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# Government Intrusion: An Eligibility Requirement of AFDC

## I. Introduction

Aid to Families with Dependent Children<sup>1</sup> is a system of "cooperative federalism"<sup>2</sup> designed to provide public assistance to a category of needy children.<sup>3</sup> Section 401 of the Social Security Act<sup>4</sup> sets forth the purpose of AFDC: to encourage the care of children in their own homes. This objective is to be implemented by enabling states to furnish financial assistance and rehabilitation to dependent children and their parents in order to maintain and strengthen family life and help the children and their parents attain self support and personal independence.<sup>5</sup> In reviewing the state and federal laws designed to reach these goals, one overriding eligibility requirement becomes apparent. In return for its help, the government demands the submission of the AFDC recipient to extensive government inquiry about himself, his family and his home. The recipient must, therefore, be willing to endure substantial government interference.

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1. The controlling federal law is a subchapter of the Social Security Act, §§ 401-44, 42 U.S.C. §§ 601-44 (1970 & Supp. 1975), and the regulations authorized under the Act, 45 C.F.R. §§ 201, 204-06, 213, 220, 224-26, 228, 232-35, 237, 302; 42 C.F.R. § 205; 29 C.F.R. §§ 56-58 (1976) [hereinafter referred to as AFDC].

In Pennsylvania, the AFDC administration plan is set forth in the Public Welfare Code, PA. STAT. ANN. tit. 62, §§ 401-1503 (Purdon 1968 & Supp. 1977), and in regulations and memoranda contained in the PUBLIC ASSISTANCE MANUAL §§ 1100-8330 (1969) [hereinafter cited as P. A. MAN.]

The basic requirements for state plans are set forth in 42 U.S.C. § 602 (1970 & Supp. 1975).

2. *Doe v. Beal*, 523 F.2d 611, 616 (3rd Cir. 1975). "Provision for the economic security of children was made by offering substantial federal funds to states submitting plans complying with the Act and HEW regulations." *Mandley v. Trainor*, 523 F.2d 415, 417 (7th Cir. 1975).

3. Section 406(a) of the Social Security Act defines "dependent child" as a needy child

(1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and . . . a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment . . . .

42 U.S.C. § 606 (1970 & Supp. 1975). Section 407 of the Act was amended in 1968 and redefined "dependent child" to include one deprived by reason of the father's unemployment.

4. 42 U.S.C. § 601 (1970).

5. *Id.*

In some instances the law mandates direct<sup>6</sup> governmental intrusion into the individual's family life, while in others it indirectly<sup>7</sup> affects the recipient. In either case, government interference necessarily creates a dependency on government.<sup>8</sup> The intent of this note is to survey relevant federal and Pennsylvania laws to show the kinds of indirect and direct government intervention imposed as conditions of eligibility for AFDC.

## II. Direct Government Interference

### A. *Support*

As a condition of eligibility the Social Security Act mandates that the recipient assign to the state any rights to child support.<sup>9</sup> The recipient must further cooperate with the state in establishing the paternity of an illegitimate child for the purpose of obtaining support payments.<sup>10</sup> The recipient is excused from cooperating only if she can show "good cause" for refusing.<sup>11</sup>

1. *Proposed Federal Regulations.*—Under the proposed regulations of the Department of Health, Education and Welfare,<sup>12</sup> the recipient shall be determined to have "good cause"<sup>13</sup> only if cooperation would be "against the best interests of the child."<sup>14</sup> The major justification for refusal is that the recipient's cooperation would result in substantial danger, physical harm, or undue harassment to the child or the caretaker relative.<sup>15</sup> Other "best interest" exceptions include when the child was conceived as a result of forcible rape<sup>16</sup> or incest<sup>17</sup> or when an adoption is pending.<sup>18</sup>

The exceptions are reasonable and humane, but the burden of proof is not. The proposed regulations unduly restrict the recipient's ability to show one of the excepted circumstances. The evidence submitted must establish a *prima facie* case.<sup>19</sup> This is made difficult, however, by the fact that the recipient must be able to produce police records, medical reports, social services reports or court documents to substantiate her claims.<sup>20</sup>

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6. See notes 9 to 108 and accompanying text *infra*.

7. See notes 109 to 124 and accompanying text *infra*.

8. See generally Note, *Rehabilitation, Investigation, and the Welfare Home Visit*, 79 YALE L.J. 746, 756-61 (1970).

9. Section 402(a) (26) (A)&(B), 42 U.S.C. § 602(a) (26)(A)&(B) (Supp. 1975); 45 C.F.R. §§ 232.12 to .30 & 302.31 (1976).

10. *Id.*

11. Section 402(a)(26)(B), 42 U.S.C. § 602(a)(26)(B) (Supp. 1975).

12. 41 Fed. Reg. 34298-34301 (1976).

13. 41 Fed. Reg. 34300-301 (1976) (to be codified in 45 C.F.R. § 232.13).

14. *Id.*

15. *Id.* § 232.13(d)(1).

