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General Assistant Programs: Review and Remedy of Administrative Actions in Indiana

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GENERAL ASSISTANCE PROGRAMS: REVIEW AND REMEDY OF ADMINISTRATIVE ACTIONS IN INDIANA

There has been a dearth of litigation by poor people[1] challenging denials of aid by locally funded and administered general assistance programs.[2] One reason[3] for this lack of litigation has been the mistaken belief that state judicial review[4] of administrative decisions in the welfare field is virtually nonexistent. Although this note will focus on the availability of review and possible remedies within Indiana's general assistance program, the implications of this analysis are national in scope.[5]

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1. There are no precise definitions as to who is a "poor person," though there has been a great deal written about different means of determining who is poor. *See* J. KERSHAW, GOVERNMENT AGAINST POVERTY 5-18 (1970) [hereinafter cited as KERSHAW]; Spilerman & Elesh, *Alternative Conceptions of Poverty and Their Implications for Income Maintenance,* 18 SOCIAL PROB. 358-67 (1971). The leading Indiana case on this definitional point says that "poor person" and "indigent person" are synonymous. Parkview Memorial Hosp. v. County Dep't of Pub. Welfare, 134 Ind. App. 689, 695, 191 N.E.2d 116, 119 (1963).

2. There are no reported cases in Indiana in which a poor person has sued a trustee for relief. The single unreported case of which the writer is cognizant, Fry v. Stevenson, No. E-8134 (St. Joseph [Ind.] Super. Ct., Apr. 7, 1971), is not relevant to the matters here discussed. The statutes outlining the general assistance program are IND. CODE §§ 12-2-1-1 to 12-2-1-39 (1971), IND. ANN. STAT. §§ 52-144 to 52-181 (1964).

The general assistance program is completely financed by money raised at the lower levels of government. The administrators of the general assistance program are specifically exempt from regulation by the state. IND. CODE § 12-1-20-1 (1971), IND. ANN. STAT. § 52-176a (1964).

3. One of the reasons why the poor may have failed to seek judicial relief in the past was the unavailability of lawyers willing to represent the indigent. Now that legal service programs are widely available the continued lack of cases necessitates other explanations. The most logical is that welfare recipients are hesitant to challenge a caseworker or a trustee for fear of earning his permanent enmity. Handler, *Controlling Official Behavior in Welfare Administration,* 54 CALIF. L. REV. 479, 494 (1966).

Often the only people who will challenge a welfare administrator in court are those who have been denied admittance to a program of benefits and have nothing to lose by the challenge. *Id.* at 496.

4. This note will concentrate on state judicial review. There is always the possibility of federal review. *See* Note, *Federal Judicial Review of State Welfare Practices,* 67 COLUM. L. REV. 84 (1967).

5. The traditions of general assistance programs are similar throughout the nation because they have a common base in the English poor laws.

> . . . [P]ublic assistance has survived with a set of creaky traditions intact that may help explain the system's present condition. The traditions include repression, local financing and administration, a minimization of the amount of money spent on the poor, an emphasis on the work ethic, a distinction between the deserving and the undeserving poor, and a stigma attached to those who are dependent on relief. All these are interrelated; none are independent of the others.

B. STEIN, ON RELIEF 43 (1971).

JUDICIAL REVIEW

The administrators of general assistance programs in Indiana are township trustees.[6] Three major roadblocks prevent judicial review of their decisions. The first obstacle stems from the traditional notion that a mandamus action,[7] the procedural vehicle most typically used in welfare cases, was available only when a public official failed to perform a duty to give aid.[8] This was particularly true if the official had any statutory powers of discretion as to eligibility determinations.[9] But traditional notions are eroding.

In *Washington Township v. Parkview Memorial Hospital*,[10] the Indiana Appellate Court found a statutory duty to aid the poor in need of medical services and granted review despite its implicit acknowledgement that the statute in question gave the administrator great discretion in regard to eligibility determinations. *Parkview* certainly discredits the theory that "discretionary" decisions are non-reviewable in that the court specifically reversed a trustee's determination that the claimant did not fulfill the statutory requirements. The court reasoned that the trustee's decision that such requirements had not been met did not negate his statutory duty to provide aid if subsequent review revealed an abuse of discretion.[11]

While the *Parkview* court appeared specifically to tie review to a failure to exercise a statutory duty, one implication of its reasoning is that an abuse of discretion will always support review.[12] A recognition that

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6. IND. CODE § 12-2-1-1 (1971), IND. ANN. STAT. § 52-144 (1964).

