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WHAT REMAINS OF FEDERAL AFDC STANDARDS AFTER JEFFERSON v. HACKNEY?

The Aid to Families With Dependent Children (AFDC)¹ program of the Social Security Act of 1935 (Federal Act)² was originally enacted to encourage the states to provide financial assistance to needy children. Since that time additional programs have been added to provide medical aid,³ employment training,⁴ and other social services.⁵ However, before receiving these other benefits, a family must first qualify for monthly cash assistance under the AFDC program.⁶ The reliance of the poor on these services makes it essential that any state or federal action that deprives them of these benefits is carefully studied to insure that such action complies with all existing federal standards and statutes.

Many states have been unwilling or unable to provide adequate assistance to all needy children.⁷ To apportion available funds the states have resorted to two different techniques. The first is to reduce the number of eligible recipients; the other is to reduce the amount of assistance disbursed to eligible children or families. The former method denies some children all cash assistance and contingent services, whereas the latter only reduces the cash benefits without affecting services.

Initially states exercised almost unlimited discretion in distributing AFDC funds. Over the years, however, Congress and the Supreme Court have limited this discretion by forcing the states to provide aid for all

1. 42 U.S.C. §§ 601-44 (1970).

2. *Id.* §§ 301-1396.

3. *Id.* §§ 1396-96g (medicaid program).

4. *Id.* § 602(a)(19).

5. *Id.* §§ 602(a)(13)-(14). Each state determines what services it will make available to AFDC recipients. The purpose of these services is to "maintain and strengthen family life for children." *Id.*

6. 42 U.S.C. § 1396a(a)(10) (1970) (medicaid); *id.* § 602(a)(19) (employment training); *id.* § 602(a)(14) (social services). Medicaid also allows the states to provide medical assistance to persons not receiving cash assistance; however, this provision is optional with the states. *Id.* § 1396a(a)(10)(B).

7. In 1970 the average number of children and adults receiving monthly AFDC payments was 7.4 million. This figure represented an increase of 75.3 per cent over the 1965 figure. Expenditures for assistance payments rose from 1.6 billion dollars in 1965 to 4.1 billion dollars in 1970. NATIONAL CENTER FOR SOCIAL STATISTICS, DEP'T OF HEALTH, EDUCATION AND WELFARE, NCSS REPORT H-4, TRENDS IN AFDC 1965-1970, at 1 (1970). This phenomenal increase has made it difficult for many states to adequately plan and allocate resources for welfare assistance. In some states the problem has been compounded by statutory or constitutional ceilings on annual amounts that can be appropriated for public welfare expenditures. *See, e.g.,* TEX. CONST. art. 3, § 51-a(4), which imposes an eighty million dollar ceiling on public welfare expenditures.

children eligible for AFDC under the Federal Act, without preventing the states from limiting the amount of assistance each child receives. In *Jefferson v. Hackney*,⁸ the Supreme Court for the first time appears to have permitted a state to implement procedures which deny AFDC benefits to needy families which otherwise qualify for such benefits under the Federal Act. In a narrowly written opinion, the Court left unclear the true import of its decision. Resolution of the potential conflict between *Jefferson* and earlier cases is essential to further meaningful litigation concerning AFDC.

AFDC: THE STATUTE AND PREVIOUS LITIGATION

AFDC is one of the four categorical assistance programs established by the Federal Act.⁹ Participation in AFDC is voluntary for the states. Financing is provided primarily by the federal government on a matching fund basis, but the program is administered almost exclusively by the states.¹⁰ To take advantage of AFDC a state must submit its plan for approval by the Secretary of Health, Education, and Welfare.¹¹ All subsequent changes must also be approved.¹²

The AFDC program singles out for assistance the needy dependent child.¹³ It makes eligible all needy children who have been denied parental care and support and who meet certain age and educational requirements.¹⁴ The determination of which children are needy and how much they are to be paid is left to the discretion of the states.¹⁵

The cornerstone of all state programs is the standard of need. This is the dollar amount considered essential for the subsistence of the family in question and thus is the yardstick for measuring who is needy and how

8. 406 U.S. 535 (1972).

9. 42 U.S.C. §§ 301-1396 (1970). In addition to the AFDC program, *id.* §§ 601-44, there are programs for Old Age Assistance, *id.* §§ 301-429, Aid to the Blind, *id.* §§ 1201-06, and Aid to the Permanently and Totally Disabled, *id.* §§ 1351-55.

