
Burlington County v. R.K.
Cite as 10 *N.J.A.R.* 191

**BURLINGTON COUNTY
WELFARE AGENCY,**
Petitioner,
v.
R.K.,
Respondent

Initial Decision: February 27, 1985

Final Agency Decision: March 27, 1985

Superior Court, Appellate Division Decision

Appears at: 215 *N.J. Super.* 342

SYNOPSIS

Respondent requested relief from the decision of a local county welfare agency reducing her AFDC payments by deleting respondent from the eligible unit as a result of failing to cooperate in establishing the paternity of her first child.

Respondent named a putative father but an HLA test excluded him as the father of the child. Respondent named no other possible father, claiming she had sexual relations with only one person prior to the birth of the child.

The administrative law judge found that respondent's failure to provide any additional information, in light of the results of the HLA test, amounted to failure to cooperate in obtaining support and establishing paternity. The HLA test is recognized as reliable for determining exclusion of putative fathers. Cooperation is a condition of eligibility for AFDC, pursuant to *N.J.A.C.* 10:81-11.5(a). A parent who does not cooperate may be deleted from the eligible unit, pursuant to *N.J.A.C.* 10:81-11.5(h) and *N.J.A.C.* 10:82-2.4. The action of the welfare agency was affirmed.

Upon review, the initial decision was adopted by the Director of the Division of Public Welfare. The Director commented that, in view of the scientific reliability of the HLA test and its exclusion of the man named by respondent as the father of her child, respondent's failure to provide additional information constituted failure to cooperate. The required penalty is removal of the custodial parent from the eligible unit.

Daniel Campbell, Esq., for petitioner
William M. Thompson, Paralegal, Camden Regional Legal Services,
appearing pursuant to *N.J.A.C.* 1:1-3.12(a)4, for respondent.

FIDLER, ALJ:

STATEMENT OF THE CASE

In this matter, the respondent seeks relief from the administrative determination of the Burlington County Welfare Agency reducing her Aid to Families with Dependent Children (AFDC) monthly grant from \$385.00 to \$202.00 by deleting the respondent from the eligible unit as a result of her alleged failure to cooperate with the Child Support and Paternity Unit (CSP) in establishing the paternity of her first child, pursuant to *N.J.A.C.* 10:81-11.5 and *N.J.A.C.* 10:82-2.4.

PROCEDURAL HISTORY

The agency notified the respondent of its proposed action on January 7, 1985, and the respondent requested a hearing on January 14, 1985. On January 18, 1985, the Division of Public Welfare transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

FINDINGS OF FACT

Loretta Fisher, an Income Maintenance Worker assigned to the Child Support and Paternity Unit, testified on behalf of the petitioner that she first met the respondent in October 1984, after the respondent had added a second child to the eligible unit. Upon examining the respondent's file, Ms. Fisher discovered that a blood test administered to the respondent, her firstborn son, and the putative father, F.R., had scientifically excluded F.R. as the father of the child. However, as a result of administrative error, the CSP had made no followup of the matter since 1981.

According to Ms. Fisher, the respondent had signed a paternity complaint against F.R. on August 13, 1980, and the court had ordered that the mother, child and putative father undergo Human Leucocyte Antigen (HLA) blood testing to determine paternity. The HLA test was performed on March 2, 1981, by drawing blood samples from the mother, child and the putative father. Based upon the result of the testing, F.R., the putative father, was excluded as the father of

T.K., the respondent's firstborn son child. Specifically, William C. Sherwood, M.D., of the PennJersey Regional Red Cross Blood Service, Philadelphia, Pa., concluded that the child had inherited the white cell (HLA) A-1 and B-8 genes from his true father, and neither F.R., nor the mother, possesses these genes, excluding F.R. as the father on the basis of two first-order exclusions.

