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Social Security Act Requires States to Subtract Non-Exempt Income from the Standard of Need Rather Than the Statutory Maximum Grant When Computing AFDC Benefits.

Janice C. McCoy

lated blood on the corpse not to be inflammatory and saw no abuse of discretion by the trial judge.[36]

It is clear from the *Martin* decision that the court desires to institute a less stringent test for the admisibility of photographs. No longer must photographs tend to solve a disputed fact issue. The court is somewhat imprecise in its statement of its new test for admissibility. While holding that photographs should be admitted if a verbal description of the scene or body would be permissible, the court nevertheless maintained that they should be excluded if inflammatory. The trial court, in its effort to implement the *Martin* rule, may find it difficult to ascertain the meaning of the court's new ruling. It is certain, however, that in the future the trial court will have a far greater amount of discretion in admitting gruesome photographs than in the pre-*Martin* period.

Steven M. Lee

SOCIAL SECURITY—AFDC—COMPUTATION OF GRANT—SOCIAL SECURITY ACT REQUIRES STATES TO SUBTRACT NON-EXEMPT INCOME FROM THE STANDARD OF NEED RATHER THAN THE STATUTORY MAXIMUM GRANT WHEN COMPUTING AFDC BENEFITS. *Villa v. Hall*, 490 P.2d 1148 (Cal. 1971).

The California Welfare Reform Act of 1971 established a schedule of standards of need for recipients of Aid to Families with Dependent Children (AFDC) which was designed to indicate the amount of money necessary for safe housing, minimum clothing, adequate food, utilities, and similar items required for basic adequate care.[1] It also established a schedule of the statutory maximum amounts of grants authorized; that is, it established the level of benefit which the state would provide.[2]

[36] *Id.* The court in *Martin*, citing Lanham v. State, 474 S.W.2d 197 (Tex. Crim. App. 1971), affirms the established rule granting the trial judge a great deal of discretion in admitting photographic evidence.

[1] CAL. WELF. & INST. CODE ANN. § 11452 (3 Deering's Leg. Serv. ch. 578, 1971).

[2] CAL. WELF. & INST. CODE ANN. § 11450 (3 Deering's Leg. Serv. ch. 578, 1971). The following table is derived from §§ 11450 and 11452 of the above Code. It shows the schedules of the standards of need (minimum standard of adequate care) and the statutory maximum grants allowed (level of benefit).

No. of needy children/family	Standard of Need	Statutory Maximum
1	$125	$115
2	$210	$190
3	$255	$235
4	$314	$280
5	$362	$320

In computing the amount of grant for each family, the State Department of Social Welfare was required to subtract any non-exempt income from the statutory maximum grant. The petitioners filed a writ of mandamus to compel the Department to compute their grants by subtracting any non-exempt income from the higher standard of need. If the remainder were less than the statutory maximum, the remainder would be the amount of the grant. If the remainder were greater than the statutory maximum, the grant would still be limited to the amount of the statutory maximum.[3] Held—*Writ granted.* The Social Security Act[4] requires states to subtract non-exempt income from the standard of need rather than the statutory maximum grant when computing AFDC benefits.

Until 1935, public welfare was entirely in the hands of state and local governments. The "poor laws" were patterned after those of England.[5] Some states followed the harsh rule that if a person in need had any property whatsoever he was not entitled to public assistance.[6] However, it was also held that the law was not so rigid that a poor man had to sell his house before he could call upon the town to provide food and medicine.[7] Some states even acknowledged that a man could work and still receive assistance when he was unable to support himself and his family.[8]

The passage of the Social Security Act in 1935 marked the beginning of the federal government's involvement in providing welfare assistance.[9] Prior to that time, forty-five states had "mother's pensions"[10] to provide assistance to poor families; but the Depression had proved the total inadequacy of these programs.[11] The Social Security Act was

[3] Under the California Code, if a family of four needy children received child support payments of $40 monthly, this amount would be subtracted from the statutory maximum grant of $280 (see the table in note 2, *supra*), leaving them a grant of $240.

Under the petitioner's proposal, the $40 would be subtracted from the family's standard of need of $314, leaving a grant of $274. A family under these circumstances would receive $34 a month more than it would under the present Code.

The petitioner did not dispute the validity of the statutory maximum system of determining grants. If such a family received $20 monthly in child support payments, this figure would be subtracted from the standard of need of $314, leaving a level of need of $294. Its level of benefit, however, would be limited to the statutory maximum of $280.

[4] Social Security Act, 42 U.S.C. § 602(a)(7) (1971).

