

Court Upholds GA Child Support Assignment Requirement for Family Cap Children

Williams v. Martin, *Civ. Action No. 1:01-CV-3343-TWT (U.S. District Ct., N.D. Ga.) (Sept. 22, 2003)*

Plaintiffs are children subject to the state's "family cap" provision under which a TANF cash assistance increment is denied to children born while the family receives TANF assistance, whose rights to child support must be assigned to the state pursuant to TANF rules. Plaintiffs claim 1) that the assignment requirement violates 42 U.S.C. 608 (a)(3) which requires that states condition TANF eligibility on the assignment of support rights for anyone applying for or receiving assistance; and 2) that the mandatory assignment constitutes a taking in violation of the Fourteenth Amendment to the U.S. Constitution. The court has ruled against plaintiffs.

After concluding that plaintiffs have standing and that the case is ripe for adjudication, the court rejects the statutory claim on the grounds that while 608 (a)(3) does not expressly authorize the assignment for such children, it does not bar the state from imposing such a requirement. On the constitutional claim, the court reaches a conclusion contrary to that of the court in **Williams ex rel. Ricard v. Humphreys**, 125 F. Supp. 2d 881 (S.D. Ind. 2000) which found the assignment requirement for a family cap child unconstitutional. In reaching its conclusion, the court looked to **Bowen v. Guilliard**, 483 U.S. 587 (1987) (upholding the AFDC mandatory filing unit rule) which applied the three factor test in **Penn Central Transportation Co. v. City of New York**, 438 U.S. 104 (1978) to evaluate the taking claim. First, as to the economic impact of the regulation on the plaintiffs, the court found it significant that although the plaintiffs' TANF grants did not increase for the capped child, the addition of capped children to the family increased the potential of GAP payments made to the family when the state collected child support. Plaintiffs had received GAP payments (which were not a factor in the Indiana **Williams** case), and these GAP payments together with the state's use of its

resources to collect the support mitigated the adverse economic effect of the assignment.

As to the second **Penn Central** factor - the extent to which the regulation interferes with the plaintiffs' investment-backed expectation - the court found that a child's property interest in child support can be modified by the parent or by law and does not give the child a "vested expectation in continued identical child support payments." As to the third factor - the character of governmental action - the court, relying on **Bowen**, noted that the state faces difficult choices in allocating government resources. Plaintiffs received an overall increase in benefits through the GAP payments and assignment is voluntary insofar as the choice to apply for TANF is not mandatory. In concluding that there is no constitutional violation, the court cited the wide latitude that the state has in designing social programs.

Plaintiffs' attorneys: Nancy Lindbloom, Georgia Legal Services, Athens, GA 30605, tel. 706-369-5922, Lisa Krisher, Sheila Khrzan, Georgia Legal Services, Atlanta, GA.

NJ Supreme Court Upholds New Jersey Family Cap

Sojourner A. et al. v. New Jersey Dep't of Human Services, 828 A. 2d 306, 2003 N.J. Lexis 866 (August 4, 2003)

The New Jersey Supreme Court has upheld the constitutionality of the state law that denies, with limited exceptions, an increase in cash assistance benefits for a child born more than ten months after a family applies for and receives benefits. Plaintiffs had claimed that the "family cap" provision violates their rights to privacy and equal protection as guaranteed by the New Jersey Constitution. Relying on the approach established in prior decisions involving state constitutional claims, the court applied a balancing test that considers "the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction." The court noted, however, that while its analysis varies from the tiered test for federal constitutional claims, it considers similar

factors and often reaches the same result.

As to the claim that the family cap infringes on a woman's right to make reproductive choices by penalizing her for the birth of a child and singles out poor children, the court rejects arguments that there is an undue or new burden on reproductive choice. Family income from whatever source is likely to influence reproductive choices. Working families do not receive automatic wage increases when a child is born and the family cap puts families on welfare "on a par with working families." The court finds the state has "ample justification" for the cap as "resources available as a result of the cap have been diverted to job training, child care, and other programs..." which should help improve the lives of welfare families. The court distinguished an earlier New Jersey Supreme Court decision finding an equal protection violation where the state denied Medicaid funding for abortions except where medically necessary to save the mother's life. Noting that the court had also held that the state could exclude from Medicaid funding elective, nontherapeutic abortions that did not involve the life or health of the mother, the court said that in this case the life or health of the mother is not at stake. The court discounted plaintiffs' contention of disparate treatment based on when a child is born - i.e. before a family receives welfare or after. It noted that families subject to the cap receive additional Food Stamps and Medicaid, and rejected arguments of amici that the statute violates international norms regarding birth-status discrimination. The court concluded that the case is "not about the right to choose whether and when to bear children, but rather, about whether the State must subsidize that choice."

Plaintiffs' attorneys: Lenora M. Lapidus, American Civil Liberties Union, 125 Broad Street, New York, NY 10004, tel. 212-549-2668, fax: 212-549-2651; Sherry Leiwant, NOW Legal Defense and Education Fund, 395 Hudson Street, New York, NY 10014, tel. 212-925-6635, fax: 212-226-1066; Gibbons, Del Deo, Dolan, Griffinger & Vecchione.