

**R.S.,**  
Petitioner,  
v.  
**GLOUCESTER CITY WELFARE DEPARTMENT,**  
Respondent.

Decided December 6, 1979

**Initial Decision**

SYNOPSIS

Petitioner received benefits under the General Public Assistance Law, *N.J.S.A.* 44:8-107, through a voucher system in which recipients were not paid directly, but rather submitted vouchers. The local welfare director denied payment under the General Assistance Program for petitioner's hospitalization for the removal of cancerous tissue and reconstructive surgery. The petitioner argued additionally that the State benefit level, established in *N.J.A.C.* 10:85-4.1, is a mandatory benefit level and he should receive benefits at that level regardless of the amount of vouchers he may have submitted in a given month.

The administrative law judge found that, although *N.J.A.C.* 10:35-5.2 provides that payment for hospitalization is within the discretion of most local welfare directors, this discretion must accommodate the purposes of the General Public Assistance Law and that *Higdon v. Boning*, 121 *N.J. Super.* 276 had established a bottom level of medical assistance below which discretion could not be exercised. The administrative law judge found that the local director's decision was not in keeping with the general purpose of the statute and that the decision would deny petitioner the level of medical care to which he was entitled. Accordingly, the local welfare agency was directed to pay the hospital costs associated with petitioner's surgery.

As to the issue of whether the local agency may, by using a voucher system, provide benefits at a level lower than maximum monthly reimbursement level established by the State, the administrative law judge found that *Purnell v. City of Bridgeton*, 139 *N.J. Super.* 259, set forth the principle that *N.J.S.A.* 44:8-24 permits the establishment of a uniform statewide definition of "need" contained in *N.J.A.C.* 10:85-4.1. Accordingly, while the local director could not be required to pay more than the statewide level, payments and benefits at a level lower than the statewide standard were unacceptable and the vouchering system could not be used to thwart the intent of the statute and regulations.

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**METZGER, ALJ:**

Petitioner is a recipient of general assistance benefits in the City of Gloucester. The issue before me is the correctness of the amount of assistance which the City Welfare Department has provided him, and of the Welfare Department's refusal to pay certain hospital bills incurred by petitioner. A state fair hearing was requested on July 13, 1979. Hearings were scheduled on August 13 and September 1, 1979 but were adjourned on both occasions due to administrative error. A hearing was held on October 26, 1979 at the Camden County Court House. The parties were afforded an opportunity to submit post-hearing legal memoranda and to supply documents not available at the hearing. The record was closed on November 6, 1979.

The facts are not in substantial dispute. Petitioner has been receiving general assistance, pursuant to the "General Public Assistance Law," *N.J.S.A.* 44:8-107 *et seq.*, in the city of Gloucester City since March 1, 1979. The Welfare Director testified that the city uses a vouchering system for the payment of benefits such that recipients are not paid directly, but rather submit vouchers from providers who are in turn paid in accordance with the vouchers. The maximum monthly reimbursement level is set at the State benefit level established in *N.J.A.C.* 10:85-4.1. Petitioner's first disagreement is with the notion that the State benefit level merely imposes a maximum. He argues rather that these are mandated payments, intended to apply uniformly throughout the State and must be paid in full, irrespective of the fact that vouchers are not submitted for the entire eligible amount. The amount of the vouchers submitted in each month, the State Formula payment, and the differential are not in dispute and need not be recounted in detail here. By way of example, however, in the month of April, petitioner submitted vouchers in the amounts of \$80 for shelter and \$10 for car-fare. He thus accounted for \$90 which was paid. The State Formula in the month of April permitted \$119 for a person in petitioner's circumstances, and the dispute concerns the \$29 difference. In the month of June he submitted a shelter expense of \$80 and vouchers for miscellaneous expenses of \$19.23. He paid out \$99.23. At this point, the State Formula has increased assistance payments to \$178 and as such, the dispute is over that differential, or \$78.77. Except for the changes in numbers, the dispute is with respect to the differential in each month from March to the present.

Additionally, during this period petitioner was suffering from cancer of the face and neck. He was admitted to Cooper Medical Center, in Gloucester

City, for surgery to remove the cancerous tissue and for reconstructive surgery. Again, there is no dispute with respect to these facts. The Welfare Director simply took the position that he did not pay for hospitalization, that Cooper Medical Center was required to accept charity cases, and that he did not believe that they would seek to collect from petitioner. Petitioner's view was that the responsibility for payment of these expenses was the city's and, in the only factual dispute presented, offered testimony and records to indicate that the hospital was sending him collection letters and pressing its claim against him.

I **FIND** the facts as follows:

1. Petitioner has been a general assistance recipient in Gloucester City since March 1979.

2. Through the use of a vouchering system in which the city makes payment directly to third party providers on behalf of recipients, petitioner has, in each month since he became eligible for assistance, been receiving less than that which the State Formula for the receipt of general assistance provides.

3. Petitioner was suffering from cancer of the neck and face and in May 1979 was admitted to Cooper Medical Center for the purposes of surgery to remove the cancerous tissue and for reconstructive surgery.

4. The Gloucester City Welfare Agency does not pay for hospitalization and has refused to pay for petitioner's surgery.

5. Cooper Medical Center has begun collection efforts with respect to the hospital bills incurred by petitioner.

*I*

Firstly, the matter of petitioner's hospital expenses. The basic policy underlying the "General Public Assistance Law" is set out at Section 109 as follows:

It is hereby declared to be the public policy of this State that every needy person shall while in this State, be entitled to receive such public assistance as may be appropriate . . . and that the furnishing of such public assistance is primarily the duty of the municipalities and of the civic and charitable organizations but that all needy persons not otherwise provided for under the laws of this State shall hereafter receive public assistance pursuant to law and the provisions of this act.

