

Welfare News



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Due Process and Fundamental Fairness in the Aftermath of Welfare Reform

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRA") repealed the federal Aid to Families with Dependent Children ("AFDC") program, which guaranteed aid to those who were eligible under federal law, and replaced it with the Temporary Assistance to Needy Families (TANF) block grant. Where once stood a federal entitlement for every eligible family now stands a program which proclaims that it "shall not be interpreted to entitle any individual or family to assistance. . . ."

In this article we look back based on two years of experience with the implementation of TANF to determine the extent to which the states are administering

their TANF programs in a manner that protects the due process rights of applicants and recipients. As we discovered, the news is mixed. We are reassured that states are still providing administrative hearings for applicants and recipients seeking to challenge state, county, or local officials' acts or failures to act. We also are encouraged that advocates are suing to insure that agencies conduct hearings fairly, issue timely decisions, and comply with decisions promptly and completely.

However, we are alarmed that many states appear to have exploited the opportunity created by the repeal of the federal AFDC statute and regulations to operate their TANF programs in an

increasingly arbitrary fashion. We are hearing reports of programs being operated without clear and understandable eligibility standards. As a result applicants are often confused about what they need to do to establish eligibility and recipients are ill-informed about the standards for exemptions from and extensions of rapidly approaching time limits.

Other problems include increased sanctioning and lack of adequate notice informing applicants and recipients of their rights.

Fair hearings. At the passage of the PRA, several states suggested that they might seek to avoid notice and hearing requirements by arguing that the elimination of the entitlement to aid also eliminated the right to notice and fair hearing. While that position is of questionable legal validity, the good news is that with very limited exceptions, the states appear not to have acted on their initial sentiments.

A review of the statutes and regulations that remain post-TANF indicates that virtually all the states have retained a fair hearing mechanism that is similar to the one in place under AFDC. For example, while sweeping changes were rendered in New York's public assistance programs, not a word was changed in the statutory provision establishing the right to an administrative hearing to challenge adverse actions or failures to act. Similarly, despite a massive conversion of the welfare program to a work program, Ohio retains the requirement that "an appellant who appeals under federal or state law a decision or order of an agency administering a human services program shall, at the appellant's request, be granted a state hearing by the department of human services." Even in Wisconsin, where the W-2 program appears, on paper, to eliminate or severely curtail fair hearing rights, reports from advocates indicate that

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fair hearings are still being conducted and that appellants are winning.

On the other hand, limitations on procedural due process in the fair hearing process are arising. Michigan plans to limit the extent to which it will automatically provide assistance unchanged pending an administrative hearing and the issuance of a hearing decision. The Michigan scheme would terminate aid without advance notice and then, supposedly, reinstate aid if the hearing is requested within 10 days.

In another example, New York's newly enacted Welfare Reform Act now requires recipients determined to be able bodied enough to engage in a workfare assignment or other welfare-to-work activity to request a fair hearing challenging the determination within 10 days from the date the determination was made.

Although fair hearings continue, there are deficiencies in those proceedings. For example, Illinois advocates report delays in scheduling hearings and issuing decisions, scheduling prehearing conferences and providing aid pending appeal. Advocates have continued to challenge hearing deficiencies in the courts. For example, in New York, the Welfare Law Center, in *Piron v. Wing*, a state court class action, has joined with local advocates to challenge delays in the holding of hearings, the rendering of decisions after fair hearing, and the timely compliance with favorable decisions in TANF and state-funded cash assistance programs. This action is part of a concerted effort to challenge delays in other benefit programs including food stamps (*Moore v. Perales*), fostercare benefits and services (*Freeman v. Scoppetta*), and medical assistance (*Cutler v. Bane*). The Welfare Law Center is counsel with local advocates in the first two cases.

In another New York case, *Morel v. Giuliani*, a four year old class-wide preliminary injunction requiring the State and City welfare agencies to provide aid continuing pending the fair hearing and the issuance of a decision for cash assistance recipients who timely request a hearing is based on due process claims and has survived the repeal of AFDC. The preliminary injunction also extends to the food stamp program.

Adequacy of Notice. While the notices provided to applicants and recipients under AFDC were often far from ideal, we

have observed, and advocates across the country report, a general decline in the adequacy and timeliness of notices. Notice is clearly crucial for poor persons seeking to navigate increasingly complex welfare bureaucracies with numerous new requirements, including tight time limits on aid.

Examples of inadequate notices abound. Some Colorado counties rely on the shotgun approach to give notice; recipients have received notices that inform them that:

Your family's cash assistance will be decreased because you have failed to cooperate with the work requirement, child support requirement or immunization requirement of the Colorado Works Program.

Recently, in a hearing decision a Colorado state administrative law judge reversed a sanction because the county's notice was inadequate and observed that the notice provides the appellant with "a litany of possible reasons for the sanction's imposition and leaves the recipient to determine which of the reasons is the cause for the sanction." News reports indicate that over 1,000 individuals have received such defective notices; they may also want to seek to have their sanctions overturned.

In setting aside a sanction based on inadequate notice, a Delaware hearing officer chided the agency for not following longstanding due process requirements embodied in regulation. The Colorado and Delaware hearing decisions are an example of the critical representation that Legal Services funded advocates can provide to welfare clients.

In other states clients are not advised adequately that they are rapidly approaching time limits or are not given full information of the steps that might be taken to fully utilize education and training programs designed to move from welfare to work.

Standardless decisionmaking and inconsistent administration. The greatest erosion in fairness has occurred in the administration of TANF programs. Far too many states are operating their TANF programs with insufficient standards and inadequate oversight of the work of the staff charged with implementing welfare reform. These problems are compounded in some

states by the de-linking of administration of cash assistance programs from food stamps and medicaid, resulting in multiple eligibility rules and eligibility requirements.

