

Public Benefits: Beyond the Usual Suspects

By Marcia Henry and Katina Ancar

While Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and food stamps are the 800-pound gorillas of public benefit programs, other more narrowly tailored programs also can be important resources for low-income clients.¹ As with any public benefits program, sorting eligibility criteria into three categories may help you understand the program's eligibility framework:

- **Categorical eligibility:** Is just anyone potentially eligible for this benefit, or is it restricted to a certain category of people? TANF benefits, for example, are restricted to “households with children.”
- **Financial eligibility:** What are the limits on recipients' income and assets?
- **Conduct eligibility:** Is a person required to “do” anything (as opposed to “be” in a certain category) to receive benefits? The most common conduct requirements in public benefit programs relate to work, but others exist as well (e.g., immu-

nization and school attendance requirements in state TANF programs).

The following are some of the smaller public benefit programs of which advocates should be aware in order to advise their clients fully.

Adoption Assistance

Congress enacted the Adoption Assistance Program as Title IV-E of the Social Security Act to increase the adoption rate for children with “special needs.”² The program provides cash payments to help adoptive parents defray high costs of caring for special-needs children, usually until the children turn 18. A child with special needs may be eligible if the child satisfies any of the following three requirements:

- The child meets the Aid to Families with Dependent Children (AFDC) eligibility requirements in effect on July 16, 1996; the child must meet these requirements both at the time of removal from the birth home and when the adoption petition was

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¹ The operating definition of “public benefits” here is a transfer of income or purchasing power from the government to an individual on the basis of need.

² Some states have their own state-funded adoption assistance programs that may include children not covered by the federal program. Many state programs offer less generous benefits than the federal program.

filed.³ To be eligible for the Adoption Assistance Program as an AFDC-eligible child, a child placed into foster care must have been removed from the family home pursuant to a judge's determination that remaining in the home would be contrary to the child's best interest. If the child entered the court's jurisdiction through a voluntary placement agreement, the child must actually receive foster care payments while in foster care.⁴ Children relinquished to private, nonprofit adoption agencies meet this requirement if there is a subsequent judicial determination that leaving the birth home was in the child's best interest.⁵ Children relinquished directly to relatives for adoption are not eligible for federal adoption assistance.⁶

- The child is eligible for SSI benefits, in which case the child need not meet the removal requirements necessary for AFDC children.

- The child is the child of a foster child whose expenses are covered by the minor parent's foster care maintenance payments.⁷

A special-needs child is one who cannot be reunified with a parent and who possesses characteristics that make it "reasonable to conclude that such child cannot be placed" successfully for adoption unless the adoptive parents receive additional financial or medical assistance.⁸ These

characteristics may include ethnicity, age, membership in a sibling group, medical condition, or physical, mental, or emotional disability. The state must make reasonable efforts to place the child without providing assistance unless doing so would be contrary to the child's best interest.

Several types of assistance are available:

- cash or "maintenance" payments that may equal, but not exceed, the amount of maintenance payment the child would have received in foster care.⁹

- reimbursement to adoptive parents of nonrecurring adoption expenses, including "reasonable and necessary adoption fees, court costs, attorney fees" and other onetime expenses related to the adoption, up to \$2,000.¹⁰

- Medicaid coverage.¹¹

- individualized services, ranging from special services traditionally offered to a child in foster care to structural changes to a home. The family may negotiate services to meet the child's anticipated as well as current needs.

Children with mental or physical disabilities may receive adoption assistance until the age of 21.¹² The assistance—including cash payments and individualized services—that the child receives must be memorialized in a written adoption agreement negotiated between the agency

³ 42 U.S.C. §§ 673(a)(2)(A), 672(a)(2)(C) (2001); HHS (U.S. Department of Health and Human Services), Administration on Children, Youth, and Families, Children's Bureau, Policy Announcement 01-01, Title IV-E Adoption Assistance (Eligibility and Ancillary Policies) 3 (Jan. 23, 2001) [hereinafter ACYF-CB-PA-01-01]. The child may also be eligible if a previous adoption fails (the child's previous connection to Aid to Families with Dependent Children (AFDC) is essentially reinstated) or if the child's parent is eligible for AFDC. Adoption assistance is an example of why, even though Congress abolished the AFDC program when it passed welfare reform in 1996, advocates still should know something about AFDC.

⁴ 42 U.S.C. § 673(a)(2)(A)(i).

⁵ HHS, CHILD WELFARE POLICY MANUAL § 8.2B.13.

⁶ ACYF-CB-PA-01-01.

⁷ 42 U.S.C. § 673(a)(2)(A)(iii).

⁸ *Id.* § 673(c)(2).

⁹ *Id.* § 673(a)(3).

¹⁰ *Id.* § 673(a)(1)(B)(i), (a)(6)(A); ACYF-CB-PA-01-01. Some states may not offer reimbursement for the full amount of expenses or impose a lower cap.

