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Family Caps Threaten Women and Their Children

Jennifer S. Madden†

The public’s image of the welfare system is guided by societal constructions of the “deserving” and “undeserving” recipients of public aid. Those whom society deems worthy of public aid include the elderly, veterans, and the disabled, while single women with children are viewed as burdens on an already overloaded system. One part of the welfare system, Aid to Families with Dependent Children (“AFDC”), significantly affects single women with children. Although the public mistakenly assumes that most of the AFDC recipients are African-American women, Caucasians and African Americans make up almost equal percentages of the AFDC recipient pool.¹

One thing that these women have in common, however, is their status as poor women who are stereotyped by society as lazy and parasitic. Influenced by these stereotypes, society finds restricting their AFDC benefits easy and justifiable.

There has been a movement over the past decade to reform welfare in response to society’s pressure to curb taxes for unnecessary expenditures and its growing hostility toward the recipients themselves. The resulting U.S. government response has included offering states a variety of methods, or “waivers,” to circumvent federal regulations while maintaining their federal funding for welfare. This waiver process has been at the center of various lawsuits.

One particular kind of waiver, the “family cap,” targets women on AFDC who have additional children while receiving AFDC benefits. States put caps on the payments made to such families, so that mothers who have additional children do not receive additional money. Family caps are the focus of much controversy, as critics insist they are only a temporary remedy to a larger problem. Understanding family caps includes a discussion of the motivations behind such waivers, the effect that they have on eco-

¹ In 1991, African Americans made up 38.8% of AFDC families and Caucasians made up 38.1%. U.S. DEP’T HEALTH & HUMAN SERVICES ADMIN. FOR CHILDREN & FAM., CHARACTERISTICS & FINANCIAL CIRCUMSTANCES OF AFDC RECIPIENTS FY 1991, at 28 [hereinafter CHARACTERISTICS].
nominally disadvantaged women, and suggestions for how we can react to a system which discriminates against women for being mothers.

I. BACKGROUND

Because family caps are encompassed by the larger system of waivers, an understanding of waiver requirements in general is necessary to an understanding of the family cap. The AFDC program is administered by each state under the supervision of the federal Department of Health and Human Services. Under this cooperative scheme, states must notify the federal government of their plans to ensure that their programs comply with federal regulations. States are allowed to “waive” out of federal regulations through “any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives [of the act].” As the statute indicates, these waivers are intended for projects that are “experimental” in nature. AFDC recipients are involuntarily subjected to state “experiments,” which may or may not achieve their desired effect.

In the 1990s, instead of reforming welfare on a systemwide level, President Bush encouraged states to apply for waivers to “promote experiments with welfare reform.” As a result, waivers have been approved in large numbers and with great speed. This sends a message that the federal government wants to relieve itself of the regulatory burden of AFDC programs. The government wants the states to assume more responsibility, even at the expense of the population which is supposed to be served by such regulation.

Examples of waivers that have been approved in California include the work incentive program, which encourages recipients to work and reduces their benefits in the process. Recipients keep more of their earned income but receive a cut in their AFDC incomes. Other waivers deny recipients AFDC benefits until they have been in the state for at least a year. This restricts the benefits of people who the agency believes come to California to receive higher benefits than those available in their home state. Family caps, which are the focus of this piece, are another form of waiver.

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3 Id. at 742.
5 Bennett & Sullivan, supra note 2, at 742.
6 Id. at 743.
7 See, e.g., Beno v. Shalala, 30 F.3d 1057 (9th Cir. 1994).
II. FAMILY CAPS: A BAND-AID SOLUTION

Family caps are those waivers which put a limit on benefits available to a family, despite an increase in the number of children in the family while the mother is on AFDC. The costs of feeding, clothing, and providing for a child are extensive. Although the thought of denying a family additional money for additional children seems unjust, the government has managed to rationalize the family caps, citing with the need to cut incentives for having more children and the public’s unwillingness to support welfare programs. While family caps may temporarily reduce the costs of providing benefits, they do not address the deeper issue of why these women are poor and why they lack the training and child care resources necessary for them to enter the workforce.