Examples of harm exist throughout virtually every region of the country. Under W-2, Wisconsin's all encompassing work program substitute for cash assistance, responsibility for determining eligibility and administering assistance has devolved from state administration to administration by private not-for-profit and for-profit local contractors. In Milwaukee, five different groups, including a private corporation, administer W-2 in six regions. Applicants and recipients appear to be treated very differently depending on the region in which they live. An applicant in one region may find the application process considerably different from a like applicant in another region. Regional differences as well as differences in the worker assigned also appear to factor into the nature of the work assignment given, the leniency shown when rules are thought to be violated, and level of supportive services provided.

The W-2 experience is being replicated in New York City, where Jason Turner, one of the architects of W-2, has been hired as Commissioner of the New York City Department of Social Services. In New York City, instead of applying for TANF assistance at welfare offices, applicants are now being required to apply at Job Centers, where the opportunity to apply for cash assistance, food stamps, and medical assistance is frequently deferred while the applicant is assigned to job search, simulated work, and other deterrence activities. Inconsistent administration by workers unfamiliar with program rules coupled with intense pressure to reduce caseloads has resulted in dramatic decreases in applications approved and has forced thousands of needy families to reapply many times in order to secure assistance.

Similar experiences are reported from Alabama. In one county, applicants report no problem in receiving applications. Yet, in another county, surveyors found applications were routinely being denied as the result pre-screening obstacles and other barriers.

A recent report from Virginia notes the great disparity between neighboring counties in the number of sanctions

imposed and suggests worker discretion as the reason.

In Florida, extensive delays and inconsistent administration have occurred in the creation and implementation of the private and quasi-public coalitions charged with implementing the work program components of that state's TANF program. As a consequence, thousands of recipients have not received services designed to assist them in securing unsubsidized employment prior to the expiration of the time limits.

In New York State, the Welfare Law Center and the local legal aid program have filed a class action in federal district court to challenge illegal terminations of medical assistance, often without notice, whenever the public assistance program benefits are terminated for allegedly failing to comply with public assistance program rules (*Mangracina v. Turner*).

In Massachusetts proposed regulations regarding extensions of time limits do not contain adequate standards defining which families will qualify for an extension.

In other states, standardless administration has also pumped up the rate of erroneous sanctions. In Utah, a welfare administrator found that half of the sanctions ordered under a pilot program "were done in error, often when a caseworker didn't detect that a recipient suffered from mental illness or some other problem." In Montana, a family was sanctioned for submitting a pay stub one day late, in violation of an unwritten rule developed by the caseworker. (See the article p. 7 describing a program instituted by Tennessee in the wake of concerns that dramatic caseload reductions meant that families were erroneously losing aid.)

Conclusion: The move away from administration of public welfare programs in accordance with clearly articulated uniform standards to a system that vests increased discretion in front-line workers charged with reducing caseloads has been a primary cause for the overwhelming increase in sanctions, wrongfully denied applications, and denials of necessary

services and benefits. Advocates, organizers, and others concerned with the fair administration of benefit programs pursuant to a rule of law understood by all and applied fairly and equally will need to be particularly vigilant and active in holding public welfare officials and state legislators accountable. In addition, in most states, the preservation of the fair hearing system, largely unchanged, provides a mechanism for applicants and recipients to seek redress from unfair application of TANF rules.

The Welfare Law Center is available to work with attorneys on due process, standardless decisionmaking, work programs and other welfare-related litigation issues. Contact Marc Cohan at the Center; e-mail: cohan@welfarelaw.org.

Update on Durational Residency Challenges: California Seeks Supreme Court Review and More Courts Rule Favorably

During the past several months federal and state courts have continued to invalidate various state policies that discriminate against new state residents by providing lower or no benefits to newcomers, usually for a specified period such as twelve months. In August California asked the United States Supreme Court to review the constitutionality of its policy which had been struck down earlier this year. Generally challenges to these policies have been based on the U.S. Constitution's Equal Protection Clause and the federal constitutional right to travel. Some of the cases also raise claims under state constitutional provisions as well.

California's petition to the Supreme Court in *Anderson v. Roe* was supported by three amicus briefs. The Attorney Generals of 16 states, including those that have lost their cases in lower courts (Illinois, Minnesota, New York, Rhode Island, and Washington), as well as others that fear becoming "welfare magnets" (including Florida, Georgia, Mississippi, Nevada, and North Carolina) urged the Supreme Court to

take the case in view of the alleged difficulties the courts below are having. The Washington Legal Foundation filed a brief on behalf of a number of California legislators defending their action. A third brief was filed by the Pacific Legal Foundation. The respondents (the plaintiffs below) argued that the case is not worthy of Supreme Court review in light of the fact that the lower courts have all held such provisions unconstitutional. The Supreme Court's decision on whether to accept the case for review may occur as early as October.

In early September, the Third Circuit unanimously upheld the lower court's decision invalidating a Pennsylvania policy and in so doing applied the strict scrutiny test because it concluded that the policy did indeed penalize the exercise of the right to travel. (The lower court had found that there was no penalty, but invalidated the policy as irrational.) The First Circuit will hear oral argument in early October in Rhode Island's appeal from a March 1998 decision finding its policy unconstitutional. Henry

Freedman of the Welfare Law Center will argue the case for plaintiffs-appellees.

In July courts in New York, New Jersey, Illinois, and Minnesota issued favorable decisions. The New York decision came in a state court case challenging New York's third consecutive attempt to adopt a durational residency policy and followed prior decisions striking down the earlier provisions. The New Jersey state court decision found that the challenged provision violates the equal protection guarantees of both the federal and state constitutions. The Minnesota state court decision found itself bound by a 1993 state Supreme Court case decided on federal constitutional grounds and did not reach the state constitutional claims. The court also invalidated a "contingency plan" adopted by the legislature if the grant reduction was found unconstitutional. Under this "contingency plan" new residents would not receive the child care and employment training provided to long term residents. The court found that these too were "necessities of life" and that denying them

only to new arrivals was a penalty on the exercise of the right to travel. A federal court in Illinois enjoined the Illinois policy on the basis that there was no rational

relationship between the classification of new residents and a permissible state purpose. It declined to decide whether the provision penalized the exercise of the right

to travel and therefore had to be justified by a compelling state interest, although it indicated that if forced to, it would conclude that there is no penalty.