10. 42 U.S.C. §§ 601-10 (1970).

11. *Id.* § 601 (1970). Such plans must conform to the requirements of 42 U.S.C. § 602 (1970) and 45 C.F.R. Pt. 233 (1972).

12. 45 C.F.R. § 201.3 (1972).

13. 42 U.S.C. § 601 (1970).

14. The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and . . . a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

42 U.S.C. § 606(a) (1970).

15. *Rosado v. Wyman*, 397 U.S. 397, 408-09 (1970).

much assistance they should receive.¹⁶ In this formula, each state makes its own determination of what items are essential.¹⁷

States have attempted to limit AFDC expenditures in two ways. First, they have tried to restrict eligibility. Waiting lists were an early example of this.¹⁸ Section 602(a)(10) of the AFDC program¹⁹ was passed to prohibit the use of waiting lists by providing that all eligible persons are to receive some assistance with "reasonable promptness."²⁰ Another device used by the states to limit the number of welfare recipients was the "suitable home" requirement.²¹ After 25 years of use, the effect of this requirement was diminished by Congressional action in 1961 and 1962; these amendments allow states to remove a child from a judicially determined unsuitable home,²² but prohibit termination of AFDC benefits unless other adequate care and assistance is provided.²³

More recently, in *King v. Smith*,²⁴ involving a challenge to Alabama's "substitute father" rule,²⁵ the Supreme Court determined that states may not impose eligibility requirements not recognized by the AFDC program. The Court found that, in the absence of voluntary contributions or a legal duty to support on the part of the "substitute father," the state may not deny assistance to any needy child.²⁶

16. *Id.*

17. *Id.* Standards of need for a family of four vary from 132 dollars in Puerto Rico to 400 dollars in Alaska. NATIONAL CENTER FOR SOCIAL STATISTICS, DEPT OF HEALTH, EDUCATION, AND WELFARE, NCS S REPORT D-2, PUBLIC ASSISTANCE PROGRAMS: STANDARDS FOR BASIC NEEDS, JULY, 1971, at 16, table 6 (1972).

18. *Dandridge v. Williams*, 397 U.S. 471, 493-94 (1970) (Douglas, J., dissenting). These lists contained the names of applicants who could not draw any assistance until state appropriations were increased or persons receiving assistance were dropped from the welfare rolls.

19. [A]ll individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals.

42 U.S.C. § 602(a)(10) (1970).

20. 42 U.S.C. § 602(a)(10) (1970).

21. *W. BEL*, AID TO DEPENDENT CHILDREN 20 (1965). Under such requirements, the caseworker had to determine that a child's home was suitable in order for the child to be eligible for assistance. Frequently, the suitability of a home was based on the moral conduct of the mother. *Id.* at 20-39. The federal government began to discourage these types of requirements in 1945. *Id.* at 40.

22. 42 U.S.C. § 608(a)(1) (1970).

23. *Id.* § 604(b). Assistance may not be denied to any eligible child to discourage illegitimate births or to regulate the mother's moral conduct. *King v. Smith*, 392 U.S. 309, 324 (1968).

24. 392 U.S. 309 (1968).

25. This rule provided that the income of any man who "cohabited" with a needy child's mother was to be included in the child's resources for purposes of determining need. 392 U.S. at 311.

26. 392 U.S. at 329-30. In *Lewis v. Martin*, 397 U.S. 552 (1970), the Court relied on *King* in holding that, in the absence of voluntary contributions, the income of

In *Townsend v. Swank*,²⁷ the Supreme Court indicated when a state may exercise discretion in determining AFDC eligibility. Illinois denied assistance to children aged eighteen to twenty who attended college, but provided assistance to children in the same age group who attended vocational or technical training schools.²⁸ In holding that the Illinois provision violated § 606(a) of AFDC,²⁹ the Court stated that in the absence of express authority in either the AFDC provisions or their legislative history, states may not deny assistance to any person eligible for benefits under the federal standards.³⁰ The Court went on to point out that a state which adopts an eligibility standard that excludes such persons violates the Supremacy Clause and any such standard is therefore invalid.³¹

The second way that states have sought to contain their welfare expenditures is by limiting the amounts paid to each eligible recipient. Two separate methods have been used to implement these limitations and both have gained the approval of the Supreme Court. One method is the ratable reduction, which permits the states to pay each recipient only a fixed percentage of his standard of need.³² The Supreme Court in *Rosado*

stepfathers, or any other male living in the house, may not be considered in determining a child's need.