It was the testimony of Ms. Fisher that these results were brought to the attention of the respondent in March 1981, but the respondent continued to maintain that F.R. was the father of her child. As a result, the Child Support and Paternity Unit inquired of Dr. Sherwood as to whether a blood transfusion that the putative father had allegedly received could have affected the results, and whether all other factors of the testing procedure had been done in compliance with the usual standard method. By letter dated March 31, 1981, Dr. Sherwood replied that if F.R. had received a blood transfusion it would not have affected the reliability of the testing data and that a blood transfusion would not cause any changes in the recipient's genetic makeup. In addition, Dr. Sherwood stated that from his review of the records and an audit of all samples, he could find no evidence of any irregularity in the testing.

When the administrative failure to follow up on this paternity matter was discovered in October 1984, the respondent was provided copies of the 1981 test results and correspondence and was given another opportunity to inform the agency who, in fact, is the father of her first child. According to Ms. Fisher, the respondent did not provide another name as a possible father, and she acknowledged that the respondent has always, consistently, claimed that F.R. is the father of her first child. According to Ms. Fisher, since the putative father, F.R., had been scientifically excluded as the father of T.K., the respondent's refusal to provide additional information in order to establish paternity led to the action of the County Welfare Agency to delete the respondent from the eligible unit as a result of her lack of cooperation.

Testifying on her own behalf, the respondent stated that she became sexually involved with a man for the first time in 1979, when she was 20 years old. The first man with whom she became so involved was F.R., and she learned on December 27, 1979, that she was pregnant, following a visit to a doctor. It was the testimony of the respondent that F.R. was the first and only person with whom she had sexual relations prior to the birth of her first child. The respondent stated that she and F.R. remained involved until approximately her fifth

month of pregnancy, after which he no longer came to see her. The respondent and F.R. have had little contact since the child's birth, and he has never provided any money or gifts for the child.

According to the respondent, she had agreed to sign a paternity complaint against F.R. in 1980. Subsequently, she and the child and F.R. were required by the court to undergo the blood test. Approximately a month later, in March 1981, the respondent learned that the test had excluded F.R. as the father of her child. The respondent agreed that F.R. has never acknowledged that he is the father of her child, but the respondent continued to maintain to the County Welfare Agency and at the hearing that F.R. is the only person with whom she had sexual relations prior to the birth of the child.

Based upon the foregoing testimony and documentary evidence, I make the following undisputed **FINDINGS OF FACT**:

1. The respondent R.K. receives AFDC benefits for herself and her two children.
2. On March 2, 1981, an HLA blood test was performed on the respondent, her firstborn son, T.K., and on F.R., the putative father.
3. Based upon the results of the HLA blood testing, F.R. has been excluded as the father of T.K., on the basis of two first-order genetic exclusions. In other words, F.R. cannot be the father of T.K., the respondent's son.
4. The respondent insists that F.R. is the father of T.K., and the respondent has refused to provide any additional information in order to establish the child's paternity.

DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to *N.J.A.C.* 10:81-11.5(a), cooperation in obtaining support and establishing paternity whenever necessary is a condition of eligibility for AFDC for each applicant and recipient. Under *N.J.A.C.* 10:81-11.5(c) and (d), an applicant and recipient is required to cooperate with the Child Support and Paternity Unit by assisting in identifying and locating the parent of each child for whom aid is requested and by appearing as a witness at court or other hearings or proceedings necessary to obtain support. In the event of continued refusal to cooperate, the parent will be denied eligibility and will be deleted from the eligible unit, pursuant to *N.J.A.C.* 10:81-11.5(h) and *N.J.A.C.* 10:82-2.4.

The petitioner argues that it may properly delete the respondent

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from the AFDC grant in that, notwithstanding the fact that the HLA blood test excluded F.R. as the father of her child, the respondent has continued to insist that F.R. is the father. To the contrary, the respondent argues that she has cooperated within the meaning of the applicable regulations, because she has identified F.R. as the only man with whom she had sexual relations prior to the birth of her child.