Recent Cases Challenging Durational Residency Requirements

The cases mentioned in the accompanying article and other decisions since late 1997 are as follows:

Roe v. Anderson, 966 F. Supp. 977 (E.D. Cal. 1997), *aff'd*, 134 F. 3d 1400 (9th Cir. 1998), *petition for cert. filed*, (U.S. July 1998) (No. 98-97)

Maldonado v. Houstoun, ___ F. 3d. ___, 1998 WL 569359 (3d Cir. Sept. 9, 1998)

Westenfelder v. Ferguson, 698 F. Supp. 146 (D.R.I. 1998) (appeal pending before the 1st Circuit)

Warrick v. Snyder, ___ F. Supp. ___, 1997 WL 875695 (W.D. Pa., 1997) (appeal pending before the 3d Circuit)

Hicks v. Peters, ___ F. Supp. ___, 1998 WL 424176 (N.D. Ill. July 17, 1998)

Ruffin v. Quasim, No. C975767 (W.D. Wash., Feb. 5, 1998)

Sanchez v. Department of Human Services, ___ A. 2d ___, 1998 WL 391584 (N.J. Super. Ct. App. Div. July 8, 1998)

Davis v. Doth, No. 62-C6-97-010231 (2d Dist. Ct., Minn. July 31, 1998)

Doe v. Wing, No. 98/2903 (N.Y. Sup. Ct. Monroe Cy. July 30, 1998)

For earlier cases see *Welfare Litigation Developments Since the Personal Responsibility and Work Opportunity Reconciliation Act of 1996* by Welfare Law Center and National Employment Law Project staff in the January-February 1998 issue of *Clearinghouse Review* (also available on the Center's web site: www.welfarelaw.org).

Low Income Groups From 12 States Gather at Western Region Welfare Activists Summit

Editor's note: Welfare Law Center staff members Dirk Slater (Circuit Rider for the LINC Project) and Angela Bradford (Low Income Group Liaison) attended the Western Region Activists Summit and prepared this report on the Summit.

This summer more than 75 welfare rights activists representing 23 grassroots organizations from 12 western states, gathered at Reed College in Portland, Oregon to develop a regional response to welfare reform. The Western Region Welfare Activists Summit was held during the Community Strategic Training Initiative sponsored by the Western States Center. Through this unique collaboration, Summit

organizers hoped to create a media campaign aimed at reversing the current negative trends in welfare policy. The origins of the Summit and the meeting itself are an exciting example of how grassroots groups are coming together to deal with the reality of welfare devolution.

Summit background. The idea for the Summit grew out of a meeting of activists at last year's Community Strategic Training Initiative (CSTI), an annual event that provides training and support to some 300 to 400 community leaders from western states. CSTI is sponsored by the Western States Center, which was created in 1987 to help encourage creative and successful organizing effort in the western region.

As described by Summit organizers, at last year's CSTI training, activists from the Seattle Welfare Rights Organizing Coalition (WROC), Montana's Working for Equality and Economic Liberation (WEEL), Justice Economic Dignity & Independence for Women (JEDI for Women in Utah), FAIR Budget (Seattle), and the Oregon Human Rights Coalition gathered under a circle of trees (the only space not occupied by CSTI classes) to share their frustration with the new welfare system. The activists took turns sharing horror stories brought on by welfare reform. Each tale had common themes: the new welfare rules were punitive and oppressive and instead of gaining self-sufficiency, recipients were sinking even

deeper into poverty. These discussions led to the idea for a Welfare Activists Summit within the next CSTI, and the Western States Center lent its support. A number of groups collaborated in planning the Summit: WROC, Fair Budget, WEEL, J.E.D.I. for Women, Nevada Empowered Women's (NEW) Project, United Vision of Idaho, and the Welfare Law Center.

The Summit: More than 75 welfare activists representing 23 grassroots organizations from 12 western states gathered at Reed College on July 31st to share their experiences with the harms harsh new welfare policies have caused families, forge new partnerships, plan strategies, and gain momentum for continued collaboration.

The Summit's program was designed to create an ongoing regional welfare rights policy/media campaign; increase access to information on the newest computer communications systems, and promote ongoing organizing dialogue. The first session included a presentation by Organizer Ellen Ryan of Minnesota's Regeneration Project. Ms. Ryan discussed alternative styles of organizing and lead a discussion on how organizing had changed with the implementation of "Welfare Reform" or "Welfare Repeal" (the language preferred by Summit activists).

Using the visual aides of a laptop computer and a projector, the Welfare Law Center's Dirk Slater demonstrated how the Internet can be used as an effective organizing tool. Representatives of many groups shared their experiences using the Internet and discussed how they are easily accessing and sharing information and connecting to a larger audience of supportive policy makers and advocates

working to reinstate the safety net. They also spoke highly of the Welfare Law Center's organizers' listserv and the LINC Project Web Page (www.lincproject.org) as useful tools for welfare rights organizers now online.

Economist Judy Brown discussed the economic impact of welfare reform on the western region, the economy, and the job gap for welfare recipients. The following morning during a "Getting to Know You" session, a representative of each of the 25 welfare rights groups gave a brief biography of his or her organization and explained how new welfare rules are affecting the lives of people. The most commonly shared problems were excessive and severe sanctioning policies, limited access to education and training, the overall punitive nature of the new rules, and the basic human rights violations occurring as a direct result of welfare reform.