7. Mandamus is an order commanding an official to perform a duty he has refused to carry out. It is an extraordinary remedy and, as such, is not available if an adequate remedy exists at law. L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 176-77 (1965) [hereinafter cited as JAFFE].

8. *Id.* at 181.

9. *Id.*

10. —— Ind. App. ——, 246 N.E.2d 391 (1969). In this case, the hospital recovered 14,000 dollars from a township trustee for medical services rendered a deceased indigent who had previously been denied relief.

11. The court found in this case that the trustee had never made an eligibility determination. This conclusion is difficult to support since the court found as facts that the trustee's wife, as his agent, received effective notice of the applicant's request, made a "brief inquiry" into the applicant's eligibility and informed the applicant's husband that she would not qualify. *Id.* at ——, 246 N.E.2d at 395. If the court truly believed no decision had been made, its logical reaction would have been a remand.

12. The duty of the trustee to provide medical and hospital care for poor persons is mandatory. There is no room for discretion once the determination is made. . . . No such determination was ever made in this case.

Id. at ——, 246 N.E.2d at 394. Thus, *Parkview* ties review and remedy to a showing that duty is required once the discretionary decision as to eligibility is made. But in this case the court, and not the trustee, purportedly made the discretionary decision—a very unusual situation. Transcending the fiction of non-determination, the court is really

abuse of discretion, absent any statutory duty, will lead to review was made earlier in *State ex rel. Smitherman v. Davis*[13] where the Indiana Supreme Court did not limit judicial review to a showing of a "prima facie mandatory duty."[14] In addition, *Smitherman* recognized that an abuse of discretion by the official involved will give rise to review even if the statute contained no duty at all. The majority stated:

> [O]ur courts have held that although the language of the statute is permissive in form, making the action of a public official discretionary, nevertheless where there has been an abuse of such discretion courts will review the exercise of such discretionary powers and compel proper discharge of the duties imposed.[15]

If courts are willing to give relief where there has been an abuse of discretion, they must be willing to review every case of alleged abuse. Such a policy leads to extensive judicial review.

The doctrine of exhaustion of administrative remedies presents a second obstacle to judicial review. Indiana subscribes to this doctrine.[16] Although the exhaustion doctrine is usually justifiable, its validity becomes questionable in emergency situations. This fact has been recognized in a New York decision establishing a right to emergency assistance.[17]

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saying that the trustee's "discretion" is not so broad as to give him complete freedom. This is really not surprising since even "discretionary" decisions must be made within a sphere of valid choices:

> Discretion is the power usually given by statute to make a choice among competing considerations. Most powers to act involve some elements of choice if only as to detail. On the other hand, nearly all powers to act, however numerous and broad the considerations relevant to choice, exclude and deny the legality of other elements as facts of choice. . . . It has, for example, been said that however broad the discretion of government personnel officers in hiring and firing, certain bases of action would violate both the Constitution and the assumed statutory terms of reference. . . . [T]he fact that there may be discretionary elements present does not, or at least should not, exclude judicial review, whether by mandamus or other appropriate remedy, where legally irrelevant or forbidden considerations have determined the decision.

JAFFE, *supra* note 7, at 181.

13. 238 Ind. 563, 151 N.E.2d 495 (1958). In response to a complaint asking that school officials be commanded to grant the transfer requests of pupils, the court found that the complaint alleged an abuse of discretion sufficient to withstand demurrer.

14. *Id.* at 571, 151 N.E.2d at 498.

15. *Id.* at 569, 151 N.E.2d at 497-98.

16. Wilmont v. South Bend, 221 Ind. 538, 48 N.E.2d 649 (1943); Culbertson v. Board of Comm'rs, 208 Ind. 22, 194 N.E. 638 (1935). In general assistance cases there is a statutory procedure for administrative review by the county commissioners. Pub. L. No. 168, § 2, [1971] Ind. Acts 676, *formerly* IND. CODE § 12-2-1-18 (1971), IND. ANN. STAT. § 52-160 (1964).

