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Working with Welfare: Can Single Mothers Manage?

Elspeth K. Deily†

An unsure and risky future is ahead for many poor mothers and children. In August, Aid to Families with Dependent Children ("AFDC"), was replaced by the Personal Responsibility and Work Opportunity Reconciliation Welfare Act of 1996 ("Welfare Act"). Marking a fundamental shift from the former system, the Welfare Act provides each state with a block grant and wide latitude in determining to whom and how to provide welfare. In 1996, approximately 4.6 million families received welfare in an average month, and 89% of the families were headed by a single mother. Of the families on welfare, approximately 37% were White, 36% were African-American, 20% were Latino, 3% were Asian-American and 1% were Native American. As a result, the burden of the changes initiated by the Welfare Act will fall disproportionately on single mothers of color.

The linchpin to the new legislation is encouraging self-sufficiency through work requirements. Assuming this is a desirable goal, it is likely to be impeded by the many obstacles facing single mothers trying to leave poverty. In this article, I will first briefly review select provisions of the Welfare Act. Next, I will look at the problems of job availability and child care in the welfare-to-work program. I will end with some observations on the validity of state sanctions against noncomplying welfare recipients.

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2. See § 103, 110 Stat. at 2124-27. For instance, states can experiment with delivery systems, such as using vouchers instead of cash or contracting with religious organizations to provide services. See id. at 2161-63.
3. See STAFF OF HOUSE COMM. ON WAYS AND MEANS, 104TH CONG., 2D SESS., 1996 GREENBOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 467 (Comm. Print 1996) [hereinafter GREENBOOK]. Approximately 13 million people received welfare in an average month, 8.8 million of whom were children.
5. See GREENBOOK, supra note 3, at 474. The remaining 2% were other or unknown. The most recent statistics are for 1994.
The Statute

Eligibility

States have broad discretion in deciding who will be eligible for welfare. The Welfare Act provides some guidelines, however, for states seeking to limit benefits. A state may limit recent residents' assistance to the equivalent of what they received in their previous state of residency. Denying benefits to legal immigrants is also allowed. The Welfare Act further provides that a recipient with a felony drug conviction will be permanently disqualified from welfare unless a state explicitly rejects this provision. In addition, the Welfare Act requires single teenage mothers to attend high school and live with a parent or in an adult-supervised home in order to qualify for assistance. The Welfare Act also redefines who will be considered a "disabled" child. The National Association of Child Advocates estimates that 200,000-300,000 disabled children will lose benefits under the new definitions.

Time Limits

The federally mandated maximum amount of time for which a recipient can receive welfare benefits is five years, but states may set an even shorter time limit. A state may exempt up to 20% of its welfare recipients from the five-year maximum for "special hardships."

Work Requirements

States are required to have 25% of their welfare recipients in jobs by the end of 1997 and 50% in jobs by 2002. After two years on welfare, a recipi-
ent must enter the workforce.\textsuperscript{16} If a state does not attain the requisite percentages, its block grant will be reduced.\textsuperscript{17} Likewise, a recipient who does not meet the work requirements can be sanctioned.\textsuperscript{18} States are given wide discretion in setting sanctions. A single mother may be exempted from work requirements if she is: (1) caring for a child under the age of one, (2) caring for a child under the age of six and cannot find child care, or (3) a teen parent in school.\textsuperscript{19} The maximum time limits still apply to an exempt mother.

\textbf{Child Care}

Although the demand for child care is likely to increase with more single mothers on welfare required to work, child care is no longer a guaranteed part of welfare.\textsuperscript{20} Where assistance is provided, the amount no longer needs to be based on market rates.\textsuperscript{21} The only requirement is that child care subsidies provide "equal access" between those families receiving child care services under the Welfare Act and those receiving similar services in the state or geographic area.\textsuperscript{22}

\textbf{Child Support}

Under the Welfare Act, states must follow strict guidelines for child support enforcement. Single mothers are required to cooperate in establishing paternity before qualifying for welfare.\textsuperscript{23} A state may define the cooperation requirement, but any violation must be sanctioned by at least a 25\% grant reduction.\textsuperscript{24} If a state fails to enforce noncooperation sanctions, its block grant will be reduced.\textsuperscript{25}