Chris Tilly, an Economics Professor and author of *Glass Ceilings and Bottomless Pits: Women's Work and Women's Poverty*, offered a motivational speech and discussed the methods for developing an organizing campaign development laid out in his book. Following Chris's presentation, participants met in small groups for follow up discussion and to identify the ten most pressing problems facing their constituencies. Discussion groups identified the following as the most important issues: adding an educational component to the new rules, a living wage job creation program, the elimination of time limits, reducing sanctions, putting a new face on poverty, combating rural isolation, establishing a national welfare workers bill of rights,

redefining family values to include those of non-traditional families, and redefining welfare violations as a human rights issue.

Media specialists Kim Deterline and Taj James for We Interrupt This Message wrapped up the program by offering participants tools for an organizing campaign and offered tips for working effectively with the media.

To follow-up on the conference, organizers have formed a media committee and plan to hold a series of conference calls to settle on a final message. Further regional strategizing and communications among the groups will take place on the Welfare Law Center's organizers' listserv.

Perhaps the most inspiring aspect of the Summit to us was its inclusive nature. All of the 25 groups in attendance shared their ideas and opinions, and each group's contribution contributed to the formulation of a media campaign. The Summit was true consensus building and should serve as a model for other regional and eventually national efforts for creating strategy on changing "welfare repeal." Participants strengthened existing ties, and new partnerships were formed. For example, a group in Colorado had its first opportunity to meet with other Colorado groups. As a result of the Summit, they have formed an alliance and now plan to meet regularly to work on a campaign for Colorado's next legislative session.

For more information on the Summit or on how to be involved in the regional campaign, please contact Raquel Castellanos (Summit Planning Committee member) at WEEL, tel. (406) 543-2530 or 1-888-543-2530; email: weel@marsweb.com or totema@montana.com.

How To Join the WLC's Organizers' ListServ

If you are an active welfare organizer or associated with a low income membership organization that works on welfare issues and you have e-mail, you can apply to join the organizers' listserv. Just send an e-mail request describing yourself and your work to info@welfarelaw.org.

Welfare Rights Organizing Coalition: Adding the Voice of Low Income People to Welfare Decisionmaking

Nestled in the heart of Seattle's low income community, the Welfare Rights Organizing Coalition (WROC) provides a place where poor people's voices can be heard. According to Jean Colman, WROC's director, the group was founded in 1984 when welfare recipients in North, South, and Central Seattle met to compare the treatment they received at their local welfare offices. The group of mostly female recipients spoke of numerous incidences of caseworker abuse, and identified the welfare agency's failure to provide information on available programs and resources as the most pressing problems within the Seattle welfare system.

Acknowledging the need to empower themselves and others, the women joined together to share resources. The newly formed group of potential welfare rights activists organized monthly meetings to disseminate information on current welfare policy and helped each other solve welfare related problems. After several meetings the women elected to move beyond individual advocacy. They wanted to become active in the decisionmaking about policies that were affecting their lives so profoundly. They moved to form the Welfare Rights Organizing Coalition - a welfare rights group whose primary focus would be to equalize the power relationship within the welfare system and in the policymaking process.

WROC's 3,500 membership includes both current and former welfare recipients. The Board and advisory committee are predominantly low income, and the staff includes volunteer recipients. The group's current work and areas of interest include: leadership training and membership development, advocacy training, developing a trained speaker's bureau, initiating a voter registration drive, providing members with training on legislative policies, and implementing a "stop the clock campaign" to end time limits for employed recipients.

Seattle's public assistance recipients are referred to WROC through public education and word of mouth. Outreach is done through tables at the entrance to welfare offices, food banks, Head Start centers, community action agencies, WIC offices, and Community Colleges. WROC's outreach activities have recently expanded

to include King County, Olympia, Bremerton, Thurston, and Kitsap. The group now has four active chapters in King County.

WROC has a history of working to affect public policy. In 1985 when the State Welfare Department (DSHS) wanted to count student loans as income, members organized to stop them. WROC organized again when DSHS wanted to change child-care rules for the worse. In 1986 members challenged DSHS proposed 8% grant cuts and successfully secured a 3% increase instead. WROC has also helped to develop, monitor, and evaluate the Family Independence Program (FIP), Washington State's former welfare to work demonstration project. Since 1995, when welfare policies took a turn for the worse, WROC members have monitored agencies to ensure that rules were being implemented in a manner least harmful to recipients.

In 1996 when the Clinton administration set out to "end welfare as we know it" WROC knew it would be engaging in the fight of its life. Members knew how severely the new welfare reform bill would affect recipients' lives. During Congressional consideration of welfare reform, WROC's Policy Committee organized a Valentine's Day Rally and demonstrated outside the Federal Building. Later that year they held a Mother's Day picnic and marched to Senator Slade Gorton's home to protest his support of the bill.

Unfortunately when the federal welfare bill was signed, WROC members found they needed to be more active than ever. To challenge harsh new welfare rules which include excessive sanctioning policies and which have led to drastic reduction in caseloads, WROC had to forge new alliances. Members helped to organize the Welfare Reform Coalition, bringing together welfare recipients, immigrant groups, women's organizations, churches, and organized labor to work on welfare and immigrant issues. The group has also joined the Women's Funding Alliance and the National Welfare Rights Union. WROC continues to monitor and document violations and abuses in the new welfare system and plans to bring them to the attention of the agency, the public, elected officials, and the media.

Last August, to mark the second anniversary of the signing of the welfare reform bill, WROC held a press conference, during which members presented their local welfare department with a report card evaluating its performance. Agency officials were less than pleased with the WROC's evaluation. The department rated poorly on among other things, consideration of individual family needs in its rush to reduce caseloads, and its ability to meet the needs of families who want desperately to move out of poverty, not simply off of welfare.

