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Hubert H. Margolies
Federal Security Agency

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JUDICIAL REVIEW OF PUBLIC ASSISTANCE DETERMINATIONS

HUBERT H. MARGOLIES*

Old man Minick's contemporary in another midwestern state had been unable to initiate the necessary arrangements for entering a private institution. With the crash the value of his investments had declined to the point where the only course open to him was to live with his son-in-law and daughter. He was not unwelcome, but an atmosphere of dutiful sacrifice pervaded the apartment.

Then the state enacted its old-age assistance law under which it obtained Federal participation in half the total of all assistance payments. One day when the fact of his dependency bore on him rather more heavily than usual Minick's contemporary went to the local welfare office and filled out an application. In a few weeks he received a letter notifying him that he had been found ineligible for old-age assistance because he was not in need, but that he was entitled to a hearing before the State department. Since it seemed obvious that he had no income, he returned to the local office where it was explained that an individual receiving all support from a son-in-law was not in need. Minick's contemporary then demanded a hearing before the State agency.

His son-in-law failed to attend the hearing. The applicant testified that he had become a burden, that he had no money of his own, and that he was entitled to assistance. The case worker's tale was not substantially different, except that reference was made to the deeding of some property to the son-in-law three years ago, when he had been in arrears on his taxes. The hearing was informal and the representatives of the State department had been sympathetic and understanding. Nevertheless, two weeks later the applicant was informed that the decision of the State department on the fair hearing was that the support and maintenance furnished by his son-in-law disqualified him.

When the son-in-law learned of the determination he

* Attorney, office of the General Counsel, Federal Security Agency. The opinions expressed in this article are those of its author exclusively and may not be attributed to the Federal Security Agency or the Social Security Board.

was indignant. He immediately retained a local attorney to handle the appeal to the district court.

Thus far, the situation has been viewed exclusively from the standpoint of the applicant. Is the determination as arbitrary as it seemed to him, or is there another side with which he was unfamiliar? This article will discuss the attitude of courts and their role with respect to agency determinations as to old-age assistance, aid to the blind, and aid to dependent children,¹ when the applicant and his friends are not satisfied that he has received fair treatment.

The Federal Social Security Act requires as a condition of approval of State plans for public assistance that an applicant or recipient, dissatisfied with the preliminary decision by the local agency in a program supervised by the State department or by the field employees in a program administered by the State department, be granted an opportunity for a fair hearing before the State agency.² Thus, before a case reaches the courts, the administrative tribunal, a superior and revising body not only at liberty but required to reach its own conclusions, passes on the claim and the State agency has given its imprimatur following a hearing to the person aggrieved by the preliminary action. The administrative tribunal bars presumptions in favor of the correctness of the initial decision and reaches its decision on the basis of the fair hearing record. The fair hearing device provides assurance that full consideration has been given to the circumstances of the individual's case by experienced persons and, concurrently, that any local deviations have been aligned with the established agency policies. An exercise of local discretion will not survive the hearing unless it is in accord with that of the administrative tribunal. As a practical matter the nisi prius court in the county of appellant's residence may not be able to view the case from as favorable a vantage-ground as the administrative tribunal and with comparable regard for the State-wide implications of its decision.³

¹ The subject of welfare activities in the courts is treated in A. D. Smith, *Judicial Trends in Relation to Public Welfare Administration* (June, 1941) Social Service Review.

² The Social Security Board on January 8, 1941, released its PRINCIPLES AND STANDARDS FOR FAIR HEARING PROCEDURES IN PUBLIC ASSISTANCE ADMINISTRATION.

³ See *Rasmussen v. County of Hennepin*, 207 Minn. 28, 32, 289 N.W. 773, 775 (1940). On the value of fair hearing procedures in preserving

Wide diversity as to the avenues to the courts exists. It ranges from express denial⁴ and complete silence to amplitude, and unquestionably affects the type of review.⁵ Nevertheless, on the basis of partial returns, with most of the jurisdictions to be heard from, some trends can be seen to emerge.

The exhaustion of administrative remedies doctrine⁶ and the doctrine of primary jurisdiction, that the State agency must be upheld if there is evidence in the fair hearing record to support its findings of fact⁷ and that its interpretation of the law⁸ is to be accorded "some" respect, are observed in public assistance litigation in the highest courts. The availability of judicial review connotes that "the final word upon this question [what the law is] must be spoken by the courts."⁹ There is a discernible lag in the lower court decisions.¹⁰ The absence of decisions of courts of last resort reversing affirmances of agency determinations is of particular significance¹¹ since it is not at all uncommon for the

the integrity of agency decisions, see Orfield, *Old Age Assistance: With Special Reference to Nebraska* (1938) 17 Neb. L. Bull. 287, 304-5; Hunter, *The Courts and Administrative 'Fair Hearings' in Public Assistance Programs* (1940) 14 Social Service Review 481.