16. *Id.* § 232.13(d)(2).

17. *Id.*

18. *Id.* § 232.13(d)(3).

19. *Id.* § 232.13(f)(1).

20. *Id.* § 232.13(g)(1)-(5).

The evidentiary restrictions seem to be based on the questionable presumption that past acts of violence have been reported. No specific provision is made, therefore, for oral testimony from the recipient or her friends<sup>21</sup> as to acts of violence or rape. Thus, the prospective recipient who fails to establish a *prima facie* case is placed in the difficult position of deciding whether the benefits of AFDC assistance outweigh the potential danger or humiliation of establishing paternity. The risk involved in choosing the welfare benefits places an unfair emotional strain on the recipient and is counterproductive to strengthening family life.

2. *Pennsylvania Regulations.*—The recently promulgated regulations of the Department of Public Welfare (DPW)<sup>22</sup> regarding cooperation<sup>23</sup> in support and paternity actions do not incorporate the expanded “best interest” provisions of the proposed federal regulations. Instead, the “best interest” exception is limited to paternity actions after the recipient has assigned her support rights to DPW.<sup>24</sup> The Pennsylvania regulations excuse cooperation only when rape, incest, or pending legal proceedings for adoption are involved.<sup>25</sup> Thus the mother may have to submit herself to physical danger as a condition of eligibility for AFDC. It is again impossible to reconcile this requirement with AFDC’s stated purpose, which is to strengthen family life.<sup>26</sup>

#### *B. Property Rights*

Stated simply the computation of a grant in AFDC is made by adding together a grant group’s earned and unearned income and resources and subtracting that figure from the monthly family allowance.<sup>27</sup> If non-exempt income and resources are greater than the monthly allowance, then the family is ineligible because it fails to meet the need requirement.<sup>28</sup>

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21. Section 232.13(g)(6) is a catchall provision and gives HEW the discretion to permit such other elements as it may determine constitute acceptable evidence. This provision does not guarantee that the state will permit oral statements by the applicant or corroborating oral statements by another witness. This seems particularly restrictive in rape cases because many rapes are not reported.

22. 7 Pa. Bull. 580 (1977).

23. Under 7 Pa. Bull. 584 (1977) (to be codified in P.A. MAN. § 3237.211) cooperation includes the following: (1) appearing at the offices of the local and/or Domestic Relations Office as necessary to provide verbal and written information and signing legal forms required to file petitions for support, (2) appearing as a witness in court proceedings necessary to obtain support, (3) giving support payments to the Claim Settlement Child Support Agency.

The inconvenience to the applicant apparent in this regulation is illustrative of the unnecessary government intrusion connected with receiving welfare. The applicant is forced to provide the same information to three separate sources—the income maintenance worker, the Claims Settlement Officer, and the Domestic Relations Officer.

24. 7 Pa. Bull. 585 (1977) (to be codified in P.A. MAN. § 3237.212).

25. *Id.*

26. Social Security Act, § 401, 42 U.S.C. § 601 (1970).

27. P.A. MAN. § 3200.

28. *Id.* In Cumberland County the allowance for a family of four is \$350. In Dauphin County the allowance is \$354. *Id.* § 3260.

In determining an applicant's need the state disregards certain personal property,<sup>29</sup> exempts other personal property<sup>30</sup> and disregards the recipient's home.<sup>31</sup> Any non-exempt personal property and the applicant's residence are secured by Pennsylvania to repay assistance benefits.<sup>32</sup> The conditions imposed by the applicant's acknowledgement of liability would be considered onerous if imposed upon a poor person by a private lender.

1. *Intrusion upon Real Property Rights.*—The AFDC recipient may own his home; he is not required to liquidate that asset.<sup>33</sup> He is, however, required to acknowledge liability by signing a reimbursement agreement that contains a confession of judgment clause.<sup>34</sup> If the homeowner is forced to sell because of urban renewal he frequently cannot obtain a mortgage to buy another home, and the state takes its lien out of the proceeds of the sale.<sup>35</sup> Even if the homeowner wishes to dispose of his home voluntarily he cannot buy or sell without the DPW's permission.<sup>36</sup> If he does sell, the recipient may be forced to repay all or part of the lien.<sup>37</sup> Finally, if the recipient undertakes to make major repairs he cannot obtain financing because the presence of a lien on a credit report discourages financial institutions from extending credit.<sup>38</sup>

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29. The following personal property does not represent a resource to the AFDC client and is disregarded in determining eligibility: (1) wedding and engagement rings, family heirlooms, clothing and children's toys; (2) household furnishings, personal effects, and items used to provide, equip, and maintain a household for the applicant or recipient; (3) equipment and material that are necessary to implement employment, rehabilitation, or self-care plan for the client; (4) motor vehicles; (5) retroactive assistance payments received as a result of a Fair Hearing decision; and (6) retroactive assistance payments authorized to correct underpayments to current recipients. 5 Pa. Legis. Serv. 495 (Purdon 1976) (to be codified in Pa. STAT. ANN. tit. 62, § 432.5); 7 Pa. Bull. 603 (1977) (to be codified in P.A. MAN. § 3236.11).