WROC is currently developing a "Stop the Clock" campaign to end time limits for employed recipients still receiving a small welfare grant to supplement their incomes. WROC believes welfare time limits are punitive rules designed to intimidate recipients into accepting low wage jobs. To generate support the group will actively involve employed parents and train them to lobby their legislators to change the policy. WROC also plans to launch a media campaign to gain public support.

In recent years WROC representatives have attended the Western States Center's Community Strategic Training Initiative (CSTI) to learn organizing and tactics to fight against harmful policies. (CSTI offers intensive training in community organizing, leadership development, cultural work, nonprofit management and leadership.) At last year's CSTI conference WROC helped to organize this summer's Western Region Welfare Activists Summit. In August, more than 75 welfare activists representing 23 grassroots organizations from 12 states met at the summit to develop a regional response to welfare reform. Fair Budget (another Washington based low income organization), WEEL (Montana), New Project (Nevada), J.E.D.I. for Women (Utah), United Vision of Idaho, and the Welfare Law Center worked in collaboration with WROC to plan the Summit.

WROC and Fair Budget have also collaborated to conduct monthly support groups for recipients living in the state's rural areas. Meetings are held in Olympia, Everett and East and South King County.

According to Jean Coleman, WROC works to add the voice of welfare recipients and low wage workers to the decision

making processes affecting their lives. However, with the recent implementation of Workfirst, members have more constraints on their time and find it increasingly difficult to remain active. Coleman adds, "WROC plans to be

innovative; we will simply plan smaller actions on days when more parents can be involved."

For further information contact Jean Colman at WROC, 2212 South Jackson,

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Customer Service Review Tennessee's Review Process Before Welfare Reform Cases Are Closed

by
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Editor's note: With reports of dramatic TANF caseload declines have come growing concerns that many families are suffering because of inappropriate case closings. The following article reports on the steps that Tennessee has taken to protect families from incorrect closings and to remove barriers to families' compliance with program requirements. For further information about the Tennessee Customer Service Review, contact Russ Overby at the Tennessee Justice Center, Inc., 203 Second Avenue, North, Nashville, TN 37201, tel. (615) 255-0331; email: tjustice@usit.net. A copy of this article appears on the Welfare Law Center's website: www.welfarelaw.org.

In January of 1998, the Tennessee Department of Human Services initiated a review process called a "Customer Service Review" to take another look at all cases scheduled to be closed due to noncompliance with Tennessee's "Families First" welfare reform program, and also all cases in which a parent had requested that their case be closed.

The review process includes an attempt to contact the family to try and determine what the problem is and whether it can be resolved. This review takes place prior to closure, and closure does not occur if the review determines that there has been an error in fact or policy, or if the parent has a good cause reason for a failure to comply, or if the parent now agrees to comply.

As a result of this review process, approximately thirty per cent of cases scheduled for closure have not been closed. There has also been a reduction in the number of cases in which an initial determination for closure has been made.

The Customer Service Review process was initiated by Tennessee as a quality assurance measure after a precipitous decline in the number of families receiving assistance. When the Families First program began in September of 1996 91,500 families were receiving cash assistance. By December of 1997 only 56,611 families were still getting assistance.

The Families First program established stringent requirements and penalties for families who wished to continue to receive cash assistance. All families were required to sign personal responsibility plans which imposed activity requirements of 20 to 40 hours per week, unless the caretaker was found to be exempt. Families that either failed to sign a personal responsibility plan or failed to participate in required activities lost all cash assistance.

The Department of Human Services' own data found that less than 30 per cent of case closures were because the caretaker obtained employment. Almost 31 per cent were closed because the caretaker requested case closure, 21 per cent were closed for a failure to comply with work requirements, and 19 per cent were closed because the caretaker refused to sign a personal responsibility plan.

Advocates found that families within these three categories often had similar problems. Some families who were characterized as having requested case closure left because required Families First activities conflicted with work or schooling they were already engaged in. Others believed they could not comply with required activities due to problems in obtaining child care or transportation or because they had to care for a disabled child or spouse. Although

Families First policy contains good cause exceptions to case sanctions and activity requirements, these exceptions were not consistently recognized.

The majority of the families that lost eligibility for a reason other than obtaining a job had no work income at all and many faced an immediate inability to pay rent or utilities. A study by the University of Memphis found that less than 42 per cent of those sanctioned for a failure to meet program requirements or sign a personal responsibility plan had any work income at all. Thirty-four per cent of the families sanctioned reported they were not able to pay their rent, and 32 per cent reported they were unable to pay their utilities.

There was also evidence that many families did not understand what they were required to do. The University of Memphis found that thirty-four per cent of those families sanctioned for a failure to sign a personal responsibility plan reported they did not understand what they would have to do to comply with the plan.

In January of 1998 the Tennessee Department of Human Services instituted a customer service review process to ensure that cases were not erroneously terminated and to give families another opportunity to participate in the program.

The only cases not subject to the review process are cases which are closed due to:

- Excess income or resources
- Everyone has moved out of state
- No children under age 18 (or in some cases 19) in household
- All persons receiving assistance are deceased
- The children are already receiving cash assistance with another caretaker

In all other cases, a case manager who believes a case should be closed transmits relevant information, including the specific reason for the closure, for a customer service review.

These reviews were initially done by approximately 40 Department of Human Services supervisory personnel. The process is being gradually turned over to contract employees hired by four state universities in Tennessee on a regional basis, with overall training conducted by the School of Social Work at the University of Tennessee. Contract employees are not subject to the supervision of the local offices whose cases they review.

When a customer service reviewer receives a case for review, they first review the record to determine whether the case manager has attempted a personal contact with the caretaker before recommending closure of the case. If there is not documentation in the computer record of an attempted contact, the case is returned to the case manager. When this procedure was instituted, there was a significant decrease in the number of cases which case managers determined should be closed.