⁴ See Miss. Laws 1936, c. 175, §28: "No suit shall be maintained in any court for the purpose of compelling an award of assistance or to enforce payment of any award of assistance made under the provisions of this act."

⁵ See Smith, *supra*, note 1.

⁶ *Wilkie v. O'Connor*, 261 App. Div. 373, 25 N.Y. Supp. (2d) 617 (4th Dept. 1941); *Oklahoma Public Welfare Comm. v. Thompson*, 105 P. (2d) 547 (Okla. 1940); *McAvoy v. Ernst*, 196 Wash. 416, 83 P. (2d) 245 (1938); *State ex rel. Lung v. Superior Court*, 193 Wash. 365, 76 P. (2d) 306 (1938). The reported decision in the *Thompson* case was on rehearing. The original decision of the Supreme Court of Oklahoma, holding that it was unnecessary to exhaust the administrative remedies because the applicant believed that a fair hearing would not be available, is discussed in Hunter, *supra* note 3, at 496. See generally Stason, *Timing of Judicial Redress from Erroneous Administrative Action* (1941) 25 Minn. L. Rev. 560-587.

⁷ *Schneberger v. State Board of Social Welfare*, 291 N.W. 859 (Iowa 1940); *Chapman v. State Social Security Comm.*, 147 S.W. (2d) 157 (K.C. Ct. App. 1941); *Cf. Warren v. Indiana Telephone Co.*, 26 N.E. (2d) 399 (Ind. 1940).

⁸ *Rasmussen v. County of Hennepin*, *supra* note 3; see *Hormel v. Helvering*, 61 S. Ct. 719, 721 (1941); Final Report of the Attorney General's Committee on Administrative Procedure (1941) pp. 90-91.

⁹ *Howlett v. State Social Security Comm.*, Mo. Sup. Ct., March 22, 1941.

¹⁰ See *Howlett v. State Social Security Comm.*, 146 S.W. (2d) 94 (Springfield Ct. App. 1940), *rev'd* Mo. Sup. Ct., March 22, 1941; *White v. State Social Security Comm.*, 345 Mo. 1046, 137 S.W. (2d) 569 (1940).

¹¹ In re Application of Seidel, 204 Minn. 357, 283 N.W. 742 (1939) is not an exception. The issue was one of county liability and applicant was not affected by the outcome.

highest courts to adopt views differing from those of the agency and the lower courts.

Findings of fact based on evidence are given the weight of a jury verdict.¹² While the formulations differ,¹³ there is general agreement in the application of the principle of finality.¹⁴ On the other hand, the novelty of the delegation to an administrative body of penultimate power to construe the law has militated against the acceptance of such delegation by the courts in some jurisdictions. They appear to pass on issues of law independently of the administrative interpretation.¹⁵ Courts in other jurisdictions recognize that having the last word is not necessarily incompatible with judicial self-limitation.

Court affirmances of agency determinations are rested on a multitude of grounds, such as the separation of powers,¹⁶ the necessity of conforming with the single State agency requirements of the Social Security Act,¹⁷ and the theory that administrative determinations relating to claims for bounties or gratuities may be conclusive.¹⁸ In spite of their multiple grounds the decisions form a consistent pattern readily explicable by the unwillingness of the appellate courts to have

¹² *Chapman v. State Social Security Comm.*, *supra* note 7, at 159; *Clay v. State Social Security Comm.*, 143 S.W. (2d) 165 (Springfield Ct. App. 1940).

¹³ In *Adams v. Ernst*, 1 Wash. (2d) 254, 95 P. (2d) 799 (1939) the court said: "The decision of the administrative board must be deemed *prima facie* correct and must prevail unless it can be said that the evidence preponderates against it."

¹⁴ See Final Report, *supra* note 8, pp. 91-92, 210-212.

¹⁵ In the *Howlett* case, *supra* note 9, the court said: "A given proposition either is the law or it is not. There is no middle ground." See (1939) 13 Social Service Review 105-110. But *cf.* *Helvering v. Wilshire Oil Co.*, 308 U.S. 90, 101 et seq. (1939).

¹⁶ A provision for trial *de novo* was invalidated in *Borreson v. Department of Public Welfare*, 368 Ill. 425, 14 N.E. (2d) 485 (1938), approved Smith, *supra* note 1; Shneider, *The Social Security Act in Operation* (1938) 17 Neb. L. Bull. 145, 147 (Bar Proc.); criticized (1939) 37 Mich. L. Rev. 639; (1939) Ill. B. J. 203. The Borreson decision was adhered to in *Brown v. State Department*, 369 Ill. 543, 17 N.E. (2d) 221 (1938). Thereafter the procedure for relief was by way of mandamus. *Freeman v. Department of Public Welfare*, 368 Ill. 505, 534 14 N.E. (2d) 642 (1938).

