Chapter 2: Welfare Law

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CHAPTER 2

Welfare Law

DIANE LUND and TOBY SHERWOOD

§2.1. Introduction. During the 1971 Survey year, the recipients of public assistance saw some of the ground previously gained by welfare rights activity apparently lost as the initiative for welfare reform shifted from state and local governments to the relatively remote arena of Washington and as political attitudes began to reflect the country's economic problems. The presidential proposal for a federal take-over of welfare and the ensuing round of discussions, hearings, critiques, and counterproposals encouraged a wait-and-see attitude on the part of local governments and apparently preempted attempts to achieve immediate welfare reforms of a less comprehensive nature. State legislatures did not hesitate, however, to attempt to reduce the burden of welfare on state finances. Proposals to reduce benefits were introduced in 26 states during the 1970-1971 legislative sessions. Many states that refrained from action with respect to assistance levels nevertheless legislated to change or eliminate administrative practices which were thought to contribute to rising welfare expenses. Some states, such as New York, did both.

Given the present state of national affairs it is difficult to predict the future direction of the welfare rights movement or the progress it will be able to make. The movement has successfully pursued in the courts its objective of obtaining for recipients of public assistance the

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§2.1. 1 H.R. 1, 92d Cong., 1st Sess. (1971) (a bill to amend the Social Security Act to make improvements in the maternal and child health programs with emphasis on improvements in their operating effectiveness, to authorize a family assistance plan providing basic benefits to low-income families with children, with incentives for employment and training, to improve the capacity for employment of members of such families, to achieve more uniform treatment of recipients under the federal-state public assistance programs and otherwise improve such programs, and for other purposes).


4 New York has reduced its standard-of-living rates (N.Y. Laws 1971, c. 133), attempted to impose a residency requirement (N.Y. Laws 1971, c. 606, enjoined in Lopez v. Wyman, 329 F. Supp. 483 (W.D.N.Y. 1971) ), and instituted new procedures intended to put employable persons to work when jobs can be found (N.Y. Laws 1971, c. 102).
§2.1. Benefits to which they are entitled by law and the protections guaranteed to all Americans.\(^5\) The limits of judicial willingness to stand behind those benefits and protections, however, now may well have been reached;\(^6\) it appears unlikely that the United States Supreme Court will embrace an absolute “right to welfare” in the near future.\(^7\) Without such an outright endorsement by the high court, it is doubtful that direct improvement of benefit levels can be obtained through litigation. The improvement of the status of welfare recipients remains a subject to be dealt with through the political process.

§2.2. Assistance payments and related benefits: Right of striking workers to public assistance. During the 1971 Survey year the only decision upholding the right of persons to receive public assistance was *ITT Lamp Division of International Telephone and Telegraph Corp. v. Minter.*\(^1\) The plaintiff in that action challenged the power of the Commonwealth to grant welfare benefits to indigent strikers. ITT, seeking emergency injunctive relief, claimed that the granting of welfare benefits by the Commonwealth was state action which altered the relative economic strength of the parties to the strike and thus conflicted with the national policy of free collective bargaining. It further argued that granting benefits to strikers violated the Massachusetts welfare statutes and the Social Security Act by making payments to persons who had refused a bona fide offer of employment without good cause.\(^2\) The federal district court refused to grant a preliminary injunction on the basis of either the state or the federal statute, and the Court of Appeals for the First Circuit affirmed. In considering the question of whether or not the state or federal welfare laws had been transgressed, the circuit court relied upon the welfare commissioner’s administrative determination that the strikers were eligible for welfare. The circuit court recognized the difficulties inherent in making a factual determination as to whether going out on strike was refusing employment with good cause, and noted that the federal welfare scheme had envisioned that the state would make that determination if necessary. In the case of the ITT strikers the welfare

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\(^6\) Efforts to expand the concept of entitlement to welfare benefits received a severe setback in *Dandridge v. Williams*, 397 U.S. 471 (1970) (Maryland’s policy of imposing a maximum grant limitation on the amount of monthly welfare payments to a family unit was upheld despite the fact that it worked an extreme hardship upon large families and the children in those families).

\(^7\) In *Wyman v. James*, 400 U.S. 309 (1971), which affirmed the welfare department’s right to precondition the receipt of welfare payments upon a visit to the recipient’s home by a welfare worker, the interest of the public in seeing that welfare funds are properly expended was analogized to the interest of one who dispenses “purely private charity.”
department had made such a determination. Because there was no evidence that either Congress or the Massachusetts legislature had explicitly or implicitly disqualified strikers per se from receiving welfare benefits, the circuit court was unable to conclude that the administrative determination of striker eligibility for welfare would probably be found to be precluded by either state or federal law.

*ITT Lamp*, while reaching what appears to be the correct and socially desirable result, nonetheless demonstrates the constrained approach which the judiciary appears to be taking with respect to the right to welfare benefits. In fact, *ITT Lamp* may be a harbinger of a disinclination on the part of courts to recognize even a broad statutory right to receive public assistance. It is not encouraging to note the circuit court’s apparently willing acceptance of a discretionary administrative determination as to the eligibility of strikers for welfare benefits, especially where there was no statutory basis for resolving the case upon such a ground.³ On the other hand, the absence of any dispute as to the propriety of the court’s approach may have contributed to the result in the instant case, and thus the case may not have any broader significance in the future.