Next the reviewer looks at the record to determine whether there is sufficient documentation to establish both a factual and policy basis for closure of the case. Again, if there is not sufficient documentation, the case is returned to the case manager to document the factual basis and policy basis for the closure.

If the record passes muster, the customer service reviewer attempts to make a personal contact with the caretaker. Three attempts are made to contact a caretaker. If the first two attempts are not successful, the third attempt is made outside of normal business hours to hopefully catch a caretaker at home who may have work or other obligations during the day.

If the reviewer is unable to reach the caretaker, or if there is no available telephone number, a letter is sent to the caretaker asking her to contact the reviewer, notifying her as to the specific factual basis for the proposed closure, and informing her of the ways that she can continue to receive benefits. If the caretaker does not respond to the notice within seven days of mailing, and the record is otherwise appropriate, the case is closed.

If the reviewer is able to contact the caretaker, he or she explains the basis for the proposed closure, asks the caretaker for her side of the story and tries to determine any possible barriers to participation in the program. This includes determining whether the caretaker should be exempt from activity requirements and time limits, whether the information in the record is factually correct, and whether the caretaker has a good cause reason for any failure to comply with program requirements.

If it is determined that the case should not be closed due to an exemption, good cause, or an error in the application of the facts or policy, the case is not to be closed.

Finally, if the closure is otherwise

appropriate, the reviewer asks the caretaker if they are now willing to comply with whatever program requirement was the basis for the proposed closure. If the caretaker demonstrates compliance within 14 days, the case is not closed. This time period may be extended if it is not possible to demonstrate compliance within 14 days. If the caretaker still does not comply, the case is closed.

Families whose cases are closed after the customer service review process are sent specially designed notices which inform them of the specific factual basis for the closure, what can be done to keep eligibility, and the availability of special "safety net" payments for households in which the family is facing a loss of shelter or utilities, or lacks sufficient food.

Enclosed with the notice of closure is a postage paid postcard telling families that if they initial the post card and drop it in a mailbox, information about their case will be given to the Tennessee Justice Center for a possible review as to the correctness of the determination. The Tennessee Justice Center is a not-for-profit law firm which represents low income persons without charge with respect to access to health care and public benefits.

As a result of the customer service review process, approximately 30 per cent of all cases reviewed are not closed, but instead remain open. A majority of these cases are not closed because the caretaker has agreed to comply with program requirements and, in fact, does comply.

WLC Welcomes Debevoise & Plimpton/NAPIL Equal Justice Fellow

In September Jennifer Light joined the Welfare Law Center as a Debevoise & Plimpton/NAPIL Equal Justice Fellow. During her two-year fellowship Jennifer will work with and on behalf of current and former welfare recipients on issues involving child care, including issues regarding access for recipients in mandatory work programs, access to transitional care for persons leaving welfare

for work, access to child care to pursue education and training, and quality of care.

Jennifer, a 1996 graduate of Vanderbilt Law School, recently completed a Skadden Fellowship at the Chicago Lawyers' Committee for Civil Rights. In Chicago, Jennifer worked on class action and individual cases to improve developmentally delayed children's access to early intervention services they are

entitled to receive under federal law. Prior to her work at the Lawyers' Committee, Jennifer worked at the Cabrini Green Legal Aid Clinic on housing and family law issues.

The Welfare Law Center gratefully acknowledges the support of Debevoise & Plimpton, the National Association of Public Interest Law, and the Open Society which has provided funding to NAPIL.

New York State Bar Association Honors Welfare Law Center's Henry Freedman

The New York State Bar Association has awarded its 1998 Public Interest Law Award to Henry A. Freedman, Executive

Director of the Welfare Law Center. The award, which is sponsored by the state bar's Committee on Public Interest Law, honors

individuals who have made considerable contributions to the advancement of justice for those whose legal rights are under-

represented. The New York State Bar Association, with some 60,000 members, is the

largest voluntary bar association in the nation.

Henry, a graduate of Yale Law School, has been Executive Director of the Welfare Law Center since 1971. His work over the

years has been dedicated to using the law to protect the rights of the most vulnerable people in our society to adequate and humane income support. Henry has contributed significantly to the development of welfare law. He participated in early groundbreaking welfare litigation, notably *Goldberg v. Kelly* in which the U.S. Supreme Court held that due process

requires a hearing before welfare benefits are terminated and *Shapiro v. Thompson* in which the Court found that durational residency requirements were unconstitutional. Henry continues to defend the rights established in those landmark decisions against renewed attacks today.

The Welfare Law Center congratulates Henry on this well-deserved award.

Welfare Law Center, Child Care Law Center, NOW LDEF Target Legal Issues in TANF Child Care

Child care is crucial to families who are moving from welfare to work as states implement Temporary Assistance to Needy Families (TANF) welfare reform programs. The federal welfare reform law that created the TANF program in 1996 eliminated child care guarantees, but added funding to the Child Care and Development Block Grant (CCDBG) based on what states had spent on the child care entitlement programs in the past. Congress also added protections for certain families by prohibiting states from sanctioning single parents of young children if they refuse to participate in welfare to work activities because they cannot get appropriate child care.

Many of the legal issues that families will face, both in obtaining appropriate child care and in exercising their right to refuse participation in welfare to work activities, will be different from the issues that arose in

the old AFDC program. Because TANF gives significant discretion to the states (and some states are giving significant discretion to local jurisdictions), the legal issues will also vary from state to state; however, national trends and federal law issues will undoubtedly emerge. For example, whether families are receiving notice of their rights with respect to child care and their right (at least for single parents) to refuse to participate in welfare to work activities if appropriate child care is not available for young children will be important in every state, even if the policies and procedures for providing child care and for excusing individuals from participation may vary.