[5] Annot., 98 A.L.R. 870 (1935).

[6] Peters v. Town of Litchfield, 34 Conn. 264 (1867); Board of Chosen Freeholders of Camden County v. Ritson, 54 A. 839 (N.J. 1903).

[7] Town of Wallingford v. Town of Southington, 16 Conn. 431, 435 (1844).

[8] Town of New Hartford v. Town of Canaan, 52 Conn. 158 (1884); Town of Lyme v. Town of Haddam, 14 Conn. 394 (1841).

[9] Act of Aug. 14, 1935, ch. 531, tit. IV, 49 Stat. 620 (codified at 42 U.S.C. § 601 *et seq.* [1971]).

[10] "Mother's pensions" were allowances made by the states to mothers of dependent children to enable them to give their children necessary food, clothing, and shelter. *See* Wedemeyer & Moore, *The American Welfare System*, 54 CAL. L. REV. 326, 328 (1966). (The figure for the number of states with "mother's pensions" comes from the Senate Report below.)

[11] S. Rep. No. 628, 74th Cong., 1st Sess. 17 (1935).

designed to assist the elderly under a system of federal old-age benefits and to enable the states to make more adequate provisions for the aged, the blind, crippled and dependent children, maternal and child welfare, public health, and unemployment compensation.[12] Its ultimate purpose was not only to help the states take care of dependent persons but also to develop measures to reduce dependency in the future.[13] The program established in 1935 is essentially the program presently in operation.

When the Act was first passed, there were few restrictions that the states were required to follow in administering their programs, but more restrictions were gradually added. A 1939 amendment required the states to consider any other income accruing to the needy child in determining his need.[14] Another significant amendment in 1950 provided that grants to dependent children should include provisions for the needs of the person caring for the child.[15] Congress recognized that the amounts of AFDC grants were not realistically related to need if provisions were not made for the food, clothing, and other essentials of the person caring for the child.[16]

A 1962 amendment required the states to take into account expenses attributable to earning an income when determining need.[17] This was a more realistic determination of actual need and a step toward creating incentives for employment and reducing dependency.[18]

The 1967 amendments[19] showed an even greater emphasis on encouraging employment among AFDC recipient families. Key elements of the program included exemption of a portion of the income of a recipient that was to be considered in determining need and establishment of new work incentives and training programs.[20] Congressional concern was that if all of a person's earnings were deducted from his assistance payment, he would receive no gain for his work.[21] Another

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12 Act of Aug. 14, 1935, ch. 531, 59 Stat. 620 (codified *as amended* at 42 U.S.C. §§ 401 *et seq.*, 301 *et seq.*, 1201 *et seq.*, 601 *et seq.*, 701 *et seq.*, 246, 501 [1971]).

13 H.R. Rep. No. 615, 74th Cong., 1st Sess. 3 (1935).

14 Act of Aug. 10, 1939, ch. 666, tit. IV, § 401(a), 53 Stat. 1379 (codified *as amended* at 42 U.S.C. § 602(a)(7) [1971]).

15 Act of Aug. 28, 1950, ch. 809, tit. III, § 323(b), 64 Stat. 551 (codified at 42 U.S.C. § 606(b) [1971]).

16 H.R. Rep. No. 1300, 81st Cong., 1st Sess. 46 (1949).

17 Social Security Act, Pub. L. No. 87-543 § 106(b), 76 Stat. 188 (codified at 42 U.S.C. § 602(a)(7) [1971]).

18 S. Rep. No. 1589, 87th Cong., 2d Sess. 17 (1962).

19 Social Security Act, Pub. L. No. 90-248 §§ 202(b), 204(a), 81 Stat. 881, 884 (codified at 42 U.S.C. §§ 602(a)(8), 630 *et seq.* [1971]).

20 The Congress sought to (1) establish work incentive programs to restore adults in recipient families to regular employment through counseling, placement services and training, and work programs to improve the community; (2) provide day-care services; and (3) require exemption of a part of the family's earnings. *See generally* S. Rep. No. 744, 90th Cong., 1st Sess. 145-166 (1967).

21 H.R. Rep. No. 544, 90th Cong., 1st Sess. 106 (1967). States were required to disregard the first $301 per month and one-third of all additional earnings of adults in a recipient

key amendment compelled states to recognize a minimum standard of need and to adjust that standard to cost of living increases.[22]

In summary, the trend of the various amendments to the AFDC program of the Social Security Act has been to restrict and more closely direct the states in dispensing public assistance and to provide for a more realistic recognition of the actual needs of the recipients.