### §2.3. Administrative procedures: Right to a full hearing.

The unresponsiveness of the administrative maze that makes up our present welfare system is amply demonstrated in *Duato v. Commissioner of Public Welfare*,¹ a case in which the plaintiff, Ms. Duato, challenged the welfare department’s regulation limiting the work-related expenses of a working welfare recipient to $11 per month.² The plaintiff alleged actual expenses in excess of $40 per month, and submitted proof of them before a welfare department referee. No transcript was made of that hearing. The referee found that $11 was the proper amount of expenses. Since there was no record of the hearing and the

³ The statutes establishing the Massachusetts welfare programs, when read literally, require the Department of Public Welfare to do much more for the needy than is being done now. At the time of the ITT Lamp decision, Chapter 117 of the General Laws, the chapter pertaining to the General Relief program, stated in Section 1 that the Commonwealth “shall relieve and support all poor and indigent persons residing or found therein” and provided that the aid furnished “shall be sufficient to enable parents to bring up their children properly and to maintain an adequate standard of living for persons or families or children.” Chapter 118 of the General Laws, which governs the program for Aid to Families with Dependent Children (AFDC), contains similar language in Section 2. The statutory language prescribes a criterion for eligibility based upon need, and requires that the assistance given be sufficient in amount. The sufficiency standard is not met in practice. Decisions such as ITT Lamp tend to encourage a like disregard of the statutory criterion of need.


² Mass. Public Assistance Policy Manual c. IV, at 3, as transmitted by State Letter 264, Aug. 5, 1970, provides: “Earnings or wages must be considered in determining income to the recipient. In determining the amount which is available as income from employment, the following work-related expenses are to be considered. Compulsory deductions for Social Security taxes, Federal and State income taxes based on allowable dependents, retirement contributions, health insurance premiums, union dues and $2.50 per week ($11.00 per month) for other expenses essential to being employed.”

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referee's opinion was brief, it was not clear whether the referee had based his decision on the departmental regulation or whether he had determined that the evidence did not warrant a finding that the plaintiff’s work-related expenses in fact exceeded $11 per month. On her appeal to the superior court, the plaintiff requested leave to present evidence as to her actual expenses. Leave was granted by the court without objection by the commissioner. The trial judge found that all items other than plaintiff’s weekly transportation expense of $2 were "questionable as work-related expenses," and he affirmed the referee’s decree. In her bill of review filed in the Supreme Judicial Court, Duato attacked the welfare department’s regulation on the grounds that it had been improperly promulgated and was contrary to federal law.

The Supreme Judicial Court, on consideration of the case, first declared that the superior court judge should not have attempted a de novo factual determination as to the expenses submitted by Ms. Duato, but rather should have limited his inquiry to the record of the administrative hearing and to any procedural irregularities that might have occurred therein. The Court then explained that even if it were assumed that the regulation was invalid and the department’s decision therefore illegal, the plaintiff would still have to show that her substantial rights had been prejudiced by the decision. The Court held that the plaintiff had failed to sustain her burden of proof on that point and stated that it was within the discretion of the referee to disbelieve the evidence presented by the plaintiff.

Duato was an attempt to force the welfare department to reflect accurately in the employed recipient’s assistance grant the cost to the recipient of earning his or her wages. The question is of more than academic interest to a working welfare recipient and to the taxpayer. At issue is the amount of expenses which will be deducted by the welfare department from the welfare recipient’s pay in determining the amount by which the welfare recipient’s assistance grant will be reduced to account for wage income. Improper recognition of work-related expenses will lead to out-of-pocket losses for the welfare recipient and create employment disincentives; the net results will be a decreasing number of employed poor and an increasing welfare cost.

In reaching its conclusion, the Supreme Judicial Court apparently assumed that the plaintiff had failed to prove to the referee’s satisfaction that her work-related expenses were greater than $11. No consideration appears to have been given by the Court to the possibility

At the present time, the Massachusetts Public Assistance Policy Manual is updated by means of numbered state letters sent by the commissioner to the staff and other persons who possess copies of the manual and are on the department’s mailing list. The state letters sometimes transmit new pages to be inserted in the manual, which is looseleaf. Transmittal letters become obsolete upon receipt and usually so state. Often, however, the letter itself contains new policy material and thus must be retained as a supplement to the manual.
that the referee had not evaluated the plaintiff's evidence as to actual expenses and thus had not in fact decided the issue on the merits. The plaintiff could not directly present the merits of her case to the Supreme Judicial Court because the inadequate machinery and improper functioning of the welfare department made it impossible for her to obtain a full hearing on the issue in the first instance.³ The failure of the initial hearing to fully document the facts and reasoning of the referee's decision ultimately proved fatal when the plaintiff found herself unable to expose the initial flaws at the appellate level. By unquestioningly assuming on the basis of a record devoid of explanation that the referee had considered the merits of the plaintiff's case, the Court managed to avoid an examination of the broader questions which plaintiff was attempting to raise.