\textbf{Health Care}

Medicaid eligibility remains the same under the Welfare Act, but welfare recipients will no longer be enrolled automatically. They will have to apply separately.\textsuperscript{26}

\begin{itemize}
\item 16. \textit{See id.} at 2113. Unsubsidized private employment is not the only way to satisfy the work requirement. Allowable "work activities" also include subsidized public or private sector employment, on-the-job training, community services, and vocational educational training. \textit{See id.} at 2133.
\item 17. \textit{See id.} at 2142-43.
\item 18. \textit{See id.} at 2133.
\item 19. \textit{See id.} at 2131-33.
\item 21. \textit{See id.} at 2.
\item 22. \textit{See § 103, 110 Stat. at 2283 (codified as amended at 42 U.S.C. § 9858(c)(4)(A)).} States are required to show that child care assistance rates provide "equal access," but this term is not defined. \textit{See also California Child Care Resource \& Referral Network, supra note 20, at 2.}
\item 23. \textit{See § 103, 110 Stat. at 2135.}
\item 24. \textit{See id.}
\item 25. \textit{See id.} at 2143. A state may waive the cooperation requirement for victims of domestic violence. \textit{See also Vicki Turesky, Center for Law and Social Policy, Preliminary Analysis of Child Support-Related Provisions in Welfare Conference Bill 1 (1996).}
\item 26. \textit{See The National Association of Child Advocates, supra note 11, at xii.}
\end{itemize}
WELFARE-TO-WORK

As noted above, the linchpin of the Welfare Act is its welfare-to-work program. While the Welfare Act encourages the placement of welfare recipients into jobs, it "makes no distinctions between successful placements and those likely to fail, or between jobs paying below-poverty wages and those providing a humane standard of living." 27 Plagued by similar shortcomings, even the most successful welfare-to-work programs in the past have been mostly ineffectual. A study of one state's welfare-to-work program found that only 25% of workfare participants were employed and off welfare three years after entering the program, and 75% of those employed earned less than $5,000 per year. 28 While workfare generally provides some increase in family income, the increase typically results from working additional hours, and not from increased wages. 29

The successful workfare programs combine a broad range of employment activities, support services and adequate funding. 30 Employment activities include education, training, placement and continued counseling after job placement. Programs that increase work mandates without providing support, such as child care, transportation and continuing health care, have very poor outcomes. 31 Sufficient funding is also critical to success. 32 In light of the five-year lifetime limit for receiving benefits, perhaps the two most significant barriers single mothers face are the job market and adequate child care.

The Job Market

Most single mothers on welfare are unskilled, with little education. 33 As a result, the jobs available to welfare recipients are frequently low-paying and without the benefits necessary to support a family. 34 Well-paying stable jobs are critical to the success of welfare-to-work programs as earning more can help a mother leave welfare, while a drop in earnings can lead to entering welfare. 35

27. Id. at 65.
30. See WELFARE TO WORK, supra note 28.
31. See id.
32. See id.
33. Eighteen percent of single mothers receiving welfare attended some high school, 24.1% have a high school degree, 7.7% spent some time at college, and .5% have a college degree. See GREENBOOK, supra note 3, at 473.
34. See THE NATIONAL ASSOCIATION OF CHILD ADVOCATES, supra note 11, at 8.
35. See GREENBOOK, supra note 3, at 503-04. Fifteen percent of all welfare entries were due to a drop in earnings, while increased earnings accounted for 21% to 45% of all exits.
While some economists predict new job creation, the experience of some states suggests that providing jobs to the majority of welfare recipients who are unskilled will be a formidable task. New York is just one state that has had difficulty finding jobs for welfare recipients. Presently, only 20% of welfare recipients on Long Island are employed. In economically depressed states, the task of employing all welfare recipients seems near impossible. In Kentucky, the state is paying to move people from rural Appalachian mountain villages into the cities where a labor market exists. Mississippi is another state where there are few well-paying jobs. It is also the state with the largest percentage of African-American residents, highlighting the fear that single mothers of color may be hurt most by the five-year lifetime limit on benefits.

The history of welfare-to-work programs suggests that unless states make workfare a meaningful placement, which can lead to increased skills and eventually sustained employment, the programs are likely to fail. Unfortunately, the struggles of states such as Kentucky and Mississippi demonstrate that states may be hard pressed to provide successful placements. The Welfare Act may result in single mothers losing benefits without having adequate salaries or job security to ensure their continued well-being.

Child Care

The Act's failure to guarantee child care could effectively prohibit many single mothers from working, thus leading to a reduction or cancellation of welfare benefits. The Office of Management and Budget found that at a time when child care is most needed, federal child care funds may fall short by $2.4 billion. The General Accounting Office estimates that fully subsidized child care increases the percentage of poor mothers who work from 29% to 44%. Moreover, when child care is subsidized, single mothers can better afford to work at low wage jobs. Child care costs usually account for a very large part of a poor family's income—approximately 27% as compared to 7% for families with incomes above poverty. Child care is imperative for single

38. See id.
41. See id.
42. See THE NATIONAL ASSOCIATION OF CHILD ADVOCATES, supra note 11, at 20. In the past, federal funds provided child care subsidies to welfare recipients and to the working poor unable to afford child care. See id. at 14-15.
44. See id.
mothers on welfare so that they can start working, and is equally important for low-income mothers so that they can continue working.