¹¹ 45 C.F.R. § 1356.40(b)(3) (2002). Even if the Adoption Assistance Program is calculated at \$0, a child may continue to be eligible for Medicaid coverage.

¹² 42 U.S.C. § 673(a)(4)(A).

and the potential adoptive parents.¹³ It must be signed before the adoption is made final.¹⁴

In determining a child's *eligibility* for adoption assistance, the child welfare agency must assess only the child's circumstances, not the adoptive parents' income.¹⁵ In determining the *amount* of adoption assistance, however, the agency may consider the adoptive parents' resources.¹⁶ If the agency concludes that the adoptive parents are financially able to provide adequate care for the child, the amount of adoption assistance may be minimal.¹⁷

The agency must review the child's needs periodically.¹⁸ However, once the amount of assistance is determined, payments may not be lowered or terminated unless (1) the adoptive parents are no longer legally responsible for the child's support; (2) the agency finds that the child is no longer supported by the parents; (3) the payments are more than the child would have received in foster care; (4) the child reaches age 18 and is not mentally or emotionally disabled; or (5) the parents agree to reduced payments.¹⁹ However, adoption assistance payments may be increased upon a showing of need or if the child develops an extraordinary need that was not anticipated when the agreement was negotiated.²⁰

Adoptive parents may request a fair hearing to appeal a denial, termination, or decrease of adoption assistance pay-

ments. Six reasons are formally recognized as grounds for a hearing, but parents should appeal any incorrect eligibility determination.²¹

General Assistance

General assistance—also called general relief and home relief—has historically been the residual cash assistance program, that is, the only source of benefits, for people ineligible for programs such as TANF or SSI. It is state- or locally funded and administered. Some states have no program at all. In other states some counties provide general assistance, and others do not. The form of benefits varies as well; some general assistance programs give cash benefits while others offer only vouchers. In some counties the general assistance program may be a bus ticket out of the county. General assistance benefits may be limited to a certain number of months during the year or may be given only in emergencies rather than on a continuing basis. As a rule, the programs have strict work and other requirements (e.g., substance abuse treatment).

Some states have broad constitutional or statutory mandates that the state provide for the needs of the poor. In these jurisdictions some semblance of general assistance benefits must be available to poor individuals who are not eligible for federal benefit programs. In other jurisdictions, the state has discretion whether to offer any benefits at all.

¹³ *Id.* § 673(a)(3).

¹⁴ 45 C.F.R. § 1356.40(b)(1).

¹⁵ 42 U.S.C. § 673(a)(3); 45 C.F.R. § 1356.40(c).

¹⁶ 42 U.S.C. § 673(a)(3).

¹⁷ Children eligible for Supplemental Security Income (SSI) may be eligible for SSI benefits larger than the Adoption Assistance Program benefits. However, because SSI payments may be terminated for various reasons, adoptive parents should nonetheless apply for adoption assistance and negotiate a "deferred" adoption agreement. If SSI payments terminate, parents may request an Adoption Assistance Program redetermination and receive payments from the program.

¹⁸ 42 U.S.C. § 673(a)(3).

¹⁹ *Id.* § 673(a)(4); ACYF-CB-PA-01-01.

²⁰ ACYF-CB-PA-01-01.

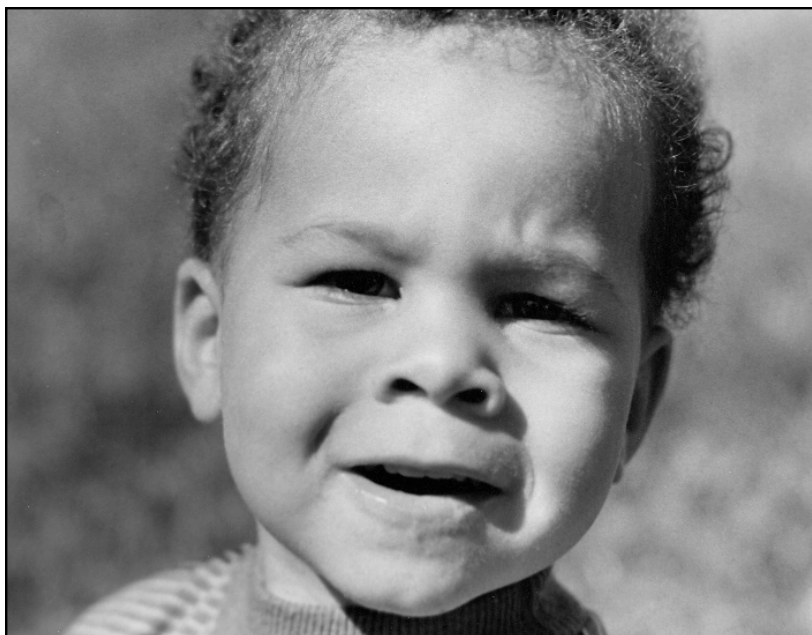
²¹ *Id.* These are that (1) the agency knew relevant information about the child but did not notify the adoptive parents before making the adoption final; (2) a means test was used to deny assistance; (3) the adoptive family believes the eligibility determination was incorrect; (4) the agency did not advise the adoptive parents of the availability of assistance; (5) payments were decreased against the parents' wishes; (6) the agency denied a needed increase in payments.