30. The following personal property is exempt to meet current and future needs while uninterrupted assistance is received:

- (1) Savings of a school child up to \$2,000 for each child.
- (2) Cash value of life insurance up to \$1,000 for each individual.
- (3) Other personal property in the combined amount of \$250 for one person in the assistance unit, plus \$100 for each additional person. Such personal property includes cash on hand, stocks, bonds, mortgages, life insurance in excess of \$1,000 for each individual, and savings of a school child in excess of \$2,000 for each child.

The total amount of all the above exempt personal property, together with income exempt by the State (§ 3232.212) cannot exceed \$12,000 for each individual client (see § 3231) (paraphrased).

5 Pa. Legis. Serv. 495 (Purdon 1976) (to be codified in Pa. STAT. ANN. tit. 62, § 432.5); 7 Pa. Bull. 603 (1977) (to be codified in P.A. MAN. § 3236.12).

31. 5 Pa. Legis. Serv. 495 (Purdon 1976) (to be codified in Pa. STAT. ANN. tit. 62, § 432.5); 7 Pa. Bull. 603 (1977) (to be codified in P.A. MAN. § 3236.12).

32. 5 Pa. Legis. Serv. 495 (Purdon 1976) (to be codified in Pa. STAT. ANN. tit. 62, § 432.5); 7 Pa. Bull. 602-03 (1977) (to be codified in P.A. MAN. §§ 3235, 3236).

33. 5 Pa. Legis. Serv. 495 (Purdon 1976) (to be codified in Pa. STAT. ANN. tit. 62, § 432.5); 7 Pa. Bull. 602 (1977) (to be codified in P.A. MAN. § 3235).

34. P.A. MAN. §§ 3822.1, 3822.2, 3826.5.

35. *Charleston v. Wohlgemuth*, 332 F. Supp. 1175, 1179 (E.D. Pa. 1971), *aff'd*, 405 U.S. 970 (1972).

36. *Id.* at 1180.

37. P.A. MAN. § 3821.2.

38. *Charleston v. Wohlgemuth*, 332 F. Supp. 1175, 1180 (E.D. Pa. 1971). The court

The economic hardships imposed by the government creditor undermine the self-sufficiency AFDC is attempting to re-establish by forcing the recipient into greater dependence on the state.

In the process of protecting public funds with confession of judgment provisions the government deprives AFDC recipients of rights to which they would be entitled if they were contracting with a private party. Although no disclaimer of the confession of judgment provision is explicitly set forth in the Public Welfare Code or Public Assistance Manual, the court in *Charleston v. Wohlgemuth*<sup>39</sup> characterized the lien as a dormant security lien<sup>40</sup> constitutionally permissible under *Snell v. Wyman*.<sup>41</sup> Consequently, in Pennsylvania confession of judgment provisions are unconstitutional when applied to private debtors earning less than \$10,000 in the absence of showing a knowing waiver,<sup>42</sup> but under *Charleston*<sup>43</sup> are constitutional when applied to AFDC recipients. This disparity is illogical and difficult to reconcile with the AFDC purpose of assuring the recipient's independence.

2. *Interference with Personal Property*.—The procedures dealing with the applicant's personal property are similar. Non-exempt personal property that is immediately convertible into cash is considered available to meet current living expenses.<sup>44</sup> After the conversion the applicant may or may not qualify for a monthly allowance.<sup>45</sup> In order to retain any non-exempt personal property which cannot be immediately converted into cash the applicant must acknowledge liability to the government<sup>46</sup> and take immediate steps to offer such property on sale on the open market.<sup>47</sup> No provision is made for refusing to sell immediately because of a depressed market.

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rejected the recipient's hardship argument because of the regulations that permit the postponement and subordination of the state's lien. P.A. MAN. §§ 3826.54, 3826.8. The court suggested, however, that the Commonwealth embark on a program of remedial action in cooperation with lending institutions supplemented by a program to better inform recipients of the subordination regulations. *Id.* at 1180.

39. 332 F. Supp. 1175 (E.D. Pa. 1971).

40. *Id.* at 1186.

41. 393 U.S. 323 (1969). The Supreme Court stated that the failure to accede to New York's claim for a dormant security lien and reimbursement was a legitimate justification for AFDC disqualification.

42. *Swarb v. Lennox*, 314 F. Supp. 1091 (E.D. Pa. 1971), *aff'd*, 407 U.S. 104 (1972).

43. 332 F. Supp. 1175 (E.D. Pa. 1971). The court distinguished *Swarb v. Lennox* because the Department of Welfare has a policy of proving its claim in any proceeding by the debtor-assistance recipient to open judgment. That policy is not stated in the Public Assistance Manual or in Public Welfare Code.