The Supreme Court has exercised jurisdiction over the states' administration of the AFDC program.[23] In the 1968 landmark decision *King v. Smith*,[24] the Court discussed the nature of the AFDC program:

> The AFDC program is based on a scheme of cooperative federalism . . . .
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> . . . .
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> There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program.[25]

The Court held that the Alabama "man-in-the-house" rule, which denied assistance to children whose mother "co-habits" with any man, conflicted with the Social Security Act.[26] Under the Act, AFDC is granted if a parent of a needy child is deceased, continually absent, or mentally or physically incapacitated.[27] The Court defined "parent" as one with a state-imposed legal duty to support a child.[28]

In *Dandridge v. Williams*, the Supreme Court sanctioned the "reasonable basis" test in determining the constitutionality of classifications in the welfare program.[29] It held that the statutory maximum grants were constitutional, although welfare money was in fact unequally distributed by this means. The Court took specific note of the limits of its powers in the area of public welfare.

> [T]he intractable economic, social, and even philosophical prob-

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family in determining the amount of income available to a family. Thus, if an adult earned $150 per month, only $80 would be considered in determining the amount of the grant. A California family of four with an adult earning $150 a month would receive a grant of $200 ($280—80) under the Code and $234 ($314—80) under the petitioner's plan.

Congress also exempted all earnings of children under 16 and of children 16-21 enrolled in school at least part-time.

22 Social Security Act, Pub. L. No. 90-248 § 213(b), 81 Stat. 898 (codified at 42 U.S.C. § 602(a)(23) [1971]).

23 *See generally* Herzer, *Federal Jurisdiction Over Statutorily-Based Welfare Claims*, 6 HARV. CIV. RTS.—CIV. LIB. L. REV. 1, 2 (1970); Note, *Federal Judicial Review of State Welfare Practices*, 67 COLUM. L. REV. 84 (1967).

24 392 U.S. 309, 88 S. Ct. 2128, 20 L. Ed.2d 1118 (1968).

25 *Id.* at 316, 319, 88 S. Ct. at 2133, 2134, 20 L. Ed.2d at 1125, 1126.

26 *Id.* at 333, 88 S. Ct. at 2141, 20 L. Ed.2d at 1134.

27 Social Security Act, 42 U.S.C. § 606(a) (1971).

28 King v. Smith, 392 U.S. 309, 329, 88 S. Ct. 2128, 2139, 20 L. Ed.2d 1118, 1132 (1968). *See also* Lewis v. Martin, 397 U.S. 552, 90 S. Ct. 1282, 25 L. Ed.2d 561 (1970).

29 379 U.S. 471, 90 S. Ct. 1153, 25 L. Ed.2d 491 (1970).

> lems presented by public welfare assistance programs are not the business of this Court. . . . [T]he Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.[30]

In *Rosado v. Wyman*,[31] the Supreme Court held that lowering the standard of need for AFDC recipients by eliminating some elements from that standard would violate the 1967 amendment which required states to adjust their standards of need to reflect recent increases in cost of living. The Court, however, reiterated its position in *King* and *Dandridge* that the states have considerable discretion in determining the standard of need and the level of benefit.[32] It also recognized the following purposes underlying the 1967 amendments:

> . . . to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need; . . . [and] . . . to prod the States to apportion their payments on a more equitable basis.[33]

The whole tenor of congressional action was to encourage increases in AFDC benefits.[34]

In *Shapiro v. Thompson*,[35] the Court ruled that the state's one-year residency requirements for AFDC was "invidious discrimination denying equal protection" to persons otherwise eligible under federal law.[36] The Court noted that states have a valid interest in preserving the fiscal integrity of their welfare program and may legitimately limit their expenditures, but they may not accomplish their purpose by "invidious distinctions" between classes.[37]

Recently, in *Townsend v. Swank*,[38] the Supreme Court emphasized other limits of the states' administrative power. The Court upheld a challenge to an Illinois provision which excluded 18 to 20-year-old children attending college from receiving benefits but included those in the same age group attending vocational schools.