As the residual program, general assistance sometimes serves as an interim source of support for SSI applicants while their applications are being processed. In fact, many states and localities have entered with the Social Security Administration into agreements under which they are reimbursed for such interim general assistance benefits out of any retroactive SSI benefit award. General assistance may take on greater importance as people with barriers to work reach their time limits for TANF benefits or are sanctioned off TANF. However, “[i]n only 12 states do current [general assistance] programs provide assistance to all low-income persons and families that fall through the gaps in the federal safety net.”²²

LIHEAP

The Low-Income Home Energy Assistance Program (LIHEAP) is a federal block grant that states administer to help low-income households pay for winter heating and, in some states, summer cooling.²³ Homeowners, renters, and some public and subsidized housing tenants may be eligible for benefits. As a rule, payment goes directly to the landlord’s fuel supplier, and the amount is credited against the family or individual’s rent. States also may use a portion of the block grant for weatherization programs.

Eligibility guidelines vary among states. Under federal law, the income of eligible households may not exceed 150 percent of the federal poverty level or 60 percent of the state median. Some states make recipients of cash assistance benefits categorically eligible for energy assistance. Benefits usually vary with household income and size and may also depend on housing type, fuel type, fuel prices, weather conditions, or actual energy consumption. Local welfare offices or community action agencies often admin-



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ister the program, and outreach is often insufficient.

For more information, contact the National Consumer Law Center, 77 Summer Street, 10th Floor, Boston, MA 02110; 617.542.801; www.nclc.org. Information is available also through the LIHEAP Clearinghouse, www.ncat.org/liheap, operated by the National Center for Appropriate Technology.

Veterans’ Benefits

Veterans and their dependents may be eligible for cash assistance and other benefits such as health care and assistance in obtaining secondary education.²⁴ Generally the veteran must have left military service under conditions “other than dishonorable.”

Disability compensation is available for veterans disabled by injury or disease incurred or aggravated during active military service. Monthly compensation in 2002 ranges from \$103 for a 10 percent disability to \$2,163 for a 100 percent dis-

²² CORI E. UCCELLO & L. JEROME GALLAGHER, URBAN INST., GENERAL ASSISTANCE PROGRAMS: THE STATE-BASED PART OF THE SAFETY NET 1 (2002), available at http://newfederalism.urban.org/html/anf_a4.htm.

²³ 42 U.S.C. §§ 8621–8629 (2001). The Low-Income Home Energy Assistance Act, passed in 1981, consolidated a number of temporary energy assistance statutes.

²⁴ See 38 U.S.C. §§ 1101–1163 (compensation for service-connected disability or death), 1301–1323 (dependency and indemnity compensation for service-connected death), 1501–1562 (pension for nonservice-connected disability or death).

ability. A veteran whose disability is rated at least 30 percent is entitled to an additional allowance for dependents; the number of dependents and the degree of disability determine the additional amount.

Pension benefits may be available for veterans who meet service and income requirements and are over 65 or permanently and totally disabled. Countable income reduces benefits dollar for dollar; for 2002, the income limit for a single veteran with no dependents is \$9,556; higher benefits are available for veterans who have dependents, are housebound, or who need regular aid and attendance.

Survivor benefits (dependency and indemnity compensation) may be available for surviving unmarried spouses, unmarried children under 18 (or under 23 and in an approved education program), or low-income parents of veterans whose death was related to military service or to a disability compensable by the Veterans

Administration. Surviving spouses of veterans who died on or after January 1, 1993, receive \$935 per month in 2002, with additional benefits available for dependent children and in other circumstances. If the veteran died before January 1, 1993, the surviving spouse may receive a higher benefit, depending on the veteran's pay grade. A *death pension* based on need may be available for surviving spouses and unmarried children of deceased veterans with wartime service.

For more information on veterans' benefits, contact the National Veterans Legal Services Project, 2001 S St. NW, Suite 610, Washington, DC 20009; 202.265.8305; www.nvlsp.org. See also *FEDERAL BENEFITS FOR VETERANS AND DEPENDENTS (2002)* (a 118-page book published by the Department of Veterans Affairs), available at www.va.gov/pubaff/fedben/Fedben.pdf or in hard copy for \$5.00 from the Government Printing Office.