The welfare department has been and continues to be shamefully understaffed for fair hearings, with less than ten examiners assigned to handle hearings throughout the entire state. At the time of this writing only one stenographer is employed by the welfare department to cover fair hearings; the alternative is an unreliable and often undecipherable recording mechanism. If, in addition to these deficiencies, a welfare recipient at the fair hearing encounters an examiner who refuses to consider the issues she or he wishes to present, it is obvious that whatever faith the recipient might have had as to the efficacy of pursuing administrative remedies will be sorely tried, if not destroyed. The inability of the welfare department to respond to the legitimate needs of the poor, as in Duato, continues to frustrate those who are trying to demonstrate that working within the system can succeed. Lack of response is commonplace within the welfare department, where the problem of keeping costs down is particularly acute and the relative political powerlessness of the poor makes responsiveness to their legitimate needs on the part of the department a matter of low priority.

§2.4. Reduction of benefit payments: Administrative regulations and individual need. As in Duato v. Commissioner of Public Welfare,¹ the plaintiff in Dullea v. Ott² was attempting to compel the

³ G.L., c. 18, §16 creates a right to a "fair hearing," which may be exercised by any person aggrieved by those welfare department actions specified in the statute. (A hearing of this nature is required by federal laws for aggrieved recipients of or applicants for assistance under joint federal-state programs such as AFDC.) Under Section 16, the hearing is to be conducted as an adjudicatory proceeding under Chapter 30A of the General Laws, the state's administrative procedure act. Welfare department fair hearings are held before referees who are employees of the department. The quality of the hearings is affected adversely by the totally inadequate appropriations for welfare administration. A further difficulty is created by some uncertainty as to the function of the fair hearing referees; many of them do not consider it their task to inquire into the legality or propriety of departmental regulations and instead restrict themselves to applying the pertinent regulation strictly to the given facts. This restrictive approach prevents any discussion of the validity of regulations at the administrative level.

welfare department, in applying its regulations, to take into account all the facts and circumstances of the particular case. The plaintiff had moved from the apartment where she had lived with her children to an apartment which she shared with her children, her father, and her stepmother. In accordance with the welfare department’s regulations, the plaintiff’s welfare grant was immediately reduced, without resort to the statutory fair hearing procedure. The plaintiff alleged that she had been denied due process of law in that her grant had been reduced prior to the fair hearing. The federal district court held that the plaintiff had failed to state a claim upon which relief could be granted, and that a fair hearing prior to the reduction of plaintiff’s grant was not required by either the federal Constitution or state law since there was no adjudicative fact in issue. The plaintiff concededly had changed her living arrangements, and the welfare department’s regulation provided for a corresponding reduction in the level of assistance whenever a change of that particular type was made. The court specifically found that the department’s use of living arrangements as a basis upon which to determine the welfare recipient’s benefit level was not so arbitrary as to support a claim that plaintiff had been deprived of substantive due process. In so finding, the court sanctioned the welfare department’s administrative practice of varying welfare grants according to nonindividualized criteria.

_Dullea_ is an illustration of one of the fundamental difficulties encountered by the designers and administrators of any welfare system—the necessity for achieving a compromise between meeting individual needs and treating all recipients identically in accordance with standardized and generalized criteria. To the extent that this compromise is reached by means of arbitrary categorizing on the basis of the number of children or the kind of living arrangements, the system will result in individual hardships not unlike those experienced by the rest of the population. But to the poor, an “individual hardship” means going without food or keeping a child home from school in cold weather because he or she has no winter jacket. There is no leeway in the budget of a welfare recipient.

Before changes were effected in September 1970, Massachusetts had responded to hardship circumstances by recognizing “special needs” and by permitting a substantial amount of discretion to be exercised by caseworkers in distributing supplementary welfare funds. The practice of giving special need grants had resulted in abuses and new inequities as welfare rights workers had encouraged recipients to make their needs known. Those recipients who were not articulate or who were assigned to unsympathetic social workers failed to benefit from the special needs arrangement and often suffered unnecessary hard-

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3 The variety of special needs was noted in State Letter 266, Aug. 28, 1970, which prohibited the future recognition of special needs: “Effective September 16, 1970, the Department will discontinue the practice of providing the following special needs: furniture, household equipment and supplies, clothing, laundry expense, telephone, extra fuel payments, supplemental food orders or payments and back rent and utility payments.”
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ships because they failed to receive the aid to which they were entitled. The individualized approach to welfare benefits embodied in special need grants broke down as soon as it was exposed to the full needs of welfare recipients. The special needs program was not able to deliver the kind of assistance that had been promised to recipients and at the same time preserve the safeguards against abuse demanded by the public.