17. In Ross v. Barbaro, 61 Misc.2d 147, 304 N.Y.S.2d 941 (1969), a welfare recipient who had been robbed of the proceeds of her welfare check (her family's sole support

Although there are no reported cases concerning an emergency exception to the exhaustion doctrine, Indiana courts have developed another exception to this requirement. The exception was formulated in *Jackson School Township v. State ex rel. Garrison*,[18] where the court found exhaustion necessary only in cases involving purely discretionary decisions.[19]

A third obstacle to review may have been created by *Smitherman*. Limiting language in the opinion stated that only administrative acts "which directly and substantially affect the lives and property of the public"[20] are reviewable. Although no prior case law supports this limitation,[21] this language could undermine extensive review in the welfare field because township trustees may argue that one individual's claim does not substantially affect the public interest.

Even if this substantial public interest limitation is valid, compelling reasons can be put forward to demonstrate that suits against township trustees satisfy the requirements of any such test. The denial of assistance on the local level means, in effect, that the individual will receive no aid whatsoever since a suit against the township trustee is an applicant's last opportunity for aid.[22] It follows, therefore, that such important and final decisions should be within the scope of judicial review. This is not to urge that the public interest is served by simply granting aid to any

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for the month) was held entitled to emergency assistance, regardless of whether the commissioner could obtain reimbursement from the state.

18. 204 Ind. 251, 183 N.E. 657 (1933).

19. *Id.* at 267, 183 N.E. at 663. The court also found that exhaustion was not necessary where there existed "a clear legal duty on the part of the defendants to perform the thing demanded." *Id.*

20. 238 Ind. at 569, 151 N.E.2d at 498.

21. *Smitherman* cites four cases as supporting this limitation: Slentz v. Fort Wayne, 233 Ind. 226, 118 N.E.2d 484 (1954); Phillips v. Officials of City, 233 Ind. 414, 120 N.E.2d 398 (1954); Smith v. Lippman, 222 Ind. 261, 53 N.E.2d 157 (1944); Coleman v. Gary, 220 Ind. 446, 44 N.E.2d 101 (1942). However, all four cases speak simply in terms of abuse leading to review. Beyond these four cases, there is no apparent support for any such public interest limitation. *See* Fuchs, *Judicial Control of Administrative Agencies in Indiana*, 28 IND. L.J. 1, 19 (1952). Since the public interest limitation had no Indiana precedent, the *Smitherman* court placed reliance on Board of Supervisors v. United States, 71 U.S. (4 Wall) 435 (1867); United States *ex rel.* Harriman Nat'l Bank v. Caplinger, 18 F.2d 898 (8th Cir. 1927).

In spite of its questionable heritage, the Indiana Supreme Court has invoked the limitation twice since *Smitherman*, Gierhart v. State, 243 Ind. 553, 186 N.E.2d 680 (1962); Orbison v. Welsh, 242 Ind. 385, 179 N.E.2d 727 (1961). The Indiana Appellate Court has employed the test on one occasion. Wright v. Kinnard, —— Ind. App. ——, 245 N.E.2d 835, 843 (1969).

22. It must not be forgotten that in most cases public assistance represents the last resource of those bereft of any alternative.
Rothstein v. Wyman, 303 F. Supp. 339, 347 (S.D.N.Y. 1969), *prob. juris. noted*, 397 U.S. 903, *vacated on other grounds*, 398 U.S. 275 (1970).

applicant, but rather is served by making certain that no qualified person is denied aid by an abuse of administrative discretion.

It may be further shown that an individual's suit against a trustee fulfills the requirements of the substantial public interest test by examining the cases cited by *Smitherman* in support of this limitation.[23] While none of these cases actually contained limiting language about "substantial public interest," they all dealt with an abuse by a public agency or political entity. Indiana courts, therefore, may rely on these cases as precedent for the proposition that the public or political nature of the defendant, such as a township trustee, is sufficient to establish a substantial public interest.

Possible Remedies

Discretionary powers do not negate the possibility of judicial review, but they may present great problems as far as the ease and availability of remedies are concerned. The ability of a court to grant a suitable remedy depends, in large part, upon the clarity of the statutory guidelines which control the trustee's discretion as to eligibility determinations. These guidelines may take one of three forms. First, the guidelines may be explicit and clearly indicate which criteria are most important. Such guidelines present the best chance for achieving a satisfactory remedy since courts can easily determine whether or not they were correctly applied by the trustee. Unfortunately, very few Indiana statutes provide such guidelines.[24]

Second, guidelines may be explicit as to a given standard but vague as to how this standad is met. For example, one typical standard is "need."[25] However, the criteria for determining "need," though sometimes listed,[26] often give no insight as to which criteria should be given

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23. *See* note 21 *supra*.