44. 5 Pa. Legis. Serv. 495 (Purdon 1976) (to be codified in PA. STAT. ANN. tit. 62, § 432.5(e)).

45. If the cash received, excluding the allowed exemptions (See note 30 *supra*) together with other resources and income exceed the monthly family allowance, the recipient or applicant would not qualify.

46. P.A. MAN. § 3821.2 sets forth the types of personal property liable for reimbursement and the acknowledgement of liability that is required.

47. P.A. MAN. § 3236 states that the applicant must convert "at whatever price the property brings when it is offered for sale on the open market."

The required acknowledgment of liability as to assignable and non-assignable personal property deprives the recipient of significant rights. The recipient must either sign and turn over to DPW the document that is evidence of ownership<sup>48</sup> or sign an "agreement to pay claim."<sup>49</sup> Under the latter he subjects himself to the following conditions: (1) judgment can be taken with declaration; (2) the cost of the suit may be added to the judgment; (3) no objections may be raised to technical errors made by DPW; (4) the posting of security to prevent sale is waived; (5) the assertion of rights under any appraisalment, stay or execution law, including debtor exemption law is prohibited.<sup>50</sup> The government has once again used its unequal bargaining power to strip the recipient of legal rights and requires him to enter into an adhesion contract in order to receive benefits.

3. *Government Restraints on Alienation.*—Dependency on the government is furthered by the regulations controlling the transfer of any of the recipient's real and personal property subject to reimbursement.<sup>51</sup> The recipient can no longer make an independent decision to sell property; instead he must obtain approval from the Department of Welfare. This request for approval triggers a mandatory investigation of the transaction by the County Office<sup>52</sup> and a discretionary investigation by the Claims Settlement Area Office.<sup>53</sup>

The Pennsylvania regulations also mandate government approval of transfers of property valued at five hundred dollars or more within two years *prior* to application.<sup>54</sup> The state must find fair consideration or an explicitly stated substitute<sup>55</sup> before the applicant can establish eligibility.

### C. Personal and Familial Privacy

In addition to the state's direct interference with a recipient's property rights, there is a requirement that the individual submit to direct government scrutiny and relinquish to the state his freedom to make certain decisions. These eligibility requirements are obviously designed to further the rehabilitative goals of AFDC.

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48. P.A. MAN. § 3822.22.

49. *Id.* § 3822.23. Resources not assignable include alimony payments, delayed wages, estates of deceased recipients, goods, chattels, auto, antiques, cash from insurance adjustment, retirement benefits, damage claims, support order payments, and workmen's compensation.

50. P.A. MAN. § 3822.232.

51. P.A. MAN. § 3232.2 Reimbursement is the repayment of assistance granted to a person or certain of his relatives while he has ownership or the right to ownership of property. The list of properties liable is set forth in P.A. MAN. § 3821.2.

52. *Id.*

53. *Id.*

54. *Id.* § 3232.1.

55. See *id.* §§ 3232.1, 3232.11 (definition of fair consideration and exceptions to fair consideration requirements).

*1. Case Studies.*—The Social Security Act prescribes government intervention when the state has reason to believe the home of a recipient is unsuitable for the child “because of the neglect, abuse, or exploitation of such child.”<sup>56</sup> The state has an affirmative duty to inform appropriate court or law enforcement agencies of “unsuitable homes.”<sup>57</sup>

Pennsylvania implements its investigative responsibilities in the following manner. The first required interview is with an income maintenance worker, who advises the prospective recipient of the services the agency provides<sup>58</sup> and makes an immediate referral to the Social Services Unit if protective services for children or adults appear to be necessary.<sup>59</sup> Unless there appears to be imminent danger the client is not required to see the social services caseworker until an initial cash grant is authorized.<sup>60</sup>

The social services worker is required at the initial interview to make a “social study and service plan”<sup>61</sup> defining problems<sup>62</sup> affecting the individual and the family. In assessing “parental functioning” the caseworker evaluates whether the home is suitable for the child.<sup>63</sup> In the Public Assistance Manual the caseworker is directed to judge whether a child’s welfare may be jeopardized in terms of the following minimum standards:

- (1) Reasonably clean, sanitary home in good repair with adequate space, heating and furnishings.
- (2) Sufficient and proper food and clothing, appropriate to the age and physical condition of the child.
- (3) Appropriate physical care and treatment.
- (4) Preventive and remedial medical care.
- (5) Support of the child’s interest and involvement in school including adaptation to the demands of school experience.

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56. Section 401(a)(16), 42 U.S.C. § 602(a)(16) (1970 & Supp. 1975).

57. Social Security Act. §§ 404(b), 408, 42 U.S.C. §§ 604(b), 608 (1970).

58. P.A. MAN. § 3572.1512.

59. *Id.* § 3572.153(b).

60. P.A. MAN. § 3572.153.

61. *Id.* § 3714.312.