Some states have shown a commitment to child care. In Illinois, the state started paying child care subsidies directly to providers instead of reimbursing for costs, thus allowing working mothers to keep more of their earnings.45 As a result, Illinois saw a large increase in both the number of single mothers working and in the number moving off welfare.46 In Rhode Island, a recent statute guarantees child care support to any family below 185% of the federal poverty level.47 Thus, both welfare recipients and low-income working families will receive a subsidy. Culpepper County, Virginia is creating a state child care center to meet the need for infant care.48 Two counties in Wisconsin are respectively encouraging clients to exchange baby-sitting services and arranging after-school care with local churches.49 In the many states that have as yet failed to provide adequate child care, however, the Welfare Act may force children into foster care as their mothers face the impossible choice between staying home to care for their children or going to work to feed them.

Sanctions

Valerie Nelson, a single mother of three, asked to enroll in her state’s work program but was put on a waiting list. She finally received an orientation date when the program became mandatory but missed orientation twice because of sick children. Valerie was penalized and her benefits were cut from $707 to $595.50

Valerie’s story illustrates the devastating effects sanctions can have on a family. The Welfare Act gives states almost complete discretion over sanctions for any number of violations, from not fulfilling the work requirement to not “cooperating” in finding a father in default on child support.51 A common sanction is for a state to reduce benefits for a certain number of months,52 but some states have gone further. Wisconsin has “strengthened” its sanctions by also reducing the number of food stamps.53 For a first sanction in Virginia, a family’s entire welfare benefit is terminated for one month
or until compliance occurs, whichever is longer. Virginia has also eliminated its "conciliation" process whereby a recipient's benefits could be restored through a showing of compliance or intent to comply. In Indiana, a third sanction terminates benefits for thirty-six months, "regardless of when the [recipient] rectifies the noncompliance." The sanctioned time still applies toward the five-year maximum lifetime limit. In some states, recipients may lose their hearing rights during an appeal of the sanctions. This will depend on whether a sanction suspending benefits is considered enough of a termination to trigger due process.

Sanctions as drastic as those imposed in Virginia, where the state terminates the entire family's benefits for a period of time for noncompliance, may be open to constitutional challenge on the ground that a parent's "guilt" cannot justify the punishment of an "innocent" child. When the Supreme Court struck down a law denying education to the children of illegal immigrants, it stated: "Even if the State found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice." The Court applied a rational basis test and found that it was not rational to punish children who could "affect neither their parents' conduct nor their own status."

A challenge to a state's sanctioning system appears to turn on whether the sanctions are seen as punishing children or as affecting the family as a whole. A state decision to fund some families more than others was held constitutional in *Dandridge v. Williams*. There, the Court held that a family cap on welfare was constitutional in part because it encouraged welfare recipients to work. Thus, if a sanction is seen as encouraging work through the expedient of not funding certain families (i.e. families with a noncomplying parent), then it is arguably valid constitutionally.

Regardless of the potential success of challenges to some states' sanctioning schemes, the sanctions that currently exist pose a severe threat to the well-being of single mothers and their children. Since states have discretion in defining noncompliance, a single mother can be penalized for child-related problems that are a daily occurrence. Valerie Nelson's noncompliance was staying home with a sick child. A mother could also be sanctioned for not being able to find child care, if the state decides she did not make a "good

54. See id.
55. See id.
56. Id.
57. See id.
59. See WELFARE WAIVERS IMPLEMENTATION, supra note 48.
61. Id. (quoting Trimble v. Gordon, 430 U.S. 762, 770 (1977)).
63. See id. at 486-87. Since the state program was rationally related to encouraging work and was free from invidious discrimination, it passed constitutional muster.
faith” effort, or she could be sanctioned for failing to ensure that her children attend school. The wide variety of reasons for which women on welfare may be sanctioned, and the severity of the sanctions that are imposed, suggest that the Welfare Act will inflict lasting damage on many poor women and their children.

**Conclusion**

The Welfare Act’s success depends on the viability of its welfare-to-work program. As this article has set out, such programs are unlikely to provide poor women with an adequate substitute for their welfare benefits within the federally mandated five-year lifetime limit. Two major problems are the lack of well-paying and stable jobs for unskilled workers, and the lack of affordable and adequate child care. Further, financially-strapped states’ broad discretion over their sanctioning schemes suggests that poor women and their children may suffer egregious deprivations long before the five-year limit runs out. Absent an amendment or repeal of the Welfare Act, single mothers on welfare will be protected best in states that adopt adequate employment activities, support services and the least-punitive sanctioning schemes possible.

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64. See § 103, 110 Stat. at 2131-33.
65. See id. at 2127-28.