
D.B. v. Passaic Co. Bd. of Social Services
Cite as 13 *N.J.A.R.* 288

D.B.,
Petitioner
v.
PASSAIC COUNTY BOARD OF SOCIAL SERVICES,
Respondent.

Initial Decision: April 15, 1988

Final Agency Decision: June 1, 1988

Superior Court, Appellate Division Decision Appears at:

235 *N.J. Super.* 22 (App. Div. 1989)

Selected for publication in *N.J.A.R.* because the court appeal of this case was published.

SYNOPSIS

Petitioner appealed the correctness of her AFDC entitlement, arguing that the \$50 child support disregard pursuant to *N.J.A.C.* 10:82-4.17 should be applied to Social Security Dependent's Benefits received by her children. The matter was transmitted to the Office of Administrative Law for a hearing.

The administrative law judge assigned to the case concluded that the child support disregard should apply. The judge found that Social Security dependency payments made directly to children or for their benefit based on their father's disability are akin to child support payments.

Upon review, this initial decision was rejected by the Division of Public Welfare, which found that the benefits were not subject to the disregard.

The Appellate Division affirmed the final decision.

Angelica Anaya-Allen, Esq., for petitioner (Passaic County Legal Aid Society)

Ruth Gotfried, Administrative Supervisor, Passaic County Board of Social Services, appearing pursuant to *N.J.A.C.* 1:1-5.4(a)3 for respondent

REINER, ALJ:

PROCEDURAL HISTORY

This matter was brought before the Office of Administrative Law as a result of an appeal filed by petitioner contesting the correctness of her AFDC entitlement. On December 16, 1987, the Department of Human Services, Division of Public Welfare, transmitted this dispute to the Office of Administrative Law as a contested case pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

After notice to all parties, a hearing was scheduled before Judge Thomas Penn for January 11, 1988. It was rescheduled due to petitioner's illness to February 1, 1988, before Judge Edith Klinger. It was adjourned to March 21, 1988, by Judge Klinger for the submission of a stipulation of facts and briefs before the undersigned judge. On that date, the parties submitted a stipulation of facts. Petitioner submitted a memorandum and argument was heard. Petitioner requested until March 28, 1988, to submit a supplemental brief. The supplemental brief was submitted on March 28, 1988, and the record closed on that date.

UNDISPUTED FACTS

At issue is whether respondent improperly failed to apply the \$50 child support disregard to the Social Security Disability Dependent's Benefits received by petitioner's two children. The facts are undisputed and may be summarized as follows:

1. D.B. and her two children, D.B. (1), age 8, and D.B. (2), age 6, receive Aid to Families with Dependent Children from the Passaic County Board of Social Services.
2. D.B. and her two children also receive Title II Social Security Benefits because D.B.'s husband, D.F.B., Sr., the father of the two children, is disabled.
3. D.B. and her children do not live with D.F.B., Sr.
4. In April 1987, D.B. and the two children were awarded Title II Social Security Benefits based on D.F.B., Sr.'s Disability Benefits.
5. D.B. receives her own Social Security Disability Benefit grant as the "wife" of D.F.B., Sr.
6. D.B. (1) and D.B. (2) receive a combined Social Security Disability Benefit grant as the "children" of D.F.B., Sr.

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7. In May 1987, D.B. (1) and D.B. (2), the children, received a retroactive Social Security payment of \$1266, with D.B. as representative payee.
8. Since April 1987, D.B. (1) and D.B. (2) have continued to receive monthly Social Security payments exceeding \$50 each month. Their monthly payment is \$29 each for a total of \$58. Since January 1988, D.B. has received, as protective payee, \$31 for each of her two children as Social Security Dependent's Benefits.
9. The Passaic County Board of Social Services has deducted the B. family's Social Security payments dollar for dollar from their AFDC grant. For example, in December 1987, the family received \$295 as their AFDC entitlement (\$424 minus \$42 recoupment, minus \$28.50 disability for D.B., minus \$59.60 disability for the two children). (The recoupment stems from an overpayment incurred when the retroactive Social Security payments were received.)
10. The Passaic County Board of Social Services, contending that it has no authority, has not applied the \$50 child support disregard to the Social Security payments received by the B. children.
11. The Passaic County Board of Social Services obtained a court order against D.F.B., Sr., for support of his minor children, D.B. (1) and D.B. (2), in March 1983.
12. The support order entered against D.F.B., Sr., ordered him to pay \$20 per week in current support and \$5 per week against arrearages.

DISCUSSION

I have considered petitioner's argument that respondent improperly failed to apply the \$50 child support disregard pursuant to *N.J.A.C.* 10:82-4.17. In order to evaluate respondent's position, I have considered the applicable law.