¹⁷ *Dean v. Brandjord*, 108 Mont. 447, 92 P. (2d) 273 (1939).

¹⁸ *Wilkie v. O'Connor*, *supra* note 6. But *cf.* *Proffitt v. Christian County*, 370 Ill. 530, 19 N.E. (2d) 345, 347 (1939). In the *Howlett* case, *supra* note 9, acceptance of this view is accompanied by dicta to the effect that a ruling on the law contrary to that of the court is arbitrary and unreasonable *per se*. An affirmative indication of legislative intent to cut off appropriate judicial review was required in *Wood v. Waggoner*, 293 N.W. 188 (S. D. 1940).

the judiciary assume the burden and responsibility for the administration of inadequate funds. Public assistance is a branch of the law not bowed under by an accumulation of judicial precedents and the granting of administrative freedom is facilitated thereby.

"The State Board having been given so much to operate on for that period, and no more, it then became its duty under the Act to adopt a policy which would best subserve the cause of old age assistance within the means furnished for that purpose. Whether it would be wiser for it to pay full quotas and prematurely expend most, if not all, of the entire fund appropriated for the given period, or whether the needy aged now qualified to receive payments and the ever increasing number of prospective recipients who may qualify later, would be more equitably and effectively assisted by the general reduction inaugurated by the board, is solely a question of administrative discretion vested exclusively in the board and its administrator."¹⁹

As the Colorado Supreme Court pointed out in *Fairall v. Redmon*,²⁰ if the agency were denied discretion to meet emergent situations the breach could not be filled. The argument from financial consequences has not been an unqualified success. When advanced, not to justify a temporary expedient, but to support a definitive interpretation of eligibility, the courts in Washington²¹ and Missouri²² being unimpressed by this canon of statutory construction.²³

¹⁹ Dean v. Brandjord, *supra* note 17.

²⁰ 110 P. (2d) 247 (1941).

²¹ Conant v. State, 197 Wash. 21, 84 P. (2d) 378 (1938) approved (1939) 13 Social Service Review 105; (1939) 12 So. Calif. L. Rev. 482; criticized (1939) 39 Col. L. Rev. 711; (1939) 52 Harv. L. Rev. 849. Although the holding, that the agency could not consider support voluntarily furnished by a son-in-law as bearing on the need of applicant where the legislature had set forth the criteria of eligibility, is reconcilable with the cases upholding agency discretion in that the majority were of the opinion the statute was unambiguous, alternative interpretations are that the Washington and Missouri courts construe the statute for themselves or have been confronted with issues on which they held pronounced views. In Wood v. Waggoner, *supra* note 18, where the factual situation and the law were substantially the same as in the Conant case, the court held that assistance was properly denied.

²² Moore v. State Social Security Comm., 233 Mo. App. 536, 122 S.W. (2d) 391 (K.C. Ct. App. 1938); Price v. State Social Security Comm., 232 Mo. App. 721, 121 S.W. (2d) 298 (Springfield Ct. App. 1938). Some intransigence in the Court of Appeals is reflected in cases like the *Howlett* case, *supra* note 10, where the Court of Appeals imposed a duty on the agency to consider the ability of a son supporting his father to continue the support. For a discussion of the 1939 amendments, see *Redmon v. State Social Security Comm.*, 143 S.W. (2d) 168 (Springfield Ct. App. 1940). That the

Regardless of the manner of submission of the controversy many public assistance cases transcend in importance the amount at stake in the proceeding before the court.²⁴ The issues cannot be resolved in the proper perspective as a by-product of litigation without an awareness of such pertinent factors as the available appropriation, its adequacy to meet the calls upon it under the possible interpretations of the legislative standards for need determination, etc. Complete disclosure of the surrounding circumstances thus verges on injecting the court into the administrative process. Consequently when a court sustains an administrative policy, it is not affirming that its own discretion would have been similarly exercised. More likely the affirmance is deference, in self-defense, to the specialization of the agency and an acknowledgment that the agency cannot be said to have erred. Few issues of social evaluation must be decided in any one way. "Whether a particular individual is needy, within the contemplation of the statute, is a question to which a categorical affirmative or negative answer is rarely possible."²⁵ The instances when the courts are forced to part company with the agency on a question of statutory construction may constitute an exception. Even then the law may exemplify "the disorderly conduct of words." If a fraternal home would rather have one of its inmates as a paying guest, is he in need in contemplation of law?²⁶ If a father of a family is receiving a railroad pension check how much thereof may he allocate for the use of his ineligible wife and minor children, under a statute providing for a grant of \$30 minus

momentum of the 1939 amendments was soon dissipated is shown by a comparison of the *Howlett* case with *Johns v. State Social Security Comm.* 143 S.W. (2d) 161 (Springfield Ct. App. 1940) and the *Redmon* case.