The acceptance of HLA testing in the scientific community as reliable and accurate is evinced in the joint AMA-ABA Guidelines for Serologic Testing in paternity cases wherein the HLA test was recommended as the most powerful single paternity test for exclusion. *Malvasi v. Malvasi*, 167 *N.J. Super.* 513 (Ch. Div. 1979). Pursuant to *N.J.S.A.* 9:17-51, whenever blood tests or genetic tests are ordered by the court to be performed by a qualified expert, the results thereof shall be filed with the court and shall be received in evidence, where an HLA test is made, or where a definite exclusion is indicated.

In this matter, the HLA blood sample paternity test determined the type of white bloodcell antigens which are possessed by the respondent, her son, and the putative father. Every human has four different antigens, and these could be any combination of four different antigens from the 40 antigens appearing in the human race. It is also known that each person has two antigens in common with his mother and two in common with his father. In the usual paternity case, it is determined which of the child's antigens he has in common with his mother, and then the child's two remaining antigens which were inherited from his true father are compared with the four antigens from the putative father to see if any of the antigens match up. In this matter, F.R. is excluded as the father of the child since he possesses neither of the antigens which the child inherited from his true father.

Since F.R. is excluded as the father of the child as a result of the HLA blood sample paternity test, and since the respondent has continued to insist that F.R. is the father of her child, despite the scientifically reliable HLA blood test, I must **CONCLUDE**, based upon the foregoing findings of fact and the applicable regulations, that the petitioner County Welfare Agency may properly reduce the respondent's AFDC grant from \$385.00 to \$202.00 per month by deleting the respondent from the eligible unit as a result of the respondent's failure to cooperate with the Child Support and Paternity Unit in establishing paternity.

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ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the action of the Burlington County Welfare Agency reducing the respondent's AFDC grant from \$385.00 to \$202.00 per month by deleting the respondent from the eligible unit for failure to cooperate with the Child Support and Paternity Unit in establishing paternity is affirmed.

This recommended decision may be affirmed, modified or rejected by the **DIRECTOR OF THE DIVISION OF PUBLIC WELFARE, AUDREY M. HARRIS**, the designee of the Commissioner of the Department of Human Services, George J. Albanese who by law is empowered to make a final decision in this matter.

FINAL DECISION BY THE DIRECTOR OF THE DIVISION OF PUBLIC WELFARE, AUDREY HARRIS:

Having reviewed the initial decision and any exceptions or replies submitted, I hereby adopt the decision of the administrative law judge in the above captioned case as the final decision with comment.

The respondent in exception to the initial decision challenges the legal conclusion by the administrative law judge (ALJ) and contends the respondent's role as custodial parent negates imposition of the proposed penalty of ineligibility if the conclusion and recommended decision by the ALJ should be accepted.

Pursuant to the regulatory requirement at *N.J.A.C.* 10:81-11.2(a)3, each AFDC applicant must cooperate with the county welfare agency in obtaining support for which members of the eligible unit are entitled. The term "cooperation" is defined to include the providing of information which is known to, possessed by or reasonably obtainable by the client". (*N.J.A.C.* 10:81-11.5(d)1) Removal of the custodial parent from the eligible unit is the penalty for failure by the custodial parent to comply with cooperation requirements. (*N.J.A.C.* 10:81-11.5(h))

The central issue is whether or not the county welfare agency has legitimately claimed that the respondent has failed to cooperate since she continues to insist that the individual she has identified is the father of the child T.K., despite the results of the HLA blood test. In view of the scientific reliability of the HLA test and the acceptance of finding from this procedure by the court, the person named by the respondent must be excluded as the father of T.K. The evidence is therefore supportive of a conclusion that the respondent has failed to comply with cooperation requirements. The regulations require

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imposition of the penalty of ineligibility by removal of the custodial parent from the eligible unit.

The action reducing the AFDC grant, due to removal of the respondent from the eligible unit, 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.