Public assistance in New Jersey is administered through a variety of programs, including categorical assistance programs. These were developed by the federal government through the Social Security Act of 1935, 42 *U.S.C.A.* §301 *et seq.*, in order to provide funding for certain classes of needy individuals and families. *Kelly v. Wyman*, 294 *F. Supp.* 893 (S.D. N.Y. 1968).

Aid to Families with Dependent Children (AFDC) is a categorical program in which New Jersey has elected to participate. *Motyka v. McCorkle*, 58 *N.J.* 165, 168 (1971). Once New Jersey elected to do so, it was required to formulate and submit a "state plan" of implementation to the federal government in order to receive federal funding. "A 'state plan' consists of all the statutes and regulations which create and provide for the administration of" public assistance. *Communications Workers v. Union Cty. Welfare Bd.*, 126 *N.J. Super.* 517, 524 (App. Div. 1974). These statutes and regulations pertaining to the implementation of the AFDC program must be consistent with the goals and mandates of the federal regulations and the statutes promulgated pursuant to the Social Security Act in order for New Jersey to receive federal funding. *Barrera v. Dept. of Institutions and Agencies*, 150 *N.J. Super.* 41 (App. Div. 1977).

Pursuant to *N.J.S.A.* 44:10-3, the Commissioner of Human Services is authorized to "issue, or to cause to be issued by the appropriate departmental officers or agencies, all necessary rules and regulations and administrative orders . . . to secure for the State of New Jersey the maximum Federal financial participation. . . ." *N.J.S.A.* 44:10-3(a) and (c) specifically direct the Commissioner:

- (a) To assure that the program shall be in effect in all counties of the State and be mandatory upon them;

and

- (c) To provide that, in determining eligibility for financial assistance and the amount of assistance to be granted, there shall be taken into consideration all other income and resources of the dependent child and of the parent, parents, or other relatives with whom such child is living, except that, in making such determination, there shall be disregarded the amounts of income and resources required by Federal law as a condition of Federal financial participation.

To receive federal financial participation, New Jersey must disregard the amount of income and resources that federal law says must be disregarded. With that in mind, I must determine whether federal law requires the application of a disregard under the instant circumstances.

Federal law, pursuant to 42 *U.S.C.A.* §602(a)(8)(A)(vi), mandates that "state plans" shall make a provision to disregard the first \$50 of child support in AFDC determinations. It provides as follows:

A State plan for aid and services to needy families with children . . . (vi) shall disregard the first \$50 of any child support payments

received in such month with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family) under sections 657(b) of this title;

In order to meet this mandate, New Jersey's corresponding regulation set forth an exclusion of the first \$50 of child support in determining AFDC eligibility. *N.J.A.C.* 10:82-4.17 provides as follows:

The first \$50.00 of any child support payments received on behalf of a dependent child or children by any family applying for or receiving AFDC shall be disregarded. Such child support payments shall include disregarded child support (DCS) payments paid the family through the child support and paternity process and direct support payments received by the eligible unit which represent a current monthly support obligation.¹ These monies are disregarded in determination of initial eligibility, maximum income eligibility, prospective needs test, and the grant computation. The total amount of child support disregarded shall not exceed \$50.00 per month per eligible unit.

In view of the applicable regulation, the meaning of a "child support" payment subject to the \$50 disregard must be determined. Child support has not been defined in New Jersey regulations to any great extent. In fact, *N.J.A.C.* 10:81-9.1 states only that "CSP" means "Child Support and Paternity Program." Federal law must thus be consulted to determine which child support payments are subject to the \$50 disregard. The Social Security Act, pursuant to 42 *U.S.C.A.* §402(d), states that children of individuals entitled to disability insurance are entitled to insurance benefits based upon the wages and self-employment income of the disabled parent. These Title II Social Security Benefits for children serve the purpose of providing financial support when the parent is disabled, deceased, or unable to work. *See, Jimenez v. Weinberger*, 417 *U.S.* 628 (1974), *affd.* on remand, 523 *F.2d* 689 (7th Cir. 1975). The question is whether such disability benefits constitute child support. In *Carter v. Bowen*, No. Civil Action 86-0398-R (E.D. Va. Dec. 21, 1987) (unreported), the court, granting a motion

1. It should be noted that it has been stipulated that D.F.B., Sr., is under a support order to pay \$20 per week in current support and \$5 per week against arrearages. Thus, to the extent that Social Security disability payments may be considered child support payments, this may be considered a "direct support payment received by the eligible unit which represent[s] a current monthly support obligation."

for summary judgment in favor of plaintiff, held that the \$50 child support disregard applies to Title II Social Security Disability Benefits which plaintiff's children were receiving on behalf of their disabled father. The court held:

It is contradictory to treat Social Security benefits like child support for the purposes of including them in family income and then in another part of the same statute treat them differently from child support payments for the purpose of excluding a family from a potential \$50 rebate.