Opponents raise several arguments against family caps. The statute governing the waiver projects contains language that suggests a family cap waiver is not allowable:

In order to permit the States to achieve more efficient and effective use of funds for public assistance, to reduce dependency, and to improve the living conditions and increase the incomes of individuals who are recipients of public assistance . . . [any state may] establish and conduct not more than three demonstration projects.\(^8\)

Thus, any approved project should, as the statute states, “improve” the living conditions of the recipients and “increase” their total incomes. But a project that does not allow for monetary increases as the number of children in a family increases is directly contrary to these goals.

Other sections of the statute state that participation in such projects should be mandatory for recipients and that such projects “must be designed to improve the financial well-being of children . . . [and may not] have the effect of disadvantaging children in need of support.”\(^9\) Putting a cap on benefits regardless of family size obviously violates these aims and clearly discriminates against single women because most of the families on AFDC are composed of single women and their children.\(^10\) Common sense dictates that a family of three cannot live on a budget for a family of two, and thus children in this scenario will be negatively impacted by the benefit cutoff. Nevertheless, the Department of Health and Human Services continues to approve such waivers and jeopardize the status of women and their families.

One New Jersey case is the focal point of the family cap controversy. \(C.K. v. Shalala^{11}\) is a class action involving Legal Services of New Jersey,


\(^{9\text{ }}\)42 U.S.C. § 1315(c)(1)-(2) (1988).

\(^{10\text{ }}\)Single women headed 71% of families on AFDC in 1991. \textit{Characteristics, supra} note 1, at 2-5.

the New Jersey ACLU and the NOW Legal Defense and Education Fund. This suit claims that the family cap, or “child exclusion,” violates the New Jersey Family Development Act as well as the federal and state constitution. Opponents of the family cap also argue that the enactment of the New Jersey waiver violates the right to equal treatment. Based on the U.S. Supreme Court’s decision in Plyler v. Doe, where the court held that education could not be denied to children based on their parents’ illegal alien status, one could argue that children should not suffer for their parents’ behavior—in this case having additional children while on AFDC. In the words of the Plyler court, “legislation directing the onus of a parent’s misconduct against [her] children does not comport with fundamental conceptions of justice.”

III. SOLUTIONS & CONCLUSIONS

The issue of waivers is especially critical at a time when our political leaders have declared a war on minorities and women with the Republican Contract With America. Part of this “contract” includes the Personal Responsibility Act which expands the concept of family caps to mothers who are minors and/or those who have not yet established paternity. Welfare advocates fear that more reform that will limit benefits and educational opportunities to AFDC recipients is on the way.

In her recent testimony before the House of Representatives, Martha F. Davis, NOW senior staff attorney, made recommendations as to how the federal government can address public comments concerning the waiver system. She stated that the federal government needs to scrutinize states’ proposals to ensure that they qualify under the statute. If the aim of the statute is to ensure the quality of life for women with children, then the family caps go against this aim. She also stated that the waivers should be closely monitored once they are approved to ensure that states are complying with the statute’s guidelines.

In closing, advocates for low-income women must scrutinize the waiver process and exert pressure upon the agencies and officials who implement and approve such projects. Advocates must critique the arguments that insist women have additional children to ensure a larger AFDC

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12 AFDC Waiver Demonstration Programs: Hearings Before the Subcomm. on Human Resources and Intergovernmental Relations of the House Comm. on Gov’t Operations (Sept. 29, 1994) [hereinafter Hearings] (testimony of Martha F. Davis, Senior Staff Attorney, NOW Legal Defense and Education Fund).
13 Id.
14 Id.
16 Id. at 220.
18 Hearings, supra note 12.
19 Id.
check. Society needs to address the underlying causes of poverty and not blame the recipients of an uncaring system for their lack of job training or choice to have more children. It must address this issue not with disdain and contempt for the victims, but with a motivation to correct the flaws in a system which continues to view women and their children as "undeserving" poor.