27. 404 U.S. 282 (1971).

28. The Illinois statute provided in part:

Child Age Eligibility. The Child or Children must be under age 18, or age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school.

ILL. ANN. STAT. ch. 23, § 4-1.1 (Smith-Hurd 1968).

29. See note 14 *supra*.

30. 404 U.S. at 286.

31. *Id.* Although the majority phrased its holding in terms of the Supremacy Clause, it used language which indicates that *Townsend* only supports the proposition that Congress can control the way in which states spend federal funds:

Congress meant to continue financial assistance for AFDC programs for the age group only in States that conformed their eligibility requirements to the federal eligibility standards.

Id. at 287.

Further support for this interpretation of *Townsend* is found in the concurring opinion of Chief Justice Burger:

The appropriate inquiry in any case should be, simply, whether the State has indeed adhered to the provisions and is accordingly entitled to utilize federal funds in support of its program.

Id. at 292.

32. Using this method, each family eligible for AFDC has its standard of need reduced by multiplying the standard by a certain percentage. For example, a family with a 200 dollar standard of need in a state using a fifty per cent reduction factor would receive benefits of 100 dollars. The reduction factors currently used vary from 35 per cent in Alabama to ninety per cent in New York. NATIONAL CENTER FOR SOCIAL STATISTICS, DEPT OF HEALTH, EDUCATION, AND WELFARE, NCSS REPORT D-3, STATE MAXIMUMS AND OTHER METHODS OF LIMITING MONEY PAYMENTS TO RECIPIENTS OF THE SPECIAL TYPES OF PUBLIC ASSISTANCE, JULY, 1971, at 7, table 3 (1972).

*v. Wyman*³³ held that this was a valid procedure because it is not an eligibility limitation but rather a proper exercise of the state's discretion to set benefit levels.³⁴ For the same reasons, the maximum grant³⁵ was approved in *Dandridge v. Williams*³⁶ as a second method of budgeting AFDC funds.³⁷

Congressional disapproval of the "waiting list" and "suitable home" requirements in conjunction with the Court's decisions in *King* and *Townsend* show that a state's discretionary power is severely limited by the Federal Act when making eligibility judgments other than establishing a standard of need.³⁸ On the other hand, *Rosado* and *Dandridge* are examples of when states may exercise their discretionary powers. Of course, the divergence between the valid and invalid procedures might also be explained by the fact that the limitations on eligibility were somewhat onerous because they involved moral or discretionary judgments³⁹ whereas the regulations in *Rosado* and *Dandridge* were capable of objective determination.

JEFFERSON V. HACKNEY

*Jefferson v. Hackney*⁴⁰ upheld the Texas method of applying income in determining AFDC eligibility and benefit levels. Texas uses a ratable reduction system similar to the scheme approved in *Rosado*. However, rather than subtract income before applying the reduction factor, Texas

33. 397 U.S. 397 (1970).

34. *Id.* at 409. The Court in *Rosado* appears to have based its decision on the assumption that any earned income was subtracted from the standard of need before the reduction factor was applied. *Id.* at 409 n.13.

When discussing the ratable reduction the Court only considered whether it was permissible for the states to pay less than the full standard of need. It did not determine whether the ratable reduction could be used to deny assistance to persons whose income was less than their standard of need. Thus, the Court's decision regarding the ratable reduction is concerned with the states' power to limit assistance rather than with the states' ability to limit eligibility for assistance. This reading of the Court's treatment of the ratable reduction is supported by the fact that the Court separately discussed state action which reduced the number of families eligible for AFDC. *Id.* at 415-23.

35. The maximum grant imposes a ceiling on AFDC payments which applies regardless of a family's need. Although the ceiling may vary with the size of the family, the maximum grant tends to impose greater hardship on large families. *Dandridge v. Williams*, 397 U.S. 471, 474-77 (1970).

36. 397 U.S. 471 (1970).

37. *Id.* at 481.

38. In 1967, Congress amended the Social Security Act to force the states to make cost of living increases in their standards of need. 42 U.S.C. § 602(a)(23) (1970). In *Rosado*, the Court said that this amendment could not be interpreted to mean that the states can lower their standards of need. 397 U.S. at 417.

39. *King v. Smith*, 392 U.S. 309, 320 (1968).