§2.5. Aid to Families with Dependent Children: 1 Flat grant system. The flat grant system for recipients of Aid to Families with Dependent Children (AFDC) was put into effect in the fall of 1970 as a solution to the problem of special needs. 2 The flat grant was instituted by administrative action, 3 with the impetus coming from the governor's office. Under the new arrangement, AFDC recipients are no longer entitled to receive additional money for special needs. Instead, all AFDC recipient families, regardless of actual need, receive every three months a check that is intended to cover unexpected expenses, large outlays, and any other special needs that may arise. The ostensible rationale for the changeover was that a flat grant program would operate more equitably, dividing the available money among all recipients rather than allotting it only to those who were asking for it. 4 One of the underlying purposes for the adoption of the flat grant system, admitted by everyone, was to eliminate one of the rallying points for welfare rights demonstrations, which had proved reasonably successful in obtaining special need grants for those who participated. While it is undoubtedly true that many nonparticipators also had special needs for which no welfare department money was forthcoming, it is equally true that the actual needs of recipient families do vary because of individual circumstances. Varying circumstances continue to be recognized under the flat grant system by the allocation of "hardship funds," which provide some capacity to meet actual emergencies. 5 Hardship funds to supplement the flat grant system are allocated by region in fixed sums, and are intended to be disbursed in last-resort situations. The power to determine the situations in which hardship funds will be used has been given to regional committees made up of welfare department personnel and recipients. Actual requests for hardship grants must be made by the recipient's social worker through departmental procedures. The requests are then filtered upward, sometimes coming before the regional committee itself, and sometimes being acted upon by an administrator who is purporting to follow committee guidelines. Whether or not a hard-

§2.5. 1 G.L., c. 118, §§1-11.
2 For a brief discussion of the special needs program, see §2.4 supra.
4 Address by Governor Sargent, 66th Annual Massachusetts Conference on Social Welfare, Dec. 3, 1969: "No longer will those who clamor loudest receive most. Nor will those in genuine need be required to clamor for what they deserve. The flat grant will be standard for all families."
A ship request is granted depends upon such factors as who else is asking, how much money there is, the nature of the request, and who makes the determination. The diffused responsibility makes it virtually impossible for a recipient to identify the reason for, or the source of, the grant or denial of a request. Although the federal government ordinarily requires a state to provide uniform benefits and uniform treatment to all recipients within the jurisdiction, 6 waivers can be obtained for experimental programs. 7 Such a waiver, effective for one year, was obtained for the hardship funds program in the early spring of 1971. 8

In practice, the flat grant system, with the supplementary hardship funds, seems to have resulted in a less visible, less assertive welfare population. It should not be assumed, however, that this means that recipients are more content or any better off. Evidence to the contrary has been given to the commissioner of public welfare by private charities, which have found that since the implementation of the flat grant system, welfare recipients have been turning increasingly to the charities for help with special needs. 9 In fact, the flat grant system has largely resulted in depersonalizing the administration of welfare and shifting the attention of welfare administrators away from individual needs. It has protected the welfare department from having the smooth functioning of the system interfered with by individuals or by members of welfare rights organizations; thus the flat grant has achieved in part what its proponents had intended. The decreased welfare rights activity is attributable to the fact that under the new system the possibilities for direct, effective communication with the welfare department about immediate needs have been virtually eliminated.

Further evaluation of the flat grant system appears to be one of those tasks which has diminished in importance in many people’s minds because of the expected federal take-over of welfare. The plan to extend the flat grant to other categories of relief has not been acted upon, and instead a different and much harsher solution to the problem of special needs has been put into effect for recipients of general relief. 10 The conflict between the design of the flat grant system, which attempts to make a welfare family’s financial situation resemble that of the “normal” family, and the content of the system, a money grant which is insufficient to permit a “normal” existence, has not been resolved or even given a thorough examination. This may be understandable in light of the taxpayers’ current attitude toward welfare costs, but if the flat grant is going to live up to its advance notices as a welfare reform measure, the issue must be dealt with.

7 42 U.S.C. §1315.
10 The General Relief program is discussed in §2.6 infra.
§2.6. General Relief program: Administrative modifications. In comparison to AFDC recipients, those who receive General Relief have been subjected to much more drastic administrative action,\(^1\) justified by the executive branch of the government as necessary in order to avert even more extreme steps which might be taken by the legislature.\(^2\) The validity of the governor's explanation for the new regulations is difficult to evaluate. The legislation which was submitted to the General Court by the Special Legislative Committee to Investigate Welfare\(^3\) did contain some extraordinarily harsh measures, such as the imposition of a residency requirement\(^4\) and a 180-day limitation on the duration of benefit payments for which a General Relief recipient was eligible.\(^5\) These portions of the bill and some similar proposals, however, were eliminated before the final votes were taken by the legislature; the revision of the General Relief program which was signed into law\(^6\) is not much different from the administrative revision effected earlier by the executive branch. Whether the governor's feat in getting his cutbacks in first did contribute to the more rational provisions of the final bill is unclear; it is clear, however, that the welfare department's credibility among welfare recipients as an advocate of the rights of the poor suffered as a result of its active role in developing the executive-sponsored legislation.

It is noteworthy that the welfare department, prior to issuing its final regulation revising the General Relief program, held a public hearing on the contents of its proposed regulation and claimed to be using procedures which satisfied statutory requirements.\(^7\) The final form of the regulation was in some respects a response to the criticisms and comments submitted to the department at the time of the hearing.\(^8\) The department's use of statutory administrative procedures is a promising development.