The Welfare Law Center, the Child Care Law Center, and NOW Legal Defense and Education Fund have begun to identify how best to address the legal issues that are arising in the provision of child care to

recipients in the Temporary Assistance to Needy Families (TANF) program. The three organizations are exploring ways that legal services and other advocates can share information and successful strategies for reducing the barriers that families face.

If you have ideas or would like additional information, please contact: Marc Cohan, Welfare Law Center, 275 Seventh Avenue, Suite 1205, New York, NY 10001-6708, (212) 633-6967, cohan@welfarelaw.org; Sherry Leiwant, NOW Legal Defense and Education Fund, 99 Hudson Street, New York, NY 10013-2871, (212) 323-4339, sleiwant@nowldef.org; or Alice Bussiere, Jo Ann Gong, or Kathy Heftman, Child Care Law Center, 973 Market Street, Suite 550, San Francisco, CA 94103-1717, (415) 495-5498, info@childcarelaw.com.

Other Welfare Law Center News Notes

Welfare Law Center Increases Use of Technology to Provide Litigation Support. In recent months the Welfare Law Center has expanded its use of technology to increase its support of welfare litigation efforts. The Center's website (www.welfarelaw.org) now includes Recent Case Developments from its monthly *Welfare Bulletin*, thereby making available to interested advocates and others timely information about new case filings and unreported and reported decisions. We now have developments from the May through August issues posted and are working to post developments from earlier issues as well.

In mid-August the Center launched an email based listserv for lawyers engaged in

welfare litigation or actively supporting welfare litigation. We hope that participants will use the listserv to communicate with their colleagues across the country about common problems and strategies to address these problems. So far some 170 advocates participate in the listserv. The Welfare Law Center screens requests to participate to assure that the individual either represents welfare clients in administrative or judicial forums or actively supports such representation by others. Individuals seeking to participate should send a request to the Welfare Law Center on their program's letterhead. Include the following information: individual's name, title, description of how the s/he meets the criteria, and email address.

WLC Staff Participate in Events Around the Country. During the summer LINC Project Circuit Rider Dirk Slater participated in the Center for Community Change's Social Change Agents Conference in Berkeley, California where he made a presentation on using the Internet in organizing. Dirk made similar presentations in late July at the Western Region Welfare Activists Summit in Portland, Oregon and at the ACORN National Organizers' Summit on Welfare Reform in Milwaukee. Angela Bradford, the LINC Project's Liaison to Low Income Organizations also joined Dirk at the Western Region Welfare Activist Summit.

Gina Mannix and Marc Cohan participated as trainers in the Welfare and

Beyond track at the NLADA Substantive Law Conference in Berkeley. Rebecca Scharf also attended the NLADA conference.

Marc Cohan made a presentation at the ACORN Organizers' Summit in Milwaukee on workfare issues. Marc also traveled to Ontario, Canada in June where he made a presentation at a two-day conference sponsored by Workfare Watch,

a joint project of the Ontario Social Safety Network and the Social Planning Council of Metropolitan. The conference, supported by Canadian labor groups and others was a chance for advocates, organizers, poor persons, and others to share tactics and strategies to fight welfare reform implementation (including workfare) in Ontario and other Canadian provinces.

Correction. In the last issue of

Welfare News the Welfare Law Center acknowledged the invaluable contribution of private attorneys to our work. Unfortunately, we misidentified Jessica Magaldi who, as a first year associate at Milbank, Tweed, Hadley & McCloy, was outstationed at the Welfare Law Center for several months in 1996.

New on the Welfare Law Center and LINC Project Web Pages

Visit the Welfare Law Center's web page - www.welfarelaw.org - to see the following recently added materials:

- Case Developments: Case Summaries from the April 1998 through August 1998 *Welfare Bulletin*.
- *Customer Service Review - Tennessee's Review Process Before Welfare Cases Are Closed* by Russ Overby, Tennessee Justice Center
- *Welfare Reform and Its Impact in the Nation and in New York* by Timothy J. Casey, Federation of Protestant Welfare Agencies

Visit the LINC Project's web page - www.lincproject.org - to review the latest additions:

- a calendar of upcoming events of interest to low income organizations
- newsletters from New York City's Community Voices Heard, Indiana's Mothers Mobilizing for Economic and Social Justice (MMESJ), Montana's Working for Equality and Economic Liberation (WEEL), ROWEL, and Survivors, Inc.
- profiles of low income groups

ACORN's Organizers' Summit Draws Activists From 22 States

ACORN's National Convention and Organizers' Summit on Welfare Reform, held in Milwaukee from July 24th through July 27th, brought together some 100 members of grassroots organizations from 22 states for the Organizers' Summit and 1,500 ACORN members for the National Convention. Welfare Law Center staff members, Marc Cohan, Rebecca Scharf, and Dirk Slater attended the event. The purpose of the Organizers' Summit was to give activists and members of grassroots organizations a chance to learn about one another's and ACORN's organizing activities around fighting back against the worst abuses of the recent welfare "reforms." The National Convention gave ACORN members an opportunity to mobilize in direct action and hear testimony from several political and community leaders who are also fighting to stop the shredding of the safety net.

The Organizers' Summit, which was largely held on Saturday, July 25th, began

with largely upbeat campaign reports from the various organizations and ACORN chapters that highlighted successes and valiant struggles. Following these reports, a plenary session on "Fighting for Access to Education and Training," focused on efforts to improve education policies in various states. John Goldstein, the Secretary Treasurer of the Milwaukee Labor Council, moderated a panel that included representatives from Kentucky Youth Advocates, Women in Transition (also from Kentucky), LIFetimE (from California), the Institute for Wisconsin's Future and Wisconsin State Senator Gwen Moore.

After the plenary, Summit participants broke down into smaller workshops, including "Building Organizations," which was devoted to ideas and techniques for building lists, moving people into action and identifying and developing leaders; "Changing State Laws," which focused on the strategies that groups are using to win policy improvements; and "Broadening the

Debate - Fighting for Jobs and Living Wages," which focused on campaigns for creating jobs and improving health and other benefits.

