210-12.)

MEJ's allegations fail to demonstrate a causal link between the specific action or inaction complained of and the alleged harm – namely, advising whether termination from TANF was proper and providing information about sources of support for those who no longer qualify to receive benefits. In the absence of a plausible connection between the alleged unlawful conduct and the alleged harm, these allegations are insufficient to confer standing. *See Collins*, 2000 ME 85, ¶ 6, 750 A.2d 1257.

Finally, MEJ asserts that it creates "client education materials" in several languages and provides "community trainings" about the public benefits for which immigrants may qualify. (App. 28-29.) These materials and trainings include, but are not limited to, information about TANF benefits. (App. 28-29.) MEJ alleges that creating these materials and trainings "detracts from other civil legal services [it] could provide to low-income Mainers." (App. 29.) These allegations fail to demonstrate any perceptible impairment in MEJ's operations. *See El Rescate Legal Servs., Inc.*, 959 F.2d at 748; *Food & Water Watch, Inc.*, 808 F.3d at 920 ("[A]n organization does not suffer an injury in fact where it expends resources to educate its members and others unless doing so subjects

the organization to operational costs beyond those normally expended." (internal quotation marks omitted)). Accordingly, like IHP, MEJ has failed to establish that it has standing to pursue a claim for declaratory judgment in its own right[12] pursuant to 5 M.R.S.A. § 8058(1).

In sum, the Court may affirm the Superior Court's dismissal of the Amended Complaint on alternative grounds, i.e., IHP's and MEJ's lack of standing. *See Bocko*, 2024 ME 8, ¶ 34, --- A.3d --- (affirming trial court's ruling on alternative reasoning).

CONCLUSION

For the reasons stated above, the Department respectfully requests that the Court affirm the Superior Court's decision.

[12] As the Superior Court noted, (App. 6), neither IHP nor MEJ argued that the Amended Complaint alleged sufficient facts to establish associational standing. *See Black v. Bureau of Parks & Lands*, 2022 ME 58, ¶ 29, 288 A.3d 346; *Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290 (arguments that lack developed argumentation are deemed waived).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brendan Kreckel, Assistant Attorney General, hereby certify that I have caused three copies of the foregoing brief of the Appellee, Maine Department of Health and Human Services, to be served upon the attorneys listed below, by depositing those copies this date in the United States Mail, first-class postage prepaid, addressed for delivery as follows:

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