The key changes accomplished by the new regulations in the General Relief program appear to be intended to reduce the number of persons eligible for General Relief. The personal property allowance has been revised downward: formerly an individual became eligible if the value of his personal property did not exceed $500; he will now

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\(^1\) State Letter 279 series, effective June 7, 1971.
\(^2\) Press conference of Governor Sargent, Mar. 26, 1971, at which he stated that he "was concerned the legislators would begin 'making irresponsible cuts in the welfare program, and start eliminating persons who really do need assistance.'" Boston Globe, Mar. 27, 1971, at 6, col. 7.
\(^3\) For a further discussion of the legislation, see §2.7 infra.
\(^4\) House Bill 5850, Appendix B, §1A (1971).
\(^5\) Id. §4.
\(^7\) G.L., c. 30A, §2, is cited in the notice of the hearing as controlling.
\(^8\) E.g., witnesses at the May 21, 1971 hearing, including Sen. Jack Backman of the Norfolk and Suffolk Senatorial District, strongly criticized the new eligibility limits proposed by the department. Under the proposal the amount of personal property that would disqualify an applicant for relief was to be reduced from $500 to $50. As is noted in the text, the final regulations, which were issued after the hearing, set the amount at $250.
become eligible only when that value does not exceed $250.9 No student (someone “regularly attending a college or university for the purpose of securing advanced education”) is eligible for General Relief. No person under 21 is entitled to receive regular, continuing assistance until the inability of that person’s parents to provide support has been ascertained and documented. Both men and women are to register with the Division of Employment Security unless, in the case of a female, she has a child under high school age. The special needs program for General Relief recipients, covering such things as clothing, household equipment and supplies, telephone expenses, special fuel costs, and household repairs, has been altogether discontinued. Eligibility for General Relief is to be redetermined frequently at specified intervals.

Changes such as those above can easily be made in General Relief because there is no federal participation in the program and, therefore, no requirements which must be met in order to receive a federal contribution. The statistics issued by the welfare department for the months following the effective date of the General Relief regulations show a significant decrease in the cost of the program.10 Although the decrease may be attributed to the more stringent eligibility requirements, it is equally possible that it is due to any one of a number of other reasons such as an improvement in the job market or a shift of General Relief recipients to other programs. Whatever the cause, the immediate downturn is likely to reinforce the beliefs that much of the taxpayers’ money spent on assistance for the poor isn’t really needed and is wasted or received by “cheaters,” and that a “get tough” policy is really all that is needed to get the situation back under control. The proponents of this line of thought often resist any attempt to cure root causes of poverty. They insist instead that there is not in fact much “real” poverty and that there is, therefore, no need for a massive plan of action. The governor and the welfare department, by assuming a “get tough” posture with respect to General Relief, regrettably furnished some support to those who would legislate away the symptoms of the welfare crisis by unreasonably restricting eligibility for assistance.

§2.7. Legislation. In June of 1971, the Special Legislative Committee to Investigate Welfare issued an interim report1 which served to focus public and legislative attention on welfare. The three appendices to the report contained specific proposals for legislation. The report itself makes a number of sensible points about the need to improve welfare administration and appears to give sympathetic recog-

9 This change and those subsequently mentioned are all prescribed in the State Letter 279 series.

10 In May, 1971, the General Relief caseload was 32,900 cases. June showed a slight decrease to 32,488 cases, a 1.3 percent change. In comparison, however, total General Relief payments in May amounted to $6,455,606, while in June the total was $4,408,042, a reduction of 31.7 percent. The average monthly payment decreased by $60.54.

§2.7. 1 House Bill 5850 (1971).
The effect of his humane approach, however, is diluted by the documentation offered by the committee to support its findings of abuses, since many of the examples offered to prove its allegations of fraud are in fact examples of the cruel dilemmas encountered by those who must subsist on welfare. The committee appears to be more concerned in its legislative proposals with the correction of abuses in the existing program than with the need to design an adequate and fair welfare system. Its proposals, for the most part, embody the nonsolutions to the welfare crisis which have been current throughout the country in 1971: reducing benefits and narrowing eligibility. The committee seems to be concerned primarily with reducing the cost of welfare and little with aiding the poor. The committee also proposed some administrative changes designed to build "business principles" into welfare and to improve the state's fraud-detecting capability.

One of the committee's major proposals, subsequently enacted by the legislature, was a revision of Chapter 117 of the General Laws, which furnishes the statutory basis for the General Relief program. Financed solely by the state, General Relief provides assistance to needy persons who are ineligible for the categorical aid which the state and federal governments cooperatively provide to the blind, the elderly, the disabled, and families with dependent children. Recipients of

2 E.g., the report states in part: "As a direct result of the failure by the Department of Public Welfare since July 1, 1968, to responsibly administer the financial affairs of the agency, the entire public assistance system in the Commonwealth has become widely criticized and has brought widespread condemnation of welfare recipients." Id. at 21.

The report further states: "This committee has not heard one single voice raised by any legislator in opposition to the granting of assistance to any eligible recipient. On the contrary, their actions and energy have been directed toward providing greater and more meaningful assistance by demanding a more effective implementation of the welfare programs to meet the needs of all eligible welfare recipients. Their tone has been one of compassion for the indigent and less fortunate individuals. This is as it should be." Id. at 274.

3 One example noted in the report is Case No. F 923: "Recipient and two children have been on AFDC continuously since 1962. In September 1970 she began work in a hospital but concealed this fact from her social worker. She admitted that she did this as she knew that otherwise the AFDC payments would be reduced and that she wanted to move out of her housing project into a better living situation. She received a total of $2,529.11 in fraudulent payments and signed a statement in which she agreed to reimburse the department with payments of $5.00 per month. Simple arithmetic indicates that this will take 42 years." Id. at 212.