> While HEW regulations imply States may vary eligibility requirements, the principle which accords substantial weight to interpretation of a statute by the department entrusted with its administration is inapplicable insofar as those regulations are inconsistent with the

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30 *Id.* at 487, 90 S. Ct. at 1163, 25 L. Ed.2d at 503.
31 397 U.S. 397, 90 S. Ct. 1207, 25 L. Ed.2d 442 (1970).
32 *Id.* at 408, 90 S. Ct. at 1216, 25 L. Ed.2d at 453.
33 *Id.* at 412, 90 S. Ct. at 1218, 25 L. Ed.2d at 456.
34 *Id.* at 413, 90 S. Ct. at 1218, 25 L. Ed.2d at 456.
35 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed.2d 600 (1969).
36 *Id.* at 627, 89 S. Ct. at 1327, 22 L. Ed.2d at 611.
37 *Id.* at 633, 89 S. Ct. at 1330, 22 L. Ed.2d at 614.
38 — U.S. —, 92 S. Ct. 502, 30 L. Ed.2d 448 (1971).

> . . . [statutory regulations] . . . that aid be furnished 'to *all eligible* individuals.' [Citations omitted.][39]

As in *Shapiro v. Thompson*, the Court again disregarded the state's interest in preserving its fiscal integrity when the state uses a method which excludes children otherwise eligible under federal law.[40]

Thus, in its recent decisions regarding AFDC, the Court has been eliminating harsh state eligibility requirements. It has not been restrained either by prior action of HEW or by possible fiscal problems of the states.

Litigation on the statute interpreted in *Villa v. Hall* has previously focused primarily on *whose* income is to be considered in determining a child's eligibility for AFDC benefits. That statute is as follows:

> [T]he State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid as well as any expenses reasonably attributable to the earning of any such income; . . . .[41]

It is the basis for the "essential person" doctrine which developed from the litigation. The doctrine requires a state to establish the needs of a child based on the recognition that the presence of another person in the home may be essential to his well-being and should be provided for in the AFDC grant.[42] After *King*, it was established that, in the absence of proof of actual contribution, only those persons with a legal obligation to support a child should have their incomes assumed available for his support in determining a child's eligibility.[43]

In *Solman v. Shapiro*,[44] the Court overruled a state's contention that the income of a stepfather, under no legal obligation to support a child, while not considered in determining a child's eligibility for AFDC, could be considered in determining the amount of the grant. It went even further in agreeing that only the recipient could determine whether a person is to be considered an "essential person" in computing his income and need.[45]

The instant case, however, focuses on *how* income is to be taken

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39 *Id.* at —, 92 S. Ct. at 505, 30 L. Ed.2d at 453. (Court's emphasis.)
40 *Id.* at —, 92 S. Ct. at 508, 30 L. Ed.2d at 456.
41 Social Security Act, 42 U.S.C. § 602(a)(7) (1971).
42 Note, *AFDC Income Attribution: The Man-in-the-House and Welfare Grant Reductions*, 83 HARV. L. REV. 1370, 1377-1381 (1970).
43 Deprivation of Parental Support or Care, 45 C.F.R. § 203.1(a) (1971).
44 300 F. Supp. 409 (D. Conn.), *aff'd*, 396 U.S. 5, 90 S. Ct. 25, 24 L. Ed.2d 5 (1969).
45 *Id.* at 414. Rule embodied in 45 C.F.R. § 233.20(2)(vi)(b)(1971).

into consideration in determining need.[46] The court's reason for requiring income to be subtracted from the standard of need rather than the statutory maximum grant is that the law explicitly states that income is to be considered in relation to need; and it does not state that it is to be considered in relation to the level of benefit.[47] However, such an omission is in keeping with the congressional and federal court policy of leaving to the states the determination of the level of benefit.

The court also refers to a provision in the Federal Handbook of Public Assistance, allowing the state to compare all income available to the individual with the amount determined to be the state-wide standard of need in computing the amount of assistance needed.[48] Similar language in the Code of Federal Regulations provides that

> . . . in establishing financial eligibility and the amount of the assistance payment: (a) All income and resources, after policies governing the allowable reserve, disregard or setting aside of income and resources have been applied, will be considered in relation to the State's standard of assistance [need] and will first be applied to maintenance costs; . . . .[49]

The court also found support for its decision in the public policy promoted by Congress. This policy provides incentives and encouragement for AFDC recipients to obtain employment. Income exemptions were established specifically to prevent all income from being subtracted from the amount of the grant.[50] To subtract the non-exempt income from the standard of need rather than the statutory maximum is in keeping with this policy.

