

**IN THE MATTER OF:
P.B.**

Initial Decision: December 13, 1979

Final Agency Decision: January 8, 1980

Superior Court, Appellate Division Decision Appears at:

175 *N.J. Super.* 158 (App. Div. 1980)

SYNOPSIS

Petitioner contested the determination of a local public welfare agency which denied one month's benefits in connection with petitioner's application for Aid to Families with Dependent Children.

The administrative law judge assigned to the case found that petitioner had applied for AFDC assistance on October 5, 1979, at which time petitioner's total available income and savings amounted to \$7. Just prior to the application petitioner had had resources of \$585 which were expended on mortgage and utility bills.

The judge concluded that nothing in the regulations requires that income available prior to the date of the application must be considered in determining initial eligibility. Thus, since petitioner was eligible at some time during the month, he should be found eligible for assistance and his initial grant should include a proportionate allowance of the full month's program standard.

Upon review of the initial decision, the Division of Public Welfare rejected the decision and concluded that initial eligibility must be determined on all income available at any time during the month the application was received.

Phyllis Warren, Esq., for petitioner (Legal Services of New Jersey, attorney)

Initial Decision

ROBBINS, ALJ:

Petitioner requests relief from the administrative determination of the Middlesex County Board of Social Services denying assistance for the month of October, 1979 under the program of Aid to Families with Dependent Children (AFDC) pursuant to agency regulation, *N.J.A.C.* 10:821.2. The matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

Petitioner requested a hearing on October 10, 1979. After notice

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to all parties, a hearing was held on November 15, 1979 in the Milltown Municipal Court, Milltown, New Jersey.

At issue is the administrative determination finding petitioner's children ineligible for AFDC assistance for the month of October 1979 due to available income and resources in excess of program standards. The relevant regulation provides "when total income equals or exceeds the public assistance allowance, the family is not eligible for assistance."

Petitioner applied for AFDC assistance on October 5, 1979. In evaluating eligibility, the agency determined that petitioner and his spouse had incurred a penalty of ineligibility as provided in *N.J.A.C.* 10:826.1, *et seq.* This penalty of ineligibility is not being contested. The agency further determined that petitioner's three children had no financial eligibility assistance for the month of October 1979 because of income in excess of program standards. The family was found eligible effective November 1, 1979 and assistance has been issued since that date. It is the denial of assistance for the month of October 1979 that is at issue in this appeal.

The agency representative testified that when petitioner applied for assistance on October 5, 1979, he reported total assets of \$7.31. Petitioner also reported that his checking account balance of \$585 as of October 1, 1979 had already been depleted by purchase of food and payment of past due mortgage, utilities, and telephone bills. The petitioner was asked to return at a later date with verification of his statements. When this verification was received, the agency determined that as petitioner had available resources of \$585 in his checking account as of October 1, 1979, and the standard monthly allowance for an eligible unit of three persons was \$224, there was no eligibility for assistance for the month of October 1979.

The agency representative further stated that petitioner had received a salary check of \$300 on October 1, 1979 for his employment that terminated in September 1979. Using this gross earned income less the \$60 disregard for computing eligibility under the AFDC-N segment, petitioner had a calculated earned income of \$240 for the month of October 1979. As this exceeds the standard allowance of \$224 for three persons, this is further reason for ineligibility for his children for the month of October 1979.

To substantiate the agency position in this matter, a letter from the State Bureau of Local Operations dated October 23, 1979, was presented. This stated as follows:

Please be advised that in determining initial eligibility, *all* income and resources available at any time during the calendar month in which

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application is made, are to be considered. However, it is noted that only income and resources available from the date of the grant until the end of the month, are to be calculated in the determination of the initial grant.

Counsel for petitioner presented the following arguments in support of the position that the denial of assistance for the month of October 1979 was clearly improper since it was uncontroverted that petitioner's resources and savings at the time of application were less than \$8.00.