40. 406 U.S. 535 (1972).

applies the factor first and then subtracts the income.⁴¹ This permits Texas not only to limit the amount of aid each person receives, but also to deny benefits to families whose income is less than their standard of need.⁴² Thus, applying an eligibility/benefit level distinction, the Texas method appears invalid because it restricts eligibility, yet valid because it only limits benefit levels. *Jefferson* is the first case to pose this dilemma. Unfortunately, the Court did not fully address the eligibility question⁴³ and thus the dilemma is left unresolved.

One analysis which eliminates this dilemma is the argument that

41. To illustrate, it will be assumed that a family with a 200 dollar standard of need has earned income of fifty dollars, and that the applicable reduction factor is fifty per cent. Under the Texas system, the family would receive only fifty dollars in benefits, whereas it would receive 75 dollars in benefits under a system in which earned income was subtracted from the standard of need before applying the reduction factor:

Texas Method		Alternate Method	
Standard of need	\$200	Standard of need	\$200
× Reduction factor	.50	— Earned income	50
Reduced need	\$100	Unmet need	\$150
— Earned income	50	× Reduction factor	.50
Benefits paid	\$ 50	Benefits paid	\$ 75

42. If, in the hypothetical set forth in note 41 *supra*, the family had earned income of 100 dollars, the Texas system would have afforded no benefits at all. On the other hand, if a system was used in which earned income was subtracted from the standard of need before applying the reduction factor, the family would have received fifty dollars in benefits.

43. 406 U.S. at 539-45. The eligibility question presented by appellants was whether § 602(a)(23) of the AFDC program as interpreted in *Rosado* mandated increased eligibility for AFDC. The Court answered this question in the negative, and did not speculate on the broader question of whether it is permissible to deny assistance to families whose income is less than their standard of need if they otherwise qualify for assistance under the federal standards. The Court did say that § 602 (a)(10) was limited in its scope and cannot be invoked for this purpose. However, no other provision of the AFDC program was raised by appellants or the Court. Thus, it appears that the broader question will only be answered in later litigation of each statutory provision.

One factor which might account for the Court's failure to fully consider eligibility, thereby deviating from prior cases, is the Texas constitutional limitation on welfare expenditures:

The Legislature shall have authority to enact appropriate legislation which will enable the State of Texas to cooperate with the Government of the United States in providing assistance to and/or medical care on behalf of needy persons, . . . : provided that the total amount of such assistance payments only out of state funds on behalf of such individuals shall not exceed the amount of Eighty Million Dollars (\$80,000,000) during any fiscal year.

TEX. CONST. art. 3, § 51-a(4). Faced with this restriction the Court may have been unwilling to force Texas to change its method and thereby raise expenditures above the constitutional ceiling. However, this problem does not seem substantial because the state can always lower its reduction factor to contain costs. Moreover, the history of the constitutional provision shows that each time Texas was faced with a crisis in welfare funds, the ceiling was increased by constitutional amendment. See TEX. CONST. ANN. art. 3, § 51-a, Comment (Supp. 1971).

Jefferson overruled *King* and *Townsend* and granted the states almost unlimited discretion to determine AFDC eligibility. However, in *Carleson v. Remillard*,⁴⁴ which was decided just one week after *Jefferson*, the Supreme Court struck down a California provision which denied assistance to so-called "military orphans."⁴⁵ In doing so, the Court relied heavily on both *King* and *Townsend* in holding that states may not impose conditions on AFDC eligibility not recognized by the Federal Act.⁴⁶

Although not overruling earlier cases, *Jefferson* seems to eliminate the possibility that reducing the size of the welfare rolls and denying otherwise eligible persons assistance is a relevant factor in determining the validity of a procedure. This is best illustrated by the fact that Texas increased its standard of need by 11 per cent, yet by simultaneously adopting its new procedure removed 2,470 families from the welfare rolls.⁴⁷ Also, *Carleson* makes clear that the basis for determining the validity of state procedures is not whether the regulation involves an objective judgment, rather than a discretionary or moralistic one. The "military orphan" condition is well suited to an objective determination⁴⁸ and yet the regulation was struck down.

Both the Federal Act and the cases can only be reconciled if need is the factor used to determine what actions by the states are valid. The waiting list, the suitable home, the substitute father, the Illinois education restriction, and the military orphan are all impermissible eligibility conditions based on something other than need. In contrast, the ratable reduction, the maximum payment, and the Texas method all accomplish their goal by imposing limitations related to the standard of need. Thus, states may exercise very broad discretion in making eligibility determinations related to standard of need, but may not regulate any other facet of AFDC eligibility unless the Federal Act or its legislative history specifically permits it.⁴⁹

44. 406 U.S. 598 (1972).