The states have been told explicitly that they can apply additional income to the standard of need rather than the statutory maximum. The Department of Health, Education and Welfare (HEW) has ruled that if a state establishes a policy of not deducting assistance from other agencies, ". . . grants by other agencies in an amount sufficient to make it possible for the individual to have the amount of money determined to be needed, . . . will not constitute duplication."[51] It should be noted

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[46] *But see* Dews v. Henry, 297 F. Supp. 587 (D. Ariz. 1969). The district court dismissed a portion of a challenge to Arizona's welfare budgeting practice similar to California's. The court said that since deductions were permissible under the statute, this kind of procedure was acceptable. It did not consider from what figure the deductions should be made.

[47] Villa v. Hall, 490 P.2d 1148, 1150 (Cal. 1971), *petition for cert. filed*, 40 U.S.L.W. 3369 (U.S. Feb. 8, 1972) (No. 982).

[48] Federal Handbook of Public Assistance, part IV, § 3120, cited in Villa v. Hall, 490 P.2d 1148, 1151 (Cal. 1971).

[49] Coverage and Conditions of Eligibility in Financial Assistance Programs, 45 C.F.R. § 233.20(3)(ii) (1971).

[50] Social Security Act, 42 U.S.C. § 602(a)(8) (1971).

[51] Need Requirements for State Public Assistance Plans, 33 Fed. Reg. 10230, 10230-10231 (July 17, 1968). Herein HEW recognizes states may establish a policy under which aid from other agencies will not be deducted from a person's public assistance grant as long as

that the California Legislature omitted the AFDC program when it gave the Department of Social Welfare a mandate to exclude earned income "[t]o the extent permitted by federal law" when computing budgets under the Aid to the Blind, Old-Age Assistance, and Aid to Permanently and Totally Disabled Persons programs.[52]

The potential impact of the reasoning followed by the California court can be seen in the fact that as of March 1971, eighteen states and the District of Columbia subtracted outside income from the level of benefit which was lower than the full standard of need.[53] Furthermore, 1969 statistics indicate that forty-four per cent of all recipient families do have some income in addition to their AFDC grants.[54]

In construing the relevant portion of the Social Security Act, the California Supreme Court also dealt with the problem of judicial deference to the interpretation of a statute by the agency charged with its administration.[55] While courts generally recognize that agency rulings and opinions ". . . constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance,"[56] they also guard their own sphere of judicial review. The courts are held to be the final authorities on issues of statutory construction.[57] The Supreme Court has told the courts that

> . . . [they] are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the Congressional policy underlying a statute.[58]

In *Villa,* the California court noted the position taken by HEW in an *amicus curiae* brief in *Jefferson v. Hackney.*[59] There the agency approved a Texas budgeting procedure which, among other things, subtracted income from the level of benefit rather than the standard of need. The court distinguished the two cases on the facts as well as the

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services are not duplicated. HEW ruled that duplication of public assistance grants by other agencies did not exist where public assistance funds are insufficient to permit grants in an amount sufficient to meet the standard of need.

52 CAL. WELF. & INST. CODE ANN. § 11008.1 (Deering's Supp. 1971).

53 NATIONAL CENTER FOR SOCIAL STATISTICS, AFDC: SELECTED STATISTICAL DATA ON FAMILIES AIDED AND PROGRAM OPERATIONS, Rep. H-4, item 28 (June, 1971).

54 NATIONAL CENTER FOR SOCIAL STATISTICS, FINDINGS OF THE 1969 AFDC STUDY, PART II: FINANCIAL CIRCUMSTANCES, Rep. 4, table 71 (1969). In California 50.2% of the families had income from one or more additional sources.

55 *See generally* 1 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 505 (1958).

56 Skidmore v. Swift & Co., 323 U.S. 134, 140, 65 S. Ct. 161, 164, 89 L. Ed. 124, 129 (1944).

57 Annot., 84 L. Ed.2d 28, 51, 70 (1940); Annot., 79 A.L.R.2d 1126, 1129 (1961).

58 Volkswagenwerk v. F.M.C., 390 U.S. 261, 272, 88 S. Ct. 929, 935, 19 L. Ed.2d 1090, 1098 (1968), *quoting* N.L.R.B. v. Brown, 380 U.S. 278, 291, 85 S. Ct. 980, 988, 13 L. Ed.2d 839, 849 (1965).

59 304 F. Supp. 1332 (N.D. Tex. 1969), *vacated and remanded,* 397 U.S. 821, 70 S. Ct. 1517, 25 L. Ed.2d 806 (1969), *motion in forma pauperis granted, probable juris. noted,* — U.S. —, 92 S. Ct. 115, 30 L. Ed.2d 47 (1971), *oral argument heard,* 40 U.S.L.W. 3413 (U.S. Feb. 22, 1972) (No. 5064).