62. The federal government prescribes services that must be provided for seventy-five percent federal matching funds. The required services are outlined in P.A. MAN. § 3710 Appendix III. The problem areas that are deemed to require social services involve unmarried parents and their children, families disrupted by desertion or impending desertion, families with potentially employable adults, children in need of protection, and children with special problems.

63. P.A. MAN. § 3710 Appendix I (a) defines what is unsuitable housing:

1. It is substandard if any of the following exist.
  - a. Has inadequate cooking, bathing and/or toilet facilities;
  - b. Has overcrowded sleeping arrangements with no separate sleeping space for parents, older children of different sex or other adults;
  - c. Has inadequate storage space for food, household supplies and clothing;
  - d. Has inadequate heating and/or lighting equipment;
  - e. The property and/or equipment is in such condition that it endangers the health and safety of the occupants.
2. It is so arranged that a person who has problems of mobility cannot cope with daily physical needs.
3. It is so located that the lack of suitable transportation creates hardships in seeking or retaining employment, securing medical care, shopping, recreation or church attendance, etc.

- (6) Satisfying family relationships.
- (7) Moral training and guidance.<sup>64</sup>

The caseworker's objective in scrutinizing these factors is to assist parents in improving home conditions principally by referring them to social service agencies that deal with that particular problem.

These standards are axiomatic and, consequently, vague. They provide the caseworker with broad discretion to determine the nature and extent of the rehabilitation required, although there is no requirement that the caseworker be trained either formally or informally<sup>65</sup> to exercise that discretion wisely. Moreover, the standards provide the recipient with no notice as to what is acceptable behavior and for what conduct he will be disciplined. More importantly, the standards demand behavior by the recipient that is not possible under current public assistance grants. The federal poverty level for 1976 is \$5,500, which is \$1,180 more than the public welfare grant for a family of four.<sup>66</sup> Public welfare recipients now live at sixty-one percent of the Bureau of Labor Statistics' "lower income budget."<sup>67</sup> That budget reflects marginally adequate levels of health and decency for a family of four.<sup>68</sup> Based on the inadequacy of the grant, the recipient will be economically incapable of meeting the state's standards of adequate care of the child.

In order to implement the minimum standards provision the Public Assistance Manual directs the caseworker, when the parents are unable or unwilling to take adequate measures to improve the situation, to refer the matter to the agency carrying out the county's child care responsibilities or to the Juvenile Probation Office.<sup>69</sup> This directive is complemented by section 2204 of the Child Protective Service Law,<sup>70</sup> which requires social service workers to report suspected child abuse to the child protective service.<sup>71</sup>

Thus the AFDC applicant must submit to government scrutiny of his ability to function as a parent; this scrutiny has far-reaching implications. A finding of neglect or abuse may trigger legal procedures that result in the loss of custody of his child. Based on the standards<sup>72</sup> set forth in the

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64. P.A. MAN. § 3714.3121(3).

65. See Note, *Rehabilitation, Investigation, and the Welfare Home Visit*, 79 YALE L.J. 746, 761 (1970).

66. Pennsylvania State Welfare Rights Organization, Why Welfare Grants Must Be Increased (Jan. 1977) (unpublished report on file Pennsylvania Legal Services).

67. *Id.*

68. Health & Welfare Council, Inc., Health and Decency for Pennsylvania's Poor (Dec. 14, 1973) (unpublished report on need for adequate income provision on file Pennsylvania Legal Services).

69. P.A. MAN. § 3714.3121(31). The legal procedures related to neglect proceedings are found under the "Juvenile Act," PA. STAT. ANN. tit. 11, §§ 50-101 to 50-337 (Purdon Supp. 1976-77).

70. PA. STAT. ANN. tit. 11, § 2201-24 (Purdon Supp. 1976-77). A social worker who willfully fails to report child abuse is guilty of a summary offense. A second or subsequent offense shall be a misdemeanor of the third degree.

71. PA. STAT. ANN. tit. 11, §§ 2204, 2212 (Purdon Supp. 1976-77).

72. PA. STAT. ANN. tit. 11, §§ 50-314 to 50-321 (Purdon Supp. 1976-77). In *Doe v. Beal*, 523 F.2d 611, 634 (2d Cir. 1975), Judge Kalodner stated, "There are probably no programs of the state or federal government affording financial assistance that do not

Public Assistance Manual, which seem vague and consequently capable of multiple interpretations by caseworkers, the AFDC recipient who is aware of the regulation must perceive child neglect or abuse proceedings as a risk connected with public assistance.