45. A "military orphan" is a child whose father is in the military service and away from home on active duty. 406 U.S. at 599.

46. 406 U.S. at 601.

47. *Jefferson v. Hackney*, 304 F. Supp. 1332, 1343 (N.D. Tex. 1969).

48. Calif. Dept. Soc. Welfare Reg. EAS 42-350.11 provides that "continued absence" does not exist:

When one parent is physically absent from the home on a temporary basis. Examples are visits, trips made in connection with current or prospective employment, active duty in the Armed Services.

406 U.S. at 599 n.1.

49. The only current exception to this broad conclusion is the prohibition imposed by the 1967 amendments to the Social Security Act and *Rosado* against lowering the standard of need. See note 38 *supra*. However, since there is no limitation on the reduction factor and the Texas method of ratable reduction was approved in *Jefferson*,

INCOME DISREGARD: OVERCOMING JEFFERSON

One major effect of the *Jefferson* decision is that approximately 2,500 Texas families were dropped from the welfare rolls.⁵⁰ This means they suffered a reduction in disposable income and an increase in living costs due to the loss of the contingent services.⁵¹ The Supreme Court did not foreclose the possibility that provisions of AFDC statutes not in dispute in *Jefferson* might be used to invalidate Texas' procedures and restore welfare benefits to these families. The income disregard⁵² is well-suited for this purpose.

In *Jefferson*, the issue presented was whether § 602(a)(23) of the AFDC program⁵³ prohibited use of Texas' procedure.⁵⁴ No other statutory provision was litigated. In their brief the appellants used other statutory provisions, including the income disregard, to support their argument as to the intent of Congress in passing § 602(a)(23), but they did not directly invoke these other statutes. Moreover, the Court recognized the very limited question it had before it. In particular, Justice Rehnquist stated that the case involved no dispute over whether or not Texas' procedures complied with the income disregard.⁵⁵ Thus, that question is still open.

Section 602(a)(8),⁵⁶ the income disregard, was part of the 1967 Amendments⁵⁷ to the Federal Act. An overriding goal of Congress in adopting these amendments was to provide work incentives without en-

the states may in effect reduce the standard of need to whatever level they desire. See notes 41 & 42 *supra*.

50. *Jefferson v. Hackney*, 304 F. Supp. 1332, 1343 (N.D. Tex. 1969).

51. See note 6 *supra* & text accompanying.

52. The income disregard provides for the exemption of specified amounts of earned income from the computation of AFDC payment levels. 42 U.S.C. § 602(a)(8) (1970).

53. [B]y July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. 42 U.S.C. § 602(a)(23) (1970).

54. *Jefferson* was initially instituted to challenge the validity of ratable reductions, and the district court found that § 602(a)(23) prohibited their use. *Jefferson v. Hackney*, 304 F. Supp. 1332 (N.D. Tex. 1969). An appeal was taken to the Supreme Court, but before the case was heard, the original decision was vacated and the case remanded for further proceedings consistent with *Rosado*. *Jefferson v. Hackney*, 397 U.S. 821 (1970). On remand the district court entered judgment against the plaintiffs, who, in a motion to amend the judgment, first raised the issue of whether the Texas procedure in particular complied with § 602(a)(23) as interpreted by *Rosado*. 42 U.S.C. § 602(a)(23) (1970).

55. *Jefferson v. Hackney*, 406 U.S. 535, 544 (1972).

56. 42 U.S.C. § 602(a)(8) (1970).

57. Social Security Amendments of 1967, 81 Stat. 821 (codified in scattered sections of 42 U.S.C.).

larging the welfare rolls.⁵⁸ Although many of these amendments encountered strong Congressional opposition, income disregard met with substantial approval in both Houses.