4 See N.Y. Times, July 9, 1971, at 1, col. 5, reporting U.S. Dept. of Health, Education and Welfare, Trends in AFDC Benefit Levels—Summer Memorandum (July 1971). The committee's proposals to achieve these ends were contained in House Bill 5850, Appendix A (1971) (a residency requirement) and in certain sections of Appendices B and C.

5 House Bill 5850, Appendix C (1971).


7 The present framework for federal participation in public assistance is through identifying kinds or "categories" of people to be helped by joint federal-state programs. The state operates the program in accordance with federal standards that determine eligibility, services to be provided, and procedures that must be followed. The state is reimbursed by the federal government for a percentage of the assistance payments and for 75 percent of the cost of social services provided to recipients. Poor people who fit into
General Relief are a relatively small group, are generally unorganized because many of them are only temporarily eligible for welfare (those who receive aid for longer periods are likely to have physical or mental handicaps which make them unemployable for practical purposes and thus entitled to categorical assistance), and are in fact totally dependent upon the General Relief program for survival. The revision of Chapter 117 forbids giving assistance to purchase furniture. It also requires a verification of the facts establishing eligibility before any assistance other than two weeks' worth of shelter costs and food orders can be given; the severity of this provision is mitigated, however, by a requirement that the eligibility determination be made within the two-week period. A similar requirement of full verification prior to assistance, with the exception of two weeks' worth of shelter costs and food orders, was proposed for AFDC applicants by the committee, and an attempt was made to narrow AFDC benefits as well. There are federal provisions, however, which have been interpreted to offer some protection against benefit reductions to AFDC recipients, and the AFDC flat grant system made the committee's proposed prohibition on grants for special needs less significant than it might otherwise have been. Since General Relief recipients are not now protected by federal regulations or subject to a flat grant system, they would have been severely affected by the passage of the committee's legislation were it not for the fact that the state's new welfare regulations cover much the same ground. It was a popular year in which to make political hay at the expense of the helpless and vulnerable General Relief recipients.

The administrative change which attracted the most attention was the committee's proposal to create a "fraud squad" to track down and collect evidence against the persons responsible for welfare abuses. The committee proposed placing the fraudulent claims bureau with

none of the categories are dependent upon state aid, which in Massachusetts is dispensed through the General Relief program.

8 This is evident from the eligibility requirements for General Relief. In order to receive assistance an individual must own no more than $250 worth of personal property and a family must own no more than $500. State Letter 279B, June 1, 1971.


11 These proposals were part of Senate Bill 1569, which was enacted by the legislature during the 1971 session, returned by the governor with proposed amendments, re-enacted by the legislature during the closing days of the session, and then pocket-vetoed by the governor on November 17, 1971. In vetoing the bill, however, the governor stated that the commissioner of public welfare was being ordered to put into effect these eligibility verification requirements and a ban on all special grants for AFDC recipients except grants for special diets, rental exceptions, and hardship situations. Boston Globe, Nov. 18, 1971, at 31, col. 1.


13 The new regulations are discussed in §§2.6 supra.

the state auditor's department. It appeared that as many as fifty new jobs would be created. After some political maneuvering, the plan was revised; as enacted it calls for a bureau of welfare auditing to be within the executive department and under the governor's control.15

A second proposed change, which would seem to be of equal significance, was a requirement that welfare office directors and regional administrators have a business background.16 Under the present laws, where qualifications for welfare department personnel are specified, social service experience or the equivalent is required.17 The bill incorporating the business background proposal was vetoed by the governor.18

One of the committee's key proposals was a one-year residency requirement for all recipients of aid.19 Similar legislation was passed in several states during the year,20 in each case with implementation being enjoined pending a judicial determination of constitutionality.21 The bill imposing a residency requirement in Massachusetts was passed by the House of Representatives, but the Senate Ways and Means Committee deferred acting upon it until an opinion as to its constitutionality could be obtained from the Supreme Judicial Court. The Court's opinion stated that the proposed act would be unconstitutional22 and the bill died in committee. The Senate's reasoned approach to the residency issue was very encouraging to persons concerned about the Commonwealth's tendency to emulate legislation, passed by other states, that reflects an unreasoning welfare backlash. To date, reform legislation has not been as vindictive as it might have been, and credit is due to both the executive and the legislative branches of government.

During the 1971 session, the legislature also dealt with the problems created by the federal government's action in increasing social security