2. *Home Visits*.—Required government intrusion does not end with the two initial interviews. In *Wyman v. James*<sup>73</sup> the Supreme Court held that home visits, which Justice Blackmun has called "the heart of the welfare administration,"<sup>74</sup> do not fall under the fourth amendment proscription against unreasonable searches and seizures.<sup>75</sup> Therefore, a recipient's consent to a welfare official's entry into his home is a condition of continued eligibility.<sup>76</sup>

In Pennsylvania redetermination of eligibility must occur at a minimum of once every six months.<sup>77</sup> Redetermination "contacts," usually through planned visits, are necessary to establish continued eligibility. The Public Assistance Manual provides for planned visits with a significant exception:

Redetermination contacts with the client may be in the home or in the office, depending on the client's preference. Office and home visits are scheduled with the client. However, it is not always possible to plan a visit; home visits to the client without notice may *on occasion be necessary*.<sup>78</sup>

An unplanned visit is permissible when substantiating information is urgently needed.<sup>79</sup> This exception, if liberally permitted, could completely abridge the client's minimal rights to privacy<sup>80</sup> by making unplanned home visits a condition of eligibility in Pennsylvania.<sup>81</sup> Although the

contain within them, sometimes unarticulated, norms of conduct that are prerequisite to receiving the assistance."

Unfortunately, the welfare recipient's violation of the norm of care demanded is often due to the inadequacy of the grant. See notes 66-68 and accompanying text *supra*.

73. 400 U.S. 309 (1971).

74. 400 U.S. 309, 320 (1971).

75. This decision is difficult to reconcile with *Camara v. Municipal Court*, 387 U.S. 523 (1967), and *See v. City of Seattle*, 387 U.S. 541 (1967). *Camara* involved a refusal of entry to city housing inspectors checking for a violation of a building's occupancy permit. *See* involved a refusal of entry to a business establishment to a fire department representative inspecting for compliance with the fire code. In both cases, the Supreme Court held warrantless searches to be violative of the fourth amendment.

76. It is significant to note that in *Wyman* Mrs. James was willing to supply all information "reasonable and relevant" to her need for public assistance. She was merely attempting to assert her right to refuse entry to her home. *Wyman v. James*, 400 U.S. 309, 313 (1970).

77. P.A. MAN. § 3512.1

78. *Id.* § 3512.4 (emphasis added). See also P.A. MAN. § 3511.332 (suggesting that notice of a visit should be given "whenever practical").

79. P.A. MAN. § 3512.4.

80. Under *Wyman*, of course, this is not a constitutionally protected right. See notes 74-76 and accompanying text *supra*.

81. Justice Douglas poses two questions that point to the Court's willingness to enforce a stricter standard of "parenting" upon the welfare recipient:

Would the majority sanction, in the absence of probable cause, compulsory visits to all American homes for the purpose of discovering child abuse? Or is this Court prepared to hold as a matter of constitutional law that a mother, merely because she is poor, is substantially more likely to injure or exploit her children?

*Wyman v. James*, 400 U.S. 309, 342 (1970) (dissenting opinion).

investigative aspects<sup>82</sup> of the home visit may lead to prosecution for a misdemeanor<sup>83</sup> or a felony<sup>84</sup> or to civil forfeiture,<sup>85</sup> the home visit is not considered a search within the ambit of the fourth amendment and the caseworker need not, therefore, have probable cause to demand entry into the recipient's home.

3. *Disclosure*.—In Pennsylvania, the AFDC recipient also risks disclosure of his financial need to persons outside the County Assistance Office. Under the "Right to Know Act"<sup>86</sup> any adult resident who provides the name of a recipient of AFDC is entitled to be told that individual's address and the amount he receives from public assistance.<sup>87</sup> The only restrictions placed on this right are that the information may not be used for political or commercial purposes.<sup>88</sup>

Caseworkers also have limited discretion to make collateral contacts to verify the client's eligibility without obtaining his consent. The Public Assistance Manual authorizes the caseworker to make such contacts because of "unusual circumstances."<sup>89</sup> An example of an unusual circumstance in which such corroboration is permitted is "when the client lives a considerable distance from the CAO, has no telephone and the need to confirm a point of eligibility is urgent for the client's welfare."<sup>90</sup>

For each client and recipient of AFDC there is a case record file. The case record is the Department of Welfare's official file of forms, correspondence and other documents pertinent to the client's application and eligibility.<sup>91</sup> The income maintenance worker has primary responsibility for recording information on the eligibility forms, filing the forms, maintaining the record and removing outdated materials.<sup>92</sup>

The client has no right of access to his case record file unless he requests a fair hearing<sup>93</sup> challenging a Department of Welfare action refusing or discontinuing assistance.<sup>94</sup> If the client requests a fair hearing, he or she is entitled to examine *only* that material from the case record which the County Office will introduce as evidence to support its decision or action.<sup>95</sup>

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82. Although welfare caseworkers seek to be friends, they are required to be sleuths. *Wyman v. James*, 400 U.S. 309, 339 (1970) (Marshall, J., dissenting).

83. PA. CONS. STAT. ANN. tit. 18, § 2701 (Purdon 1973).

84. PA. CONS. STAT. ANN. tit. 18, § 2702 (Purdon 1973).

85. See notes 69-70 *supra*.

86. PA. STAT. ANN. tit. 65, §§ 66.1 to 66.4 (Purdon Supp. 1976-77).

87. *McMullan v. Wohlgemuth*, 453 Pa. 147, 308 A.2d 888 (1973) (dictum). *But see* 45 C.F.R. § 205.50 (1976). The regulations were published in November 10, 1975, after the *McMullan* decision, and would seem to proscribe the disclosure of information permitted in the case.