24. Though the Indiana statutes sometimes provide an abstract guideline (*see* note 25 *infra*), they very rarely indicate criteria of practical importance in arriving at decision (*see* note 26 *infra*).

25. Public aid by an overseer of the poor may include and shall be extended only when the personal effort of the applicant fails to provide one (1) or more of the following items: Food, including prepared food, clothing, shelter, light, water, fuel for heating and cooking, household supplies which shall include first aid and medical supplies for minor injury and illness, household necessities which shall include basic and essential items of furniture and utensils, heating and cooking stoves, and transportation to seek and accept employment.

Pub. L. No. 168, § 2, [1971] Ind. Acts 676, *formerly* Ind. Code § 12-2-1-10 (1971), Ind. Ann. Stat. § 52-160 (1964).

26. Among the criteria for determining need is the level of support from relatives. If the poor persons applying for township aid have relatives able to assist them who are living in the township, it shall be the duty of the overseer, before giving

primary consideration. Whenever objective criteria for eligibility determinations are absent or unweighted, a court will be hesitant to impose its unsupported and largely subjective determinations upon a trustee. Usually only the availability of some weighted guidelines will persuade the court to do so. An example of a method objectively defining "need" is the set of criteria used by the Office of Economic Opportunity (OEO),[27] under which aid is afforded to all whose income is less than a multiple of a minimum food budget. Strong justification exists for use of OEO standards in Indiana since food necessities are listed as one of the state's basic statutory criteria when trustee responsibilities are described.[28]

The third form of statutory guidelines are those which are vague or nonexistent. The susceptibility of vagueness to constitutional attack has been well documented.[29] One of the major reasons that courts will not tolerate vagueness is the likelihood of arbitrary decisions by government officials and administrators.[30] This possibility is particularly serious in general assistance programs, given their historical traditions.[31]

The need for ascertainable standards in welfare cases was specifically recognized in *Holmes v. New York City Public Housing Authority*.[32] In that case, the city of New York was receiving 90,000 family applications a year for 10,000 family openings in their public housing program. A preference group was established which included families already doubled up. Members of the non-preference group brought a claim alleging deprivation of due process since the Housing Authority had not adopted standards for allocating housing among them. In stressing the importance of guidelines in welfare cases, the Second Circuit stated:

> It hardly need be said that the existence of an absolute and

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aid a second time, to call on such relatives of the poor persons and ask them to help their poor relatives, either with material relief or by furnishing them with employment.

IND. CODE § 12-2-1-11 (1971), IND. ANN. STAT. § 52-153 (1964). It is never made clear how distant a relationship must be before aid can be withheld on the basis of possible support from relatives.

27. *See* KERSHAW, *supra* note 1, at 10. OEO guidelines determine a basic food budget and then assume that food expenditures absorb one-third of total family income. Based on these calculations the poverty line figures in 1968 were 1,635 dollars for one person, 3,335 dollars for four and 4,910 dollars for seven or more.

28. *See* note 25 *supra*.

29. While it is well recognized that vagueness will not be tolerated in the criminal law the need for precise guidelines has been extended even to the licensing field. Hornsby v. Allen 326 F.2d 605 (5th Cir. 1964). This area is closely analogous to the granting of welfare. *See* Reich, *The New Property*, 73 YALE L.J. 733 (1964).

30. *See* text accompanying note 33 *infra*.

31. *See* note 5 *supra*.

32. 398 F.2d 262 (2d Cir. 1968).

> uncontrolled discretion in an agency of government vested with the administration of a vast program, such as public housing, would be an intolerable invitation to abuse.[33]

The Second Circuit did not stop, however, after finding a lack of standards intolerable. The court went on to suggest that discretion, which may easily turn into discrimination,[34] should be kept to a minimum when the destitute are involved.

> Equitable considerations also favor the result reached by the district judge. The 31 named plaintiffs speak not only for themselves, but also for thousands of New York's neediest who may have been unfairly entrenched in squalor due to the alleged inadequacies of the Authority's procedure.[35]

Without any necessity for mentioning "equitable considerations," the Second Circuit, nonetheless, explicitly allowed equitable rhetoric like "entrenched in squalor" to influence its decision to narrow the acceptable limits of administrative discretion. Thus, there is precedent for courts allowing a narrower range of legitimate discretionary choices when the claims of the poor are being considered.