15 Acts of 1971, c. 943, §§1-5, adding G.L., c. 7, §§30Q-30T.
16 House Bill 5850, Appendix C, §§2, 12, and 23 (1971).
17 E.g., G.L., c. 18, §5, which provides: "Each community service center shall be under the administration, supervision and control of a center director who . . . shall be qualified by having received a master's degree from an accredited graduate school of social work, and by having professional experience of not less than five years as an administrator or supervisor of social welfare programs." The impact of requirements such as the above is beginning to be felt as older employees of the department retire. Many of those now reaching retirement age were transferred to the department when the Commonwealth relieved the cities and towns of responsibility for welfare programs (Acts of 1967, c. 658); often these local administrators were not required to have, and in fact did not have, any social service training or background.
benefits and in making the increase retroactive. Chapter 248 of the Acts of 1971 provides that the lump sum payment of the retroactive benefits is to be disregarded by the welfare department in determining a person’s eligibility for Old Age Assistance (OAA) or Disability Assistance (DA). Without this law the receipt of the lump sum payment might have made some welfare recipients ineligible to receive their regular monthly assistance payments because they would be in possession of cash assets in an amount in excess of departmental limits. A more complex dilemma presented by the social security increase was resolved by the passage of Chapter 698 of the Acts of 1971, which provides for an increase in the leisure time allowance of all OAA and DA recipients, an increase in the transportation allowance for all OAA and DA recipients who are not inmates of nursing homes or institutions, and an increase in the incidental expenses allowance given to recipients of Aid to the Blind (ATB). The effect of the law is to increase OAA and DA basic budgets for noninstitutionalized recipients and ATB basic budgets for all recipients by the amount of the social security increase. When an individual’s social security payment is deducted from the recipient's budgeted figure in order to ascertain what the state’s payment will be, the resulting amount will be as much as it was prior to the social security increase. The benefits of the federal action will thus accrue to the recipient who receives social security benefits, since the combined total of a recipient's monthly federal and state checks will in fact be greater. The benefits will also accrue to the recipient who is totally dependent upon public assistance, since the pass-through of federal payments without a corresponding reduction of state payments, as provided by Chapters 248 and 698, increases the total payments to all OAA and DA recipients. Spurred by the federal action, the Commonwealth recognized the impact of an inflationary economy upon social security recipients. At the same time, however, the legislature rejected the governor’s effort to provide a cost-of-living increase for AFDC recipients. By its inconsistent actions, the legislature reflected the distinction made in the public mind between AFDC recipients, who are thought somehow to be responsible for their plight and undeserving of assistance, and the elderly, blind, and disabled, whose victimization by circumstances is accepted and sympathetically responded to by the public.

The tendency toward liberal lawmaking as long as it doesn’t cost anything, often displayed by the Massachusetts legislature, surfaced to benefit the poor in at least two laws enacted in the 1971 session. Chapter 373 of the Acts of 1971 revises G.L., c. 111, §128H, which deals with the rights of migrant workers. Section 128H had formerly provided that a migrant worker not living in the quarters of his employer had the right to have visitors outside of regular working hours, but no notice to that effect was required. The amendment provides

that a notice of visitation rights, printed in both English and Spanish, be posted for the workers' benefit, requires the Department of Public Health to establish minimum standards for visitation rights by issuing pertinent regulations, and provides a mechanism for enforcement of visitation rights. The legislative intent discernible in the visitation statute indicates that the earlier law was not providing the degree of protection that was expected. The fault can be attributed primarily to the employers of migrant labor, who have frequently impeded efforts of social workers and organizers to make contact with the workers, but it would appear possible as well that the Department of Public Health had failed to exercise its powers vigorously. The problem of legislation falling into a vacuum at the administrative level, as may have occurred with respect to the former visitation statute, is particularly acute when the lawmakers attempt to create rights for, or protect rights of, minority groups. To date there has been found no workable solution which can be enforced from the upper administrative levels downward—if the beneficiaries of the legislation fail to learn about and effectively assert their new rights for themselves, the legislation has no practical effect. The revision of the migrant worker law appears to be an attempt to ensure that the workers can find out about their rights and that there is an avenue open for the assertion of their rights. With concerned citizens' groups attempting to contact and encourage migrant workers, the workers should be able to forcefully assert their rights.

The other new piece of progressive legislation is Chapter 726 of the Acts of 1971, which attempts to eliminate discrimination against persons who receive public assistance simply because of their status as welfare recipients. The statute provides that it shall be unlawful

... [f]or any person furnishing credit, services or renting accommodations to discriminate against any individual who is a recipient of federal, state or local public assistance, including medical assistance, or who is a tenant receiving federal, state or local housing subsidies, including rental assistance or rent supplements, solely because the individual is such a recipient.

Chapter 726 is designed to eliminate flat refusals to grant charge accounts, loans, or mortgages to recipients of public assistance and to eliminate the granting of such credit to public assistance recipients on terms which are harsher than those accorded similarly situated persons who do not receive public assistance. The act is also meant to ensure that the services furnished by doctors, druggists, and others to public assistance recipients are equal in all respects to the services provided to those who do not receive such assistance, and that rental housing is provided to public assistance recipients on the same basis that it is provided to nonrecipients. Chapter 726 does not require that all individuals or corporations supplying credit, services, or rental housing

26 Ibid.
§2.7. 

deal with all public assistance recipients on terms identical to those accorded all nonrecipients. What it does require is that individual recipients be treated as individuals. If a recipient has failed in the past to pay his bills promptly, one subject to the act would have a valid reason for denying him credit in the future. However, the mere fact that an individual is a public assistance recipient is not in itself an adequate reason for discriminating against him in any way.

Chapter 726 will be enforced by the Massachusetts Commission Against Discrimination. When a complaint is filed with the commission, an investigation and hearing are to be held, and an order issued either dismissing the complaint or requiring remedial action. Any person aggrieved by an order of the commission may seek judicial review.

