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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, SS.

SUPERIOR COURT DEPARTMENT / o / z w ?
GREENFIELD DIVISION
Civil Action No. 94-
(48pp.)

RECEIVED
MAY 10 1994

HENRY HUNTER,
Plaintiff

v.

JOSEPH GALLANT, in his capacity as
Commissioner of the Department
of Public Welfare,
Defendant

CLASS ACTION
COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiff brings this action to challenge the defendant's decision terminating his Aid to Families with Dependent Children (AFDC) benefits while his daughter was temporarily out of the home and he continued to exercise care and control for her. The defendant's decision was based solely on the fact that foster care payments were being made to the foster family during his daughter's temporary absence.

2. The agency decision that a parent may not continue to qualify for AFDC while his/her child is temporarily in foster care, even when the parent continues to exercise care and control, violates state and federal law, and is otherwise not supported by substantial evidence. Plaintiff asks this Court to reverse the agency hearing decision and order that his AFDC benefits be restored.

3. This action is also brought by Mr. Hunter on behalf of himself and all other grantee-relatives in the Commonwealth who have continued or will continue to exercise care and

control of their dependent child or children during a period of temporary absence from the home, and whose AFDC benefits have been or will be reduced, terminated or denied solely because the child or children are temporarily in foster care and receiving foster care payments.

II. JURISDICTION

4. Jurisdiction is conferred upon this Court by M.G.L. c. 30A, §14, which provides for judicial review of administrative hearing decisions, by M.G.L. c. 23 1 A, §31 and 2, which provide for declaratory relief, and by M.G.L. c. 212, §4, which provides for the general jurisdiction of this Court.

III. PARTIES

5. Plaintiff Henry Hunter is an adult citizen of Franklin County. He resides at 14 Oak Courts in Greenfield, Massachusetts.

6. Defendant Joseph Gallant is the Commissioner of the Massachusetts Department of Public Welfare. Pursuant to M.G.L. c. 18, he is responsible for the direction, supervision and control of the Department and the programs it administers, including the AFDC Program. His principal place of business is located at 600 Washington Street, Boston, Massachusetts 02 111.

Iv. CLASS ALLEGATIONS

7. Henry Hunter brings this action on his own behalf and on behalf of all others similarly situated, pursuant to the provisions of M.R.C.P. 23. Mr. Hunter seeks to represent the class consisting of all grantee-relatives of dependent children, as defined at 106 C.M.R. 9§301.600(M), 303.200, and 303.210, who exercise care and control over their temporarily absent children pursuant to 106 C.M.R. §303.230, for whom AFDC benefits have been or will be denied, reduced or terminated on the sole grounds that foster care payments are being made on behalf of the dependent children.

8. Joinder of the class is impracticable; there are questions of law or fact common to the class; the claims of the class representative are typical of the claims of the class; and the class representative will fairly and adequately protect the interests of the class.

9. Questions of law or fact common to the class predominate over any questions affecting only individual class members, and a class action is superior to other available methods for adjudication of the controversy.

V. FACTS

A. THE AFDC PROGRAM

10. The AFDC program is a joint federal-state public assistance program designed to provide financial assistance to dependent children deprived of care and support from one or both of the child's natural or adoptive parents, and to such children's grantee-relatives.

11. The purpose of the AFDC program is to encourage the care of dependent children by their parents or relatives by providing financial assistance to needy children and their parents or relatives. 42 U.S.C. 9601 et seq.

12. The AFDC program is jointly funded and administered by the federal and state governments, pursuant to Title IV-A of the Social Security Act. 42 U.S.C. §602 et seq.

13. The Commonwealth's AFDC program is administered under principles of "cooperative federalism" whereby Massachusetts, through its decision to maintain an AFDC program and its acceptance of federal funds to provide assistance to eligible applicants, agrees to and must comply with the requirements of Title IV-A and regulations promulgated under the authority of Title IV-A by the United States Department of Health and Human Services. 42 U.S.C. §9602.

14. Children and their grantee-relatives qualify for AFDC benefits if they fulfill both the categorical and financial requirements of the AFDC program.

15. In order to meet the categorical requirements of the AFDC program, there must be a dependent, needy child who is living in the home of the grantee-relative. 106 C.M.R. §303.210.