The major provision of the disregard excludes the first thirty dollars from a person's total monthly earned income and also eliminates one-third of the remainder of such income.⁵⁹ This provision is designed to help the needy become self-supporting and eventually lower the welfare burden.⁶⁰ The primary advantage of this method to the welfare recipient is that it lowers the family's aid by less than one dollar for each dollar earned.⁶¹

An eligibility test was designed to prevent the income disregard from expanding the welfare rolls.⁶² If a family's gross income is less than its standard of need, it is eligible to use the disregard.⁶³ Even though a family cannot meet this criterion, it can still qualify for the disregard if, during any one of the previous four months, part or all of that family's

58. The House Committee on Ways and Means stated:

The bill contains provisions which will prevent increasing the number of persons receiving assistance as a result of the earnings exemption. The provisions discussed above are to become available only with respect to persons whose income was not in excess of their needs as determined by the State agency without the application of this provision for the disregarding of income. That is only if a family's total income falls below the standard of need will the earnings exemption be available.

H.R. REP. No. 544, 90th Cong., 1st Sess. 107 (1967). For a nearly identical statement by the Senate Committee on Finance, see S. REP. No. 744, 90th Cong., 1st Sess. 158 (1967).

59. 42 U.S.C. § 602(a)(8)(A)(ii) (1970). The Senate Finance Committee recommended that the first fifty dollars be excluded from a person's monthly earned income, and that one-half of the resulting figure also be excluded. S. REP. No. 744, 90th Cong., 1st Sess. 158 (1967). However, the figures were reduced to thirty dollars and one-third by the Conference Committee to correspond to the House recommendations. CONF. REP. No. 1030, 90th Cong., 1st Sess. (1967).

In addition to the basic thirty dollar exclusion, the states may exclude five dollars from a person's monthly earned income. Furthermore, the income disregard provides for excluding all income of each child who is a full-time student or a part-time student without a full-time job, and amounts can be set aside to cover the future identifiable needs of a child. 42 U.S.C. § 602(a)(8)(A)(i) & (B)(i)-(ii) (1970).

If an otherwise eligible AFDC recipient refuses a bona fide offer of employment or reduces or terminates his income without good cause, he may not take advantage of the disregard provisions. *Id.* § 602(a)(8)(C).

60. H.R. REP. No. 544, 90th Cong., 1st Sess. 107 (1967); S. REP. No. 744, 90th Cong., 1st Sess. 159 (1967).

61. S. REP. No. 744, 90th Cong., 1st Sess. 157-8 (1967). Prior to the enactment of the income disregard all earned income of parents or other relatives of AFDC children reduced assistance dollar for dollar. *Id.*

62. *Supra* note 58.

63. [No income shall be disregarded] if with respect to such month the income of the persons so specified (within the meaning of clause (7)) was in excess of their need as determined by the State agency.

42 U.S.C. § 602(a)(8)(D) (1970).

need was met by an assistance payment.⁶⁴ Unless the family meets one of these two criteria, it may not use the income disregard.

The intent and mechanics of the income disregard cannot be reconciled with the procedures approved in *Jefferson*. The problem is posed by the family whose income is less than its standard of need and therefore eligible for the income disregard, but which is not eligible to receive any assistance because its nonexcluded income exceeds its ratably reduced standard of need.⁶⁵ Thus a class of needy persons which the income disregard was designed to assist in becoming self-supporting is denied any practical benefit from it.

From a practical standpoint, the Texas method also seems inconsistent with the second eligibility provision, whose purpose was to allow income to rise above the standard of need without imperiling AFDC eligibility.⁶⁶ Depending upon the reduction factor used by a state, the Texas method would compel termination of assistance before a family's income even reached its standard of need.⁶⁷ Therefore, the Congressional purpose

64. [No income shall be disregarded], unless, for any one of the four months preceding such month, the needs of such persons were met by the furnishing of aid under the plan.

42 U.S.C. § 602(a)(8)(D) (1970). Thus, even though a family with a 200 dollar standard of need has income of 210 dollars for the current month, it is eligible to use the income disregard if it has received some cash assistance in any one of the four preceding months. Since only nonexcluded income is used to determine payment levels, this means the family may still be eligible for AFDC. See notes 65 & 73 *infra*.

The provision can result in inequities. If two families have the same income, one might be eligible for AFDC because it had received some assistance in the previous four months while the other could not draw any aid because its income had never dropped below its standard of need. The Congressional committees studying the provision recognized this possibility but felt that the cost savings generated by the provision outweighed any harm that might result. They stated that welfare costs would be increased by "about \$160 million a year by placing people on the AFDC rolls who now have earnings in excess of their need for public assistance as determined under their State plan." S. REP. No. 744, 90th Cong., 1st Sess. 159 (1967). Despite the provision's inequity, it was upheld as constitutional in *Conner v. Finch*, 314 F. Supp. 364 (N.D. Ill. 1970), *aff'd sub nom.* *Conner v. Richardson*, 400 U.S. 1003 (1971).