Marc Cohan, Litigation Director for the Welfare Law Center, presented on a panel titled "Solving Problems and Building Power - Moving from Individual Advocacy to Collective Action" about using such legal tools as mass administrative hearings and class action law suits. Dirk Slater, Circuit Rider for the Welfare Law Center's LINC Project, was a panelist for "Allies and Alliances" where he spoke about how the Welfare Law Center's organizers' listserv was helping grassroots organizations make connections with other groups across the country.

It's also notable that several active participants in the organizers' listserv, such as Kathryn Talbert from Low Income People for Power (L.I.P.P.) in New Hampshire, Diana Spatz from LIFetimE in California, and Claudia Ditmar Coffield

from Mothers Mobilizing for Economic and Social Justice (MMESJ) in Indiana, had an opportunity to meet face to face for the first time. The true promise of the electronic conference is realized when relationships across the country can begin to develop and then come to fruition at a national summit.

Summit attendees were invited to attend the National Convention which began on Saturday night with a direct action that included over 800 ACORN members, according to an ACORN report. The action was to protest Wisconsin Governor Thompson's damaging W-2 welfare "reform" measures and was held in front of Milwaukee's new convention center where the Governor was appearing at a gala opening dinner. Arriving dinner attendees were a bit surprised when they arrived and were greeted by so many protestors shouting "Hey-hey, ho-ho, Tommy Thompson has got to go." The action garnered a lot of press coverage, though many reporters carefully pointed out that most of the protesters were

from out of state.

The National Convention convened on Sunday, July 26th and ACORN reports that over 1,500 ACORN members from over 30 states attended. The Convention included a hearing on Welfare and Workfare abuses, at which a dozen welfare recipients presented testimony to a panel of distinguished national leaders on the problems they are encountering in their states and in their local organizing campaigns. The panelists included: Linda Chavez-Thompson, Executive Vice President of the AFL-CIO; Danny Davis, Congressperson from Chicago; Peter Edelman, former Assistant Secretary of HHS; columnist and writer Barbara Ehrenreich; activist and professor Frances Fox Piven; and U.S. Senator Paul Wellstone.

The Convention continued through Monday, July 27th with various plenaries and workshops for ACORN members. During the convention there was a massive petitioning drive in low and moderate

income neighborhoods in Milwaukee, where ACORN reports that convention participants knocked on over 10,000 doors and gathered over 5,000 signatures on petitions in support of reforms of the W-2 program.

ACORN considered both the Convention and the Summit to be a great success. The Organizers' Summit provided a good networking opportunity for the organizations involved. The infusion of various strategies and ideas from the variety of groups was valuable for all who attended. The Convention energized ACORN membership for the hard fights that lie ahead. And the combination of bringing 1,500 ACORN members together with representatives from 30 other organizations helped to begin a national dialogue about how to fight the devastating effects of welfare "reform."

This report was prepared by Dirk Slater, Welfare Law Center Circuit Rider.

Groups Attending ACORN Organizers' Summit

In addition to local ACORN chapters, participants at the Organizers' Summit included representatives of the following organizations: Alabama Organizing Project, Alabama Arise, LIFetimE (CA), Project Workplace/Grossmont Community College (CA), Californians for Justice, POWER (CA), San Francisco Council on Poverty & Homelessness, Los Angeles Coalition to End Hunger and Homelessness, Mothers for Justice (CT), Florida Impact, United Sisters of Pleasant City (FL), Georgia Urban/Rural Summit, Georgia Citizens Coalition on Hunger, Mothers Mobilized for Social and Economic Justice (IN), Kentucky Welfare Reform Coalition, Kentucky Youth Advocates, Jefferson County Welfare Reform Coalition (KY), Maine Association of Interdependent Neighborhoods, Maine Women's Lobby, PROP Family Advocacy (ME), Michigan Organizing Project, Overcoming Poverty Together (MN), Montana People's Action, Children's Alliance (NH), New Hampshire Citizens' Alliance, Low Income People for Power (NH), Ohio Empowerment Coalition, Welfare Rights Coalition of Cincinnati, Empowerment Center of Greater Cleveland, CAFE (SC), Texas State Employees Union, AFSCME District Council 48 (WI), Campaign for a Sustainable Milwaukee, Institute for Wisconsin's Future, Welfare Warriors (WI).

About The Welfare Law Center

The Welfare Law Center (the "Center on Social Welfare Policy and Law") is a national legal and policy organization that works with and on behalf of poor people to ensure that adequate income support is available when necessary to meet basic needs and foster healthy individual and family development. The Center achieves its goals through legal and policy analysis, legal representation, public education, training, and aid and support to advocates. Contributions to the Center are tax deductible.

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How To Contribute to the Welfare Law Center

With the loss of federal funding, the Center relies upon contributions and publications sales to support its work. Tax-deductible contributions may be made by check or credit card (MasterCard, Visa, American Express - information can be faxed to the Center). Monthly or quarterly contributions can be scheduled. Bequests have been left to the Center in wills, and we would be pleased to discuss possible arrangements. Bulk purchases of publications for distribution to selected audiences are also welcome. For information about any of these options, contact Gail Korn at the Center.

About Welfare News

Welfare News is a bimonthly publication of the Welfare Law Center, 275 Seventh Avenue, Suite 1205, New York, NY 10001-6708, tel. 212-633-6967; fax: 212-633-6371; e-mail: wlc@welfarelaw.org; web pages: www.welfarelaw.org and www.lincproject.org. A yearly subscription fee of \$40 (\$60 for libraries and overseas addresses) brings you both **Welfare News** and **Welfare Bulletin**, the Center's monthly publication which summarizes the latest noteworthy publications, court decisions, and policy issuances on income support programs.

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