A corollary to the need for physicians and hospitals to obtain information as to the eligibility of prospective patients for medical assistance is the need to protect the physician or the hospital from any liability arising from such disclosure. Chapter 335 of the Acts of 1971 adds Section 12G to Chapter 112 of the General Laws; the new section provides that a disclosure of information to specified agencies concerning "the diagnosis, treatment or condition of a patient in connection with the establishment of eligibility for, or entitlement to" any public assistance benefits shall not be grounds for any civil or criminal liability. In another development related to medical services, the legislature postponed for another year the effective date of the law prohibiting the comptroller from advancing funds to the welfare department to pay providers of medicaid services.²⁷

§2.8. Budget considerations. A key factor in the current welfare picture is the legislature's determination of the welfare department budget, including the supplementary budget and the deficiency budget.¹ The department's requests for funds for the fiscal year 1972 were cut significantly before they reached the legislature, and further cuts were made at that stage.² Efforts to put a ceiling on the total welfare budget for the year were barely headed off, as was an attempt to control expenditures by appropriating funds on a monthly basis. One of the consequences of the legislature's intense reaction to the ever-increasing cost of welfare and the deficiencies in its administration was the immense difficulty in convincing the lawmakers of the value of an effort.


¹ The Department of Public Welfare seeks funds from the legislature at three different times during a calendar year. The first of these requests is included in the deficiency budget, which contains all the requests for operating funds needed by various departments because the original appropriations for the current fiscal year were inadequate. The deficiency budget is usually considered by the legislature early in the session. Then the budget for the next fiscal year is taken up, in which appears the welfare department's request for funds for the coming year. Finally, a supplementary budget is presented to the legislature late in the session requesting amounts needed for new programs to meet changed circumstances, or to replace funds cut from the current budget.

² According to figures released by Commissioner Minter, the department requested $929 million for the 1972 fiscal year, and Governor Sargent reduced this to $816 million. The legislature appropriated $811 million. Acts of 1971, c. 719.
to expand human services in Massachusetts by matching up private funds and federal funds under state auspices, without any expenditure of state tax money. Similar “donated funds” programs are used extensively in other states to increase the flow of federal money into such states for child welfare and supporting services, including day care. Massachusetts had been making modest progress in utilizing this program until the executive branch determined that legislative action was needed before these nonstate funds could be expended by the welfare department. The necessary legislative authorization has not been easy to obtain, and attempts to secure assent to a donated funds program, either by authorization in a separate statute or through a line item of the budget, have met with substantial opposition. An appropriation for the program was made, however, in the 1972 supplementary budget. To a limited extent, therefore, Massachusetts will be able to avail itself of donated funds and put them to use in providing needed services for residents of the Commonwealth.

A final welfare note for the year is furnished by a provision passed as part of the budget for the 1972 fiscal year. The provision conditions the appropriation of General Relief funds upon the institution of a requirement that all General Relief recipients determined by the welfare department to be employable persons receive their assistance checks from the nearest office of the Division of Employment Security. The provision's proponents expect that this will result in more job referrals and consequently fewer persons receiving aid under the General Relief program. The welfare department conducted a review of its General Relief caseload following the passage of this law and identified approximately one-fifth of the recipients as “employable.” These persons are now regularly reporting to the Division of Employment Security for job counseling prior to receiving their checks, but the preliminary reports indicate that there are very few job openings. Unless the state creates some new employment opportunities, the new scheme is likely to have very little impact.

§2.9. Conclusion. Many different groups in Massachusetts are concerned about the structure and operation of our welfare system, including local welfare rights organizations, community groups, social workers, legal services lawyers, civic organizations, and the legislature. They do not all agree on the changes which should be made, but they all speak of the need for change and apparently view change as desirable. However, despite a hospitable attitude and a considerable amount of generalized discussion of the issues, almost no one worked

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3 The problem appears attributable to a revised interpretation of Acts of 1969, c. 569, which added §17B to Chapter 10 of the General Laws. Section 17B provides in part: “The state treasurer may receive the principal of any funds given or bequeathed to the commonwealth. . . . Upon request of the agency the state treasurer shall, subject to appropriation, expend the income of the fund, and such parts of the principal as may be subject to the control of the agency, in such manner as the agency may direct, subject to any condition affecting the administration thereof.”

4 Acts of 1971, c. 1003, Item 1900-1020 (in the amount of $145,000).

for or recommended any significant change at the state level in our welfare programs during the 1971 Survey year. The activity in the field of welfare law reflected, for the most part, the usual tug-of-war over the amount of money available and the ways in which it was being administered by the Department of Public Welfare. The silent passivity on the part of so many of those previously most concerned with the operation of the welfare system, which appears to be a reaction to the proposal to federalize welfare, may be the most far-reaching consequence of the federal initiative. The reaction of concerned groups to the federal proposal suggests that if federalization does occur and the new system functions efficiently and impersonally from its remote center of operations, the level of concern over and interest in welfare activity on the local level may well diminish. If the result of the federalization of welfare is that recipients will lose the visibility and the sympathy which they now have, it will happen at a time when the task of welfare reform is only half done. While many systemic reforms have taken place, the system itself has not yet been radically altered, and no new concept has supplanted the idea that welfare is simply a government-operated charity. There is much work yet to be done, both in developing new concepts and in creating the public interest in them which is necessary to the embodiment of any new legislation.