*N.J.S.A. 44:8-122* states:

[T]he Director of Welfare, by a written order, shall render such aid and material assistance *as he may in his discretion, after reasonable inquiry, deem necessary to the end that such person may not suffer unnecessarily, from cold, hunger, sickness, or be deprived of shelter pending further consideration of the case.* (emphasis added)

In describing continued assistance, the statute goes on at section 124 to say:

[C]ontinued assistance under this act may be provided in such a manner as to meet any or all of the several needs of, *or as may be necessary to protect the well-being of, the person or persons whom assistance is to be granted such as* the provision of food, milk, shelter, fuel, clothing or medical care. . . . (emphasis added)

It is clear that primary responsibility for alleviating the suffering of the poor has, under this act, been delegated to the municipality. That medical care is an element of this responsibility is equally evident, *Higdon v. Boning*, 121 *N.J. Super.* 276 (J. & D.R. Ct. 1972). The Welfare Director took the view, however, that the provision of in-patient hospital care is a matter of discretion with the agency, pointing to *N.J.A.C.* 10:85-5.2:

*IN-PATIENT HOSPITAL CARE* – the Director of Welfare may authorize payment for in-patient care and services in an approved hospital. . . . Such payment must be authorized for eligible persons living in municipalities located in first-class counties (currently, Essex and Hudson) and entering hospitals in such counties. (emphasis added)

This distinction between first-class counties and all others finds its origin in the statute, *N.J.S.A.* 44:8-146 through 150. There can be little doubt that the regulation places discretion in the hands of the Director. However, that discretion is not unbridled and must accommodate the sections of the statute cited above as well as other provisions of the regulations which seek to implement it. In interpreting *N.J.S.A.* 44:8-122, the Juvenile and Domestic Relations Court in *Higdon, supra*, took the view that while rendering aid was left to the discretion of the Director of Welfare, the assistance was mandatory “to the end that such person may not suffer unnecessarily from cold, hunger, sickness . . . .” In effect, the court appears to have interpreted the statute to establish a bottom level of medical assistance below which there was no discretion. There the court was dealing with the denial of physical therapy for one suffering from cerebral palsy. The uncontroverted testimony was that lack of such therapy would result in emotional and physical suffering. The court held that the Welfare Director lacked discretion to deny such therapy. The instant facts are at least as compelling. The Director’s reading of *N.J.A.C.* 10:85-5.2 is, thus, entirely too narrow to accommodate the broader purposes of the statute.

There was some discussion at the hearing concerning the responsibility of the hospital or others for the payment of these expenses. If such a responsibility exists elsewhere, the record does not disclose it. The welfare agency testified to little more than its expectation that the hospital would not actively pursue petitioner through the collection process. At best, this places petitioner in the uneasy situation of not knowing whether or when

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the hospital will seek its redress. This falls well short of the entitlement language in the above-cited sections of the legislation.

Petitioner raised an additional argument with respect to the constitutionality of *N.J.S.A.* 44:8-146 through 149 and *N.J.A.C.* 10:85-5.2 cited above, asserting that no rational relationship exists between the first-class county/other county classification system and the purposes of the statute in providing hospital care for poor people not otherwise provided for. As I believe that petitioner was entitled to have his hospitalization paid for under the existing statutory and regulatory framework, it is not necessary to determine whether a program, operating in an area of discretion which did not go to essential medical treatment, would violate either the Federal or New Jersey State Constitution.

## II

The next question raised by this dispute is whether the local agency may, by the use of its vouchering system, provide benefits to petitioner which are less than that which is provided under the State Formula for General Assistance. *N.J.S.A.* 44:8-24 permits payment either in the form of cash or by "any other method authorized by the Local Assistance Board, approved by the governing body and complying with the regulations of the Commissioner." In either case, the section goes on to say that "the extent of individual grants shall be determined in accordance with standards and budgets authorized by the Commissioner." In *Purnell v. the City of Bridgeton*, 139 *N.J. Super.* 259 (J. & D.R. 1976), the court accepted the view of the Commissioner of the then Department of Institutions & Agencies, that this and like language in the statute permitted the Commissioner to establish a uniform statewide definition of "need," *N.J.A.C.* 10:85-4.1. While the court there would not require the Welfare Director to pay more than the manual required, less is certainly impermissible. To say otherwise would place a powerful tool in the hands of the local agency with which it could rid the municipality of unwanted poor. The vouchering system, considering the amounts involved, is itself sufficiently burdensome. However, that system is provided for in *N.J.A.C.* 10:85-4.3, and is not per se under attack here. However, it may not be used to thwart the clear policy of the statute and regulations.

It is thus **ORDERED** that the Welfare Director pay hospital costs associated with petitioner's cancer surgery and reconstructive surgery in accordance with the regulations, and that petitioner be paid the differential of the vouchers presented and his State Formula entitlement, from March through the present.

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After reviewing this Initial Decision, the Division of Public Welfare on January 4, 1980, issued the following Final Decision:

*N.J.A.C.* 10:85-5.2 provides the Director of Welfare must provide payments for in-patient hospitalization only in municipalities located in First Class Counties. Since Camden County is not in this classification, payment may not be mandated.

Regarding petitioner's demand for reimbursement of the difference between assistance received and the maximum benefit, *N.J.A.C.* 10:4.2(a)-4 provides granting of the amount of assistance requested when such amount is less than that to which the applicant or recipient has entitlement. In the instant case, the amount actually granted appeared to be mutually agreeable between the two parties commencing with the initial grant.

Accordingly, the conclusions by the administrative law judge are not accepted and the actions by the Gloucester City Department of Public Welfare are **AFFIRMED**.