- 1) All State regulations which define or concern the factors to be taken into account by the Welfare Board in determining initial eligibility use "availability for present needs" as the standard for measuring the applicant's entitlement to AFDC benefits for the month in which the application is made.
- 2) *N.J.A.C.* 10:822.2 provides that "available resources include cash and other forms of income immediately obtainable to meet the needs of the eligible unit."
- 3) *N.J.A.C.* 10:822.11 provides "income must be in cash or in some other form readily available to meet the needs of the eligible unit. Immediate need demonstrated by an otherwise eligible unit will be met by assistance payments until other resources are in fact actually available."
- 4) The agency's arguments that income and resources must be determined as of the beginning of the calendar month for which assistance is sought, has no authority, either in case, statutory or regulatory law, federal or state. The letter from the Bureau of Local Operations introduced by the agency cites no authority for its position.
- 5) Federal regulations 45 *CFR* 233.20(a)(3)(ii)(D) state that the Welfare Board shall only consider "net income available for current use and currently available resources. . . ."
- 6) There is no dispute that the amount of money actually available to petitioner at the time of application was approximately \$7.00.
- 7) Petitioner was in immediate need at the time of his application on October 5, 1979 and met the requirements for issuance of immediate assistance based on "presumptive eligibility" as provided in *N.J.A.C.* 10:81-3.3

Based upon the foregoing, I **FIND:**

1. Petitioner applied for AFDC assistance for his family on October 5, 1979.
2. Petitioner and his spouse have incurred a penalty of ineligibility and therefore financial eligibility for assistance was evaluated for his three children only, without the inclusion of the parents.

3. On the date of petitioner's application for assistance, his total available income and savings amounted to approximately \$7.
4. On October 1, 1979, petitioner had a checking account balance of \$585. This sum included a salary check of \$300 which was for his employment during September, 1979. The checking account balance was reduced to \$5 prior to the date of application due to expenditures for purchase of food and payment of past due mortgage, utilities and telephone bills.
5. The money spent by petitioner prior to his application for assistance was for payment of past debts that were essential for maintenance of a continuing state of shelter for his family.
6. Regulations require that all income available at the time of application be considered in determining the initial grant.
7. This court finds nothing in regulations to require that income available prior to the date of application must be considered in determining initial eligibility.
8. Regulations found in *N.J.A.C* 10:822.3(a) provide for issuance of an initial grant during the first, second or last third of the month. When eligibility is found to exist sometime during the month, the initial grant includes a proportionate allowance of the full month's program standard.

N.J.A.C 10:82-2.3(a) provides that "when the grant is effective on the first through the tenth day of the month, the full public assistance allowance shall be used in determining the amount of the initial grant, and all income available from the date of the grant until the end of the month, shall be considered."

N.J.A.C 10:82-2.3(a)2 provides "when the grant is effective on the 11th through the 20th day of the month, two-thirds of the public assistance allowance shall be used in determining the amount of the initial grant, and all income available from the date of the grant until the end of the month, shall be considered."

In the instant case, petitioner did not have eligibility for assistance on October 1, 1979, but when he applied on October 5, 1979, his resources were limited to \$7. Therefore, on October 11, 1979, the beginning of the second third of the month, his resources for the last two-thirds of the month did not exceed the program standard for eligibility for the period from October 11 to October 31, 1979.

Based upon the facts adduced at the hearing in this proceeding and

the applicable regulations, I **CONCLUDE**, pursuant to *N.J.A.C* 10:822.3(a), the petitioner's family has entitlement to assistance for the period from October 11, 1979 to October 31, 1979.

Therefore, the action of the Middlesex County Board of Social Services denying assistance for October 1979 is **REVERSED**.

**FINAL DECISION BY THE DIRECTOR OF THE DIVISION OF
PUBLIC WELFARE, G. THOMAS RITI:**

The initial decision in the case of the above captioned, dated December 21, 1979, is incorporated herein with amendment as follows:

1. Review of facts presented in the initial decision establish the provisions of *N.J.A.C* 10:822.2 is the regulation dispositive of the hearing issue. The regulation states initial eligibility must be established prior to a determination on the amount of the monthly grant.
2. In the instant case, the agency was required, pursuant to provisions of *N.J.A.C* 10:822.7(a), to determine initial eligibility based on all income available at any time during the month the application for assistance was received.

Based on the foregoing, the decision by the administrative law judge is not accepted and the action denying petitioner's application for assistance under the AFDC program is affirmed.

**You must check the New Jersey Citation Tracker in
the companion looseleaf volume to determine the
history of this case in the New Jersey Courts.**