Given the fact that courts will not tolerate vague guidelines, two possible solutions are evident. The first would allow each trustee to interpret statutes his own way.[36] This approach, however, is dependent on adminsistrative action that may never come.[37] Moreover, to allow each trustee to elucidate rules would lead to confusion and inconsistent results. The desirability of uniform guidelines leads to a second possibility —the judicial application of a standard for the entire state. It is possible for courts to create and enforce interim guidelines until acceptable alter-

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33. *Id.* at 265.

34. Where law ends, discretion begins, and the exercise of discretion may mean either beneficence or tyranny, either justice or injustice, either reasonableness or arbitrariness.

K. DAVIS, DISCRETIONARY JUSTICE 3 (1969) [hereinafter cited as DAVIS].

35. 398 F.2d at 268.

36. DAVIS, *supra* note 34, at 55:

When legislative bodies delegate discretionary power without meaningful standards, administrators should develop standards at the earliest feasible time, and then, as circumstances permit, should further confine their own discretion through principles and rules.

37. The typical failure in our system that is correctible is not legislative delegation of broad discretionary power with vague standards, it is the procrastination of administrators in the resorting to the rule-making power to replace vagueness with clarity.

Id. at 56-57.

natives are adopted by either the legislature or the administrative agency itself. There is precedent for this approach in *Miranda v. Arizona*:[38]

> Our decision in no way creates a constitutional straightjacket which will handicap sound efforts at reform, nor is it intended to have this effect. We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting rights of the individual while promoting efficient enforcement of our criminal laws. However, unless we are shown other procedures which are at least as effective in apprising accused persons of their right of silence and assuring a continuous opportunity to exercise it, the following safeguards must be observed. . . . [39]

The relevant inquiry, therefore, may be not whether courts have the power to set interim guidelines in welfare cases, but rather what guidelines should be employed. More is needed than a mere transfer of vague discretionary power from the trustee to the court. The Indiana legislature has acknowledged the need for more specific guidelines in a newly amended statute which charges the Board of County Commissioners, in passing on appeals, with the duty to:

> . . . be guided by uniform relief standards of eligibility and need established by or for the township trustee as overseer of the poor for the granting of poor relief in his township. If no such standards have been established, the Board and its hearing officers shall be guided by the circumstances in each case.[40]

Unfortunately, while this statute recognizes the need for uniform standards, it may be self-defeating in that it also gives the Board power to use a case by case approach in the absence of guidelines. The legality of such broad power, however, is questionable in light of an apparent delegation of authority that may lead to vague or nonexistent guidelines.

Even if that part of the statute authorizing a case-by-case approach will not stand constitutional scrutiny, the portion of the statute calling for "uniform relief standards" would likely stand as it suffers from no apparent constitutional deficiency.[41] If this part of the statute does

38. 384 U.S. 436 (1966).
39. *Id.* at 467.
40. Pub. L. No. 168, § 2, [1971] Ind. Acts 676, *formerly* IND. CODE § 12-2-1-18 (1971), IND. ANN. STAT. § 52-160 (1964).
41. The statute contains no specific severability clause, but the absence of such a

stand, the requirement of a "uniform" standard is a compelling argument in favor of temporary judicial formulation and implementation of such guidelines. Courts might be strongly influenced by OEO guidelines or some other well recognized standard, since these standards have a rational and clear empirical foundation.

CONCLUSION

Indiana law presents no artificial bar to judicial review of welfare administration. The township trustee's shelter from review provided by the umbrella of discretion can be pierced by showing either a duty or an abuse of discretion. Where statutes provide only vague or nonexistent guidelines, courts may be able to prescribe and enforce interim standards. In light of this fact and in order to best serve the interests of justice, courts should be willing to review and remedy alleged abuses of administrative action.

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clause means nothing. What is necessary is to see if the rest of the statute has meaning absent the questionable sentence. Here the basic thrust of the statute is in direction of uniform guidelines. Striking the sentence authorizing decisions without guidelines certainly does not negate the purpose of the statute. If anything, the omission of this sentence makes the statute clearer.