65. Assume a family with a 200 dollar standard of need and earned income of 180 dollars in a state using the Texas method and a fifty per cent reduction factor. Since the family's income is less than its standard of need, it is eligible to use the income disregard. However, the family would not receive any benefits.

Disregard Calculations		Payment Calculations	
Earned income	\$180	Standard of need	\$200
—Fixed amount	30	×Reduction factor	.50
	—		—
	\$150	Reduced need	\$100
—(\$150 × 1/3)	50	—Nonexcluded income	100
	—		—
Nonexcluded income	\$100	Benefits paid	0

66. See notes 58 & 64 *supra*.

67. See note 65 *supra*.

underlying the one-in-four provision would be frustrated.

In *X v. McCorkle*⁶⁸ the district court, in striking down a New Jersey AFDC regulation because it conflicted with § 602(a)(8), held that the income disregard "statute requires adherence to the formula it sets forth."⁶⁹ The Solicitor General, speaking for the Department of Health, Education, and Welfare, later argued this position when *McCorkle* was appealed to the Supreme Court.⁷⁰ Unfortunately, the Court did not discuss the income disregard issue;⁷¹ however, the blanket affirmance of the lower court on this issue⁷² suggests that states must strictly comply with § 602(a)(8).

CONCLUSION

It is unlikely that Congress would create a detailed system of work incentives if it anticipated that those provisions would be rendered useless by the states. In contrast to the Texas method, subtracting income before applying the reduction factor enables the income disregard to work exactly as Congress outlined it.⁷³ Perhaps this argument can form the

68. 333 F. Supp. 1109 (D.N.J. 1970), *aff'd sub nom.* Engleman v. Amos, 404 U.S. 23 (1971). This case involved a New Jersey welfare regulation which established administrative ceilings of about 133 per cent of the standard of need for the working poor. 333 F. Supp. at 1111 n.4. Enumerated items were subtracted from gross income, and if this adjusted income exceeded the administrative ceiling then the family received no assistance; however, if the adjusted income was less than the administrative ceiling, the benefit level was equal to the difference between the two. *Id.* The district court found this scheme impermissible because it failed to comply with the income disregard. *Id.* at 1116-17.

69. 333 F. Supp. at 1117.

70. Brief for the United States as Amicus Curiae at 7, Engleman v. Amos, 404 U.S. 23 (1971). In *Amos*, the Solicitor General also argued that the New Jersey income disregard regulation was invalid because it denied assistance to some otherwise eligible persons. *Id.* at 11.

71. Engleman v. Amos, 404 U.S. 23 (1971).

72. *Id.* at 24.

73. Assume a family with a 200 dollar standard of need and earned income of 180 dollars in a state using this method and a fifty per cent reduction factor. Since the family's income is less than its standard of need, it is eligible to use the income disregard.

Disregard Calculations		Payment Calculations	
Earned income	\$180	Standard of need	\$200
—Fixed amount	30	—Nonexcluded income	100
	\$150	Unmet need	\$100
—(\$150 × 1/3)	50	×Reduction factor	.50
	\$100	Benefits paid	\$ 50

Now assume that the family earns 180 dollars in months 1 through 4 and 210 dollars in month 5. Even though the family's income in month 5 exceeds its standard of need, it is eligible to use the disregard because its income for the first four months was less than its standard of need.

basis of another legal attack on the Texas system.⁷⁴ In any future case of this type, the Court will hopefully clarify the discretion allowed states when implementing procedures which affect AFDC eligibility.

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Disregard Calculations		Payment Calculations	
Earned income	\$210	Standard of need	\$200
—Fixed amount	30	—Nonexcluded income	120
	<hr/>		<hr/>
—(\$180 x 1/3)	\$180	Unmet need	\$ 80
	60	XReduction factor	.50
	<hr/>		<hr/>
Nonexcluded income	\$120	Benefits paid	\$ 40

Thus, even though the family's income rises above its standard of need, it still receives assistance and also remains eligible for the contingent services.

74. Basically the same type of argument can be made in cases involving the statutory provisions which provide for services that are contingent upon the standard of need or receipt of cash assistance. The appellants in *Jefferson* cited the purpose of these provisions to support their argument that § 602(a)(23) prohibited the use of the Texas method. As with the income disregard, the Court did not foreclose this line of argument.