²³ But cf. *State ex rel. Eckroth v. Borge*, 69 N.D. 1, 283 N.W. 521, 528 (1939).

²⁴ ". . . trouble cases must be seen as having peculiar power to become jumping-off points for socially significant normative generalizations. They are 'naturals' for precedent production. Second, and by the same token, they are cases in which a uniqueness which may be accident or misfortune (and may be planned or prophetic) is yet hard to keep from being mixed into the basis of the normative generalization. And this means that occasional individuals concerned in trouble cases may acquire a shaping power over their society." Llewellyn, *The Problem of Juristic Method* (1940) 49 *Yale L. J.* 1355, 1361.

²⁵ *Borreson v. Department of Public Welfare*, *supra* note 16, at 488. See also *Schneberger v. State Board of Welfare*, *supra* note 7, at 861.

²⁶ *Rasmussen v. Hennepin County*, *supra* note 3.

net income? Is the entire amount to be regarded as the income of the applicant?²⁷ May the agency prorate among the members of the family and under what standards, those obtaining with respect to relief or customary in the community? Or may the husband be allowed to strip himself completely? This enumeration, by no means exhaustive, indicates the possibilities open to the agency. Its discretion is well-nigh absolute with respect to statutory provisions concerning suitability of home.²⁸

However, the attorneys for the State agency would be as foolhardy to place their reliance on judicial self-suppression without articulately justifying the reasonableness of the policy or finding of fact as they would be to submit a due process brief citing exclusively presumption of constitutionality decisions. Care must continually be taken to assure the fairness of the administrative fair hearing²⁹ and consonance with the law. From time to time, with all precautions, findings and policy determinations evincing the competence of the State agency will be reversed, and it may become necessary to calk the statutory seams which have failed to withstand pressure, with respect to the scope of judicial review or the substantive provision over the interpretation of which there has been disagreement.

"It is well and good for the legislature to confine itself to formulating general policies, but it may be more important at times for it to exert its judgment on the application of a general policy of legislation enacted by another agency than to waste time ineptly at the start attempting to formulate the policy."³⁰

If applicants are to be given their measure of security, that is, the assurance that the conditions of eligibility are

²⁷ Cf. *State ex rel. Eckroth v. Borge*, *supra* note 23, at 526, holding that tax cases construing "income" are inapposite in public assistance.

²⁸ *Wilkie v. O'Connor*, *supra* note 6.

²⁹ See *Colorado Public Welfare Board v. Viles*, 105 Colo. 62, 94 P. (2d) 713 (1939) for the attitude of the courts toward intuition in lieu of facts. When a fair hearing has been denied, the courts remand for action on the correct rules of law. *Colorado Public Welfare Board v. Viles*, *supra*. The courts have no jurisdiction to substitute their own judgment as to eligibility or the amount of the award. *People ex rel. Freeman v. Department of Public Welfare*, *supra* note 16; *Howlett v. State Social Security Comm.*, *supra* note 9 *cf. Newbrand v. City of Yonkers*, 285 N.Y. 164, 33 N.E. (2d) 75 (1941).

³⁰ Weeks, *Legislative Power versus Delegated Legislative Power* (1937) 25 *Georgetown L. J.* 334, 336, reprinted 4 *Select Essays on Constitutional Law* 228, 249.

ascertainable, the court's plain duty on occasion will be to confine the agency within the bounds prescribed by the legislature and to outline the principles on which it is to proceed.³¹ Insistence on administrative elbow room does not entail hostility to the exercise of the appropriate functions of the courts. The objective of any welfare administration is the equitable distribution of available funds to those entitled under the law. As the District Court well stated in the *Sweeney* case:³²

"It [public assistance] is a gratuity from the state made to those whose status and condition measured by standards promulgated by the State Board of Public Assistance show an urgent need for financial aid in order to maintain the highest degree of public health, morals and general welfare. It is not merely an aid to an individual, but an aid to preserve community life and society, and its administration must be guided by standards of need prescribed by duly authorized bodies, here the State Board of Public Assistance. Courts will proceed with great caution before overthrowing the work of such boards, since their investigation and study have best enabled them to determine what regulations will produce the greatest good for the greatest number, and that is the fundamental aim of this democracy."

³¹ See note 29 *supra*.

³² *Sweeney v. State Board of Public Assistance*, 36 F. Supp. 171, 174 (M.D.Pa. 1940).