88. PA. STAT. ANN. tit. 65, § 66.1(2) (Purdon Supp. 1976-77).

89. P.A. MAN. § 3511.335.

90. *Id.* Contacts without specific consent are to be kept to a minimum "consistent with good judgment" and the circumstances involved are to be substantiated in the case record.

91. P.A. MAN. § 4110.

92. *Id.*

93. *Id.* § 3590.

94. *Id.* § 4143.3.

95. *Id.* § 3591(b).

Thus, the welfare recipient's right to privacy is not adequately protected under the state plan. The recipient or applicant has a severely limited right to know what records are being maintained or disseminated and to gain access to collected information to correct or amend inaccuracies or errors.<sup>96</sup>

4. *Protective Payments.*—Protective payments,<sup>97</sup> which are instituted only when all rehabilitative efforts have failed,<sup>98</sup> deprive the recipient of even the right to choose how to spend the cash granted to him by the state.<sup>99</sup> They are mandated in three situations: (1) when it is determined by a caseworker that a client's inability to manage funds severely affects his or his family's welfare;<sup>100</sup> (2) when a client refuses to participate in Work Incentive Program<sup>101</sup> or accept a bona fide offer of employment;<sup>102</sup> or (3) when a recipient is ineligible because of failure to cooperate in securing support from a parent or establishing paternity.<sup>103</sup>

Government involvement intensifies following the imposition of protective payments. Under section 3773 of the new state regulations a Public Child Welfare Agency<sup>104</sup> shall be the preferred protective payee.<sup>105</sup> This provision is a double-edged sword affecting the recipient's privacy. Under current regulations governing protective payments, home visits invariably increase, since redetermination of need for protective payments is made as often as is indicated by the circumstances but no less frequently than every three months.<sup>106</sup> Again, after these visits the caseworker has an obligation to report any child abuse or neglect.<sup>107</sup> In addition, section 3776 of the Public Assistance Manual creates a duty to

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96. Compare the safeguards in disclosing information and granting access to the affected individuals in section 4143 of the Public Assistance Manual with those safeguards prescribed in the Privacy Act of 1974, 5 U.S.C. § 552a (Supp. 1975).

The same confidentiality requirements and limitations to access by the individual pertain to the Central Registry file on absent parents, P.A. Man. § 3122.4222. Again, there is no provision for the absent parent when located to review the files in the Central Registry and to expunge any erroneous material.

97. Protective payments of assistance are made to a third party to spend to meet the needs of the recipient. P.A. MAN. § 3771.2.

98. Protective payments are imposed only after concentrated government interference in the form of home visits, discussions with the caseworker, and discussions by the caseworker with complaining creditors. P. A. MAN. §§ 3772.2 and 3714.3121(1)(B).

99. P.A. MAN. § 3770.

100. Social Security Act, § 406(b)(2)(A), 42 U.S.C. § 606(b)(2)(A) (1970); P.A. MAN. § 3772(b).

101. Commonly known as WIN, all AFDC applicants or recipients must register as a condition of eligibility. The WIN program provides manpower services, training and employment. Social Security Act, §§ 430-44, 42 U.S.C. §§ 630-44 (1970).

102. Social Security Act, § 402(a)(19)(F), 42 U.S.C. § 602(a)(19)(F) (1970 & Supp. 1975); P.A. MAN. § 3772(A).

103. Social Security Act, § 402(a)(26)(B), 42 U.S.C. § 602(a)(26)(B) (1970 & Supp. 1975).

104. P.A. MAN. § 3773.1.

105. But see 45 C.F.R. § 234.60(7)(I), which provides in part:

Standards will be established for selection: (i) of protective payees, who are interested in or concerned with the recipient's welfare, to act for the recipient in receiving assistance, with the selection of a protective payee being made by the recipient, or with his participation and consent, to the extent possible. (emphasis added).

106. P.A. MAN. § 3776.

107. See notes 73-74 *supra*.

petition for removal of the children from the home, for custodial care for the adult, or for appointment of a guardian if the caseworker feels that protective payments will have to continue for more than two years.<sup>108</sup>

### III. Indirect Government Intrusions

The second type of government intrusion into the private lives of AFDC recipients is more indirect, but no less invidious.