16. A dependent, needy child is one who is deprived of parental support or care by reason of the death, continued absence, incapacity or unemployment of a parent. 106 C.M.R. §303.210.

17. A grantee-relative is the parent, aunt, uncle, grandparent, or other close relative who resides with the dependent, needy child. 106 C.M.R. §303.200.

18. A grantee-relative is eligible to receive AFDC benefits for a dependent child who is temporarily absent from the home so long as the relative continues to exercise care and control of the child. 106 C.M.R. §303.230.

19. It is the defendant's policy and practice to reduce AFDC benefits to an otherwise eligible grantee-relative whose dependent children are temporarily out of the home and receiving foster care payments, even when the grantee-relative exercises care and control of the children.

B. THE FOSTER CARE PROGRAM

20. Foster care maintenance payments are made to those persons who provide foster care to a dependent, needy child who has been removed from the home of his or her parents or has been voluntarily placed by his or her parents. 42 U.S.C. §672(a).

21. In order to receive foster care maintenance payments a child must be a needy, dependent child as defined in the AFDC program at 42 U.S.C. §606(a). 42 U.S.C. §672(a).

22. Foster care maintenance payments are to be used on behalf of and solely for the benefit of the foster care child.

23. As a matter of both federal and state law, foster care maintenance payments are excluded as income for purposes of determining financial eligibility or the amount of AFDC for a categorically eligible caretaker relative. 42 U.S.C. §509(a), 106 C.M.R. §304.250(A)(2).

B. HENRY HUNTER

20. Henry Hunter is a single parent who lives with his four year old daughter, Bianca.

21. Mr. Hunter has been Bianca's sole caretaker since she was four months old.

22. Mr. Hunter is also a recovering alcoholic who has successfully completed an alcohol rehabilitation program.

23. Mr. Hunter was sober for four years prior to January 23, 1993. On that date, Mr. Hunter used alcohol and then got into his car. He was involved in a one car accident.

24. He immediately sought help to regain his sobriety and remain sober. On February 15, 1994, he entered a residential alcohol rehabilitation program, which he successfully completed on February 28, 1993.

25. Mr. Hunter has successfully remained alcohol-free since the January 23, 1993 incident, over a year ago.

26. On January 27, 1993, Mr. Hunter signed a voluntary agreement granting to the Department of Social Services (DSS) temporary custody of Bianca, so that he could enter the residential alcohol treatment program. Bianca was temporarily placed with a nearby foster family so that regular contact could continue during his recovery. He personally brought Bianca to the foster family and got her settled before entering his treatment program.

27. Mr. Hunter had regular visits with his daughter from the very beginning of the temporary placement. Mr. Hunter gave Bianca a birthday party on February 14, 1993 and then entered the residential treatment program the following day.

28. From the outset, the DSS service plan indicated that the goal was to reunify Bianca with her father as soon as he demonstrated that he could remain free of alcohol.

29. Upon his release from the residential program on February 28, 1993, Mr. Hunter immediately resumed regular visits with Bianca. These visits occurred several afternoons per week at his home.

30. Beginning in March, 1993, Bianca was spending overnights with her father. By April 1993, Bianca was spending four days/nights per week at her father's home.

31. During the period that Bianca was temporarily out of the home, Mr. Hunter continued to maintain a separate bedroom for her. He bought her clothing and sneakers that she needed, bore the expense of her birthday party and presents, paid for haircuts and bought all of her food when she visited.

32. He continued to be involved in all aspects of her care, including her daycare and her medical treatment. He personally took her to all doctor and dental appointments.

33. Based on the substantial steps toward reunification that had taken place, DSS agreed to return the child to Mr. Hunter on a full-time basis on May 7, 1993, a week ahead of schedule. Bianca has remained in the home since her return date.

34. By notice dated March 13, 1994, the Department informed Mr. Hunter that his AFDC would be terminated effective April 4, 1993 "because there is no eligible child living with you." The regulatory citations given in support of this action were 106 C.M.R. @303.100, 303.230, 303.300, and 303.320.

35. Mr. Hunter timely appealed the proposed termination of AFDC. However, before a hearing could be scheduled, Bianca was back in the home.

36. The Department determined that Mr. Hunter had been overpaid for the AFDC benefits that he received from April 5, 1994 through May 6, 1994, the date his daughter returned to the home.

37. A hearing was held before Diane Miller, a Welfare Appeals Referee, on September 13, 1994.

38. At that hearing, the Department worker testified that he had never requested verifications or questioned Mr. Hunter concerning the amount of care and control that Mr. Hunter exercised during his daughter's temporary absence from the home.

39. A decision was issued on September 30, 1993 finding that Mr. Hunter had not established his eligibility for AFDC during the period April 4 to May 6, 1993. The decision was based on Bianca being the recipient of foster care payments and the fact that Mr. Hunter had failed to submit verification that he exercised care and control.

40. By letter dated November 5, 1993, the defendant granted Mr. Hunter's request to remand the case to the welfare appeals referee in order to accept verification as to whether Mr. Hunter exercised care and control during Bianca's absence.

41. A remanded hearing was held on December 28, 1994. At that hearing, Mr. Hunter presented testimony and documentary evidence establishing that he exercised substantial care and control of Bianca during her temporary foster care placement.

42. On January 31, 1994, a new decision was issued affirming the Department's denial of AFDC benefits to Mr. Hunter during the period April 4, 1993 through May 6, 1993.

43. The referee made no findings and did not rule on the issue of care and control. Instead, she denied Mr. Hunter's appeal and ordered that he repay the AFDC benefits on the basis that Bianca could not be included in the AFDC unit because she was in foster care.

44. The January 31, 1994 decision is the final decision of the Department.

D. THE CLASS

45. It is the defendant's policy and practice to deny AFDC benefits to an otherwise eligible grantee-relative whose dependent children are temporarily out of the home and receiving foster care payments, even when the grantee-relative exercises care and control over the children.

46. The named plaintiff and those he seeks to represent have been harmed by the defendant's practice of reducing or denying them AFDC benefits.

V. LEGAL CLAIMS

A. CLAIMS OF HENRY HUNTER

**COUNT ONE
VIOLATION OF M.G.L. c. 30A, 814(7)(e)**

47. The Department's hearing decision in Mr. Hunter's case is based upon an error of law, unsupported by substantial evidence, arbitrary and capricious and otherwise not in accordance with the law and, pursuant to M.G.L. c. 30A, §14(7)(e), it must be set aside.

B. CLAIMS OF HENRY HUNTER AND THE CLASS

**COUNT TWO
VIOLATION OF FEDERAL LAW REQUIRING PROVISION OF AFDC
TO FAMILIES WITH CHILDREN WHO ARE TEMPORARILY ABSENT
FROM THEIR HOMES**

48. Pursuant to the provisions of 45 C.F.R. §233.90(c)(v)(B), a dependent child who is temporarily absent from the home is considered to be living with his grantee-relative so long as the relative exercises responsibility for the care and control of the child.

49. The Department's determination that Mr. Hunter and the class he seeks to represent are ineligible for AFDC benefits despite the fact that they exercise care and control of their temporarily absent children violates 45 C.F.R. §23390(c)(v)(B).

COUNT THREE

**VIOLATION OF FEDERAL LAW GOVERNING
AFDC AND FOSTER CARE.**

50. Pursuant to the provisions of 42 U.S.C. §601, the fundamental purpose of the AFDC program is to encourage the care of dependent children in their homes and to help maintain and strengthen family life.

51. In order to further the goals of the program' AFDC benefits are made available to parents of dependent children who are temporarily absent from their homes, so that the parents can maintain close contact with the children and enable the family's reunification. 106 C.M.R. §303.230; 45 C.F.R. §23390(c)(v)(B).

52. Pursuant to the provisions of 42 U.S.C. §609(a), the income and resources of a child for whom foster care payments are made are excluded from the determination of the family's benefit amount.

53. For parents with a dependent child who is temporarily absent from the home and receiving foster care, the source and amount of the funds used to support the child in foster care have no impact on the parents' need or ability to maintain contact with the child and work toward the family's reunification.

54. The defendant's interpretation of 42 U.S.C. §609(a) deprives parents of temporarily absent children of the ability to maintain contact with them and a home Nor them, thereby violating and defeating the purposes and policies of 42 U.S.C. §§601 and 609(a) and 45 C.F.R. §23390(c)(v)(B).

**COUNT FOUR
VIOLATION OF FEDERAL AFDC STATUTE**

55. Children who receive foster care maintenance payments are needy, dependent children within the meaning of 42 U.S.C. §600(a).