#### A. Maximum Grant

In AFDC programs, the state has the right to establish a maximum family grant—an upper limit on the total amount of money any one family unit may receive.<sup>109</sup> In *Dandridge v. Williams*<sup>110</sup> the recipients of AFDC argued that Maryland's maximum grant conflicted with the Social Security Act's mandate to provide assistance to all eligible individuals and with its objective of keeping children in the family home.<sup>111</sup> They also contended that the regulation violated equal protection by discriminating against recipients with large families. The Court concluded that the state's imposition of a maximum grant, although it might tend to cause the disintegration of large families, was consistent with the Social Security Act.<sup>112</sup> The Court explained that in order for the family to retain assistance payments the child could not be sent away to anyone other than a relative specified by law: "The kinship tie may be attenuated but it cannot be destroyed."<sup>113</sup> Further, citing cases regulating industry as precedent, the court imposed a rational relationship standard to test for unconstitutional discrimination between classification of welfare recipients.<sup>114</sup> Under *Dandridge*, any state is entitled through economic sanctions to affect a recipient's freedom to procreate if the classification is rational.<sup>115</sup>

The maximum family grant not only affected a recipient's decision to enlarge his or her family but also affected the parents' right to raise their own children. In adopting the rational relation test instead of apply-

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108. P.A. MAN. § 3776.

109. *Dandridge v. Williams*, 397 U.S. 471 (1970).

110. *Id.*

111. Social Security Act, §§ 401, 402(a)(10), 42 U.S.C. §§ 601, 602(a)(10) (1970 & Supp. 1975).

112. The Court reasoned that the maximum grant did not deprive only the younger children of eligibility but rather the per capita allocation of the *family grant* was reduced proportionately.

113. 397 U.S. 471, 480 (1970).

114. The Court articulated the following standard:

In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classification made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in the practice it results in some inequality. . . . 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.'

*Dandridge v. Williams*, 397 U.S. 471, 485 (1970) (citations omitted).

115. But see *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942) (the right to procreate was treated as a fundamental right and a compelling state interest was required for justification).

ing strict scrutiny, the Court refused to recognize a fundamental right under the first amendment to direct the upbringing of one's children<sup>116</sup> or a first or ninth amendment right of familial association.<sup>117</sup> Thus, *Dandridge* seemed to foreclose any extension of the fundamental right doctrine into the welfare area.

#### B. Category of Need

Congress has chosen to differentiate between classes of needy children. Only children who have been deprived of parental care for statutorily specified reasons are eligible for AFDC.<sup>118</sup> Where AFDC-U<sup>119</sup> does not exist, the AFDC program provides incentive for unemployed fathers to desert their families in order to obtain assistance.<sup>120</sup> If the father deserts, his child will be eligible by reason of the father's continued absence.

The assumption of the AFDC "category of need" analysis is that when there is a healthy breadwinner father in a healthy economy, there should be no needy children.<sup>121</sup> This philosophy places an onus on the father by assuming that if he is neither physically nor mentally ill he could be out earning enough bread for his family. Under the AFDC-U program if he is unemployed he is considered to need rehabilitation and aid in obtaining a job.<sup>122</sup> Under either AFDC or AFDC-U, if he is employed full-time and still not able to support his family capitalistic charity cannot cope with his failure.

#### IV. Conclusion

Government intervention in one's family life is the price exacted from AFDC recipients. Economically, the government demands the recipient to show how his assistance funds are being used.<sup>123</sup> Socially, the government insists on behavioral changes as a condition of eligibility. Both demands are accompanied by persistent and unpleasant government scrutiny. Although the intent may be absent, the effect is to deter the recipient from continuing on the public dole, or, at least, to make him

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116. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

117. Cf. *Griswold v. Connecticut*, 381 U.S. 479 (1965) (freedom of marital association); *NAACP v. Alabama*, 357 U.S. 449 (1958) (freedom to associate and privacy in one's associations).

118. See note 3 *supra*.

119. AFDC-U enlarges the definition of dependent child to include a needy child who has been deprived of parental support because of the unemployment of his/her father.

120. *Henry v. Betit*, 323 F. Supp. 418 (D. Alaska 1971).

121. *King v. Smith*, 392 U.S. 309, 328 (1968).

122. Social Security Act, § 407, 42 U.S.C. § 607 (1970 & Supp. 1975).

123. In *Wyman v. James*, 400 U.S. 309 (1971), Justice Blackmun analogized public assistance to private charity:

One who dispenses purely private charity naturally has an interest in and expects to know how his charitable funds are utilized and put to work. The public, when it is the provider, rightly expects the same. It might well expect more, because of the trust aspect of public funds, and the recipient, as well as the caseworker, has not only an interest but an obligation.

*Id.* at 319.

suffer if he does.<sup>124</sup> Abuse of the welfare recipient appears to be an inescapable part of the AFDC program as it is presently administered.

Grants to welfare recipients and administrative safeguards to protect their privacy and independence must be increased. The extent of government interference in the life of the assistance recipient creates a dependency on the government beyond financial dependency. This is ironic in a program where the stated purpose is to encourage personal independence. These reforms will come slowly because the government's need to scrutinize the lives of the welfare recipient will decrease only when our society abandons its outmoded conception of the "worthy poor" and its presumption that the failure to earning a living is a result of individual weakness.

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124. See generally Handler & Goodstein, *The Legislative Development of Public Assistance*, 1968 WIS. L. REV. 414 (1968).