56. Foster care maintenance payments made on behalf of needy, dependent children must be disregarded for purposes of determining AFDC benefits for the remaining family members. 42 U.S.C. §609.

57. Defendant's denial of AFDC benefits to the named plaintiff and those she seeks to represent who are caretaker relatives of children who receive foster care payments and have no other needy, dependent children in the household violates 42 U.S.C. §§601,602(a)(10)(A) and 606(b) and the regulations promulgated thereunder.

COUNT FIVE

ARBITRARY AND INEQUITABLE TREATMENT

58. 45 C.F.R. §233.10(a)(1) and 233.10(a)(1)(iv) require the defendant to establish eligibility criteria in a manner that does not exclude individuals on an arbitrary basis or which result in inequitable treatment of individuals and further requires defendant to apply eligibility conditions on a consistent and equitable basis.

59. By denying plaintiffs and members of the plaintiff class AFDC benefits as caretaker relatives of dependent children receiving foster care maintenance payments while allowing AFDC benefits for the caretaker relatives of dependent children receiving SSI benefits, the defendant has created eligibility conditions which are both arbitrary and inequitable.

60. This practice therefore violate 45 C.F.R. §233.10(a)(1) and 233.10(a)(1)(iv), and states a cause of action under 42 U.S.C. §1983 and M.G.L. ch. 23 1A, §2.

COUNT SIX
VIOLATION OF STATE AFDC REGULATIONS
REQUIRING PROVISION OF AFDC TO FAMILIES WITH
CHILDREN WHO ARE TEMPORARILY ABSENT.

61. Pursuant to the provisions of 106 C.M.R. §303.230, a dependent child who is temporarily absent from her home is considered to be “living with” her grantee-relative if the relative exercises responsibility for the care and control of the child.

62. The Department’s action of denying reducing or terminating AFDC benefits to the class during periods that class members continue to exercise care and control of their temporarily absent children violates 106 C.M.R. §303.230.

COUNT SEVEN

VIOLATION OF STATE AFDC LAW REQUIRING
DEFENDANT TO OPERATE THE PROGRAM IN AN EQUITABLE MANNER

63. Defendant’s practice and policy of denying, reducing or terminating AFDC benefits to the class violates:

- a. M.G.L. c. 18, §2(a), which requires the Department to encourage the use of all available resources by needy families and children; and
- b. 106 C.M.R. §301.220, which requires that the Department determine eligibility and the amount of assistance on an objective and equitable basis and in accordance with federal law.

C. M.G.L. c. 18 §2(d), which requires the Department to “provide the range of public welfare financial assistance services on a fair just and equitable basis to all people in need of such services. ”

COUNT EIGHT
VIOLATION OF 42 U.S.C. 81983

64. The foregoing violations of rights guaranteed to the plaintiff% under federal law are also violations of 42 U. S.C. 5 1983, entitling plaintiffs to recover the costs of maintaining this action and a reasonable attorney’s fee pursuant to 42 U.S.C. §1988.

VL PRAYER FOR RELIEF

WHEREFORE, plaintiff asks that this Court:

1. Review and reverse the decision of the Department in the case of Henry Hunter;
2. Certify the class pursuant to Mass. R. Civ. P. 23;
3. Declare the defendant’s practice and policy of reducing, denying or terminating AFDC benefits to a grantee-relative who exercises care and control of a temporarily absent child receiving foster care payments violates 42 U.S.C @601(a) and (b); 609(a); and 1983; 45 C.F.R. @233.90(c)(v)(B); M.G.L.c. 18 @2(A); and 106 C.M.R. @301.220 and 303.230;
4. Permanently enjoin the defendant, his officers, employees and successors from denying, reducing or terminating AFDC benefits to otherwise eligible grantee-relatives whose temporarily absent children are receiving foster care payments, and to issue written regulations or other directives implementing this order;
5. Order the defendant to provide notice to members of the class who may have had their AFDC wrongfully denied, reduced or terminated that they may be eligible for benefits under the newly corrected policy;

6. Grant plaintiffs their costs of maintaining this action and attorney's fees pursuant to 42 U.S.C. §1988;

7. Award such other, further or different relief as this Court deems just and proper.

Dated: _____

Respectfully submitted,

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