Carter v. Bowen, slip op. at 7.

The court then determined that "a family's eligibility for the \$50 remittance should not turn upon the absent father's ability to work," and stated that "the law should not allow a family to receive the \$50 rebate when a child is supported by a working father, but deny that family the rebate when the father becomes disabled and must provide the support indirectly through Social Security benefits." *Ibid.* Thus, in reaching a determination on the applicability of the \$50 disregard to Title II Social Security Benefits, the court held:

The "any child support" language in 42 U.S.C. §602(a)(8)(A)(vi) includes Social Security benefits paid to children of families receiving AFDC. To limit the phrase to only state ordered child support payments would be irrational. The applicability of the \$50 disregard provision should not turn upon the health of the supporting parent. Rather, the purpose of the provision is to mitigate the hardship imposed by the DEFRA amendments to the AFDC program. Whether the AFDC families include children receiving child support payments or Social Security benefits, the families suffer equally under the DEFRA amendments. Hence, the families should also equally enjoy the same limited relief provided by the Act's disregard provision.

Id., slip op. at 10.

Similarly, in *McBee v. Sallee*, No. Civil Action 2-86-103 (E.D. Tenn. Nov. 26, 1986) (unreported), the court in approving the parties' consent to dismiss, dealt with the applicability of 42 U.S.C.A. §602(a)(8)(A)(vi) to disability insurance benefits. In *McBee*, the disabled father, pursuant to a court order, was required to pay monthly child support. In order to meet this obligation, the father cashed the disability check and gave the money to the children's mother. Relying on *Davis v. Sallee*, No. Civil Action 4-86-27 (E.D. Tenn. Oct. 10, 1986), the court determined that it was a violation of both federal law and a denial of equal protection under the law to deny the child

support disregard. Thus, the court in *McBee* echoed the court in *Davis*, which held:

In the opinion of the Court, the term "child support" as used in 42 U.S.C. §602(a)(8)(A)(vi), should encompass any money received by the AFDC family which is legally for the use and benefit of the child only and unlike alimony, for example, cannot be used for other purposes. Any other interpretation of that term would defeat the intent of the "disregard" provision by decreasing the amount of family income designated exclusively for the dependent children.

McBee, slip. op. at 3.

Further support for this conclusion may be found by reviewing the applicable federal statutory and regulatory scheme. The plain language of 42 U.S.C.A. §602(a)(8)(A)(vi) states that "any child support" is entitled to the disregard. Clearly, that language does not limit the term "child support" to payments received by the state or to any other particular type of payment, such as court ordered payments. Since no other definition is offered in 42 U.S.C.A. §601 *et seq.* defining child support, pursuant to Part A of Subchapter IV of the Social Security Act it may be argued that the federal statutory scheme sought to include any money an AFDC family received for child support.

Although there is no precise definition of "child support" offered in the AFDC statutes and regulations, the manner in which "child support" is dealt with in the federal statutes and regulations regarding Child Support and Establishment of Paternity (42 U.S.C.A. §§651-665) lends support to this conclusion. The AFDC program and the Child Support and Paternity programs appear in the same subchapter (IV) of the Social Security Act. Although their purposes are not identical, the two programs are interrelated. It thus seems reasonable to review the regulations governing the Child Support and Paternity program in order to explicate the meaning of "child support" as used in the AFDC program. The regulations governing Child Support and Establishment of Paternity provide for child support collection without a court order. *See*, 45 C.F.R. §302.51(b)(1) and §302.53 (1986). The fact that the regulations deal with "child support" in a broad manner lends support to the conclusion that the child support language of 42 U.S.C.A. §602(a)(8)(A)(vi) sought to include non-court ordered payments.

Potter v. Potter, 169 *N.J. Super.* 140 (App. Div. 1979) also supports this position. Although the subject of the dispute in *Potter* was "the status of a retroactive Social Security disability payment received

by defendant wife for the benefit of the minor children of the marriage and the effect of that payment on plaintiff's obligation, if any, to the welfare board and in respect of child support arrearages" (*Potter* at 142), the court stated:

While that question has not been heretofore addressed in a reported decision in this jurisdiction, the majority of jurisdictions in which the problem has been raised hold that ordinarily a father is entitled to credit on his child support obligation for Social Security dependency payments made directly to his children or for their benefit. The rationale underlying this view is that such payments are not gratuities but were earned by the wage earner during his period of employment and that they constitute in effect insurance payments substituting for lost earning power.

Potter at 148.

The court further indicated:

We need not decide in this case whether or not a parent has the absolute right to have Social Security disability payments to dependents automatically credited to his adjudicated support obligation since we are satisfied that that result must here obtain in view of the operative circumstances.

Ibid.

Potter thus lends some support for the conclusion that Social Security dependency payments made directly to children or for their benefit based on their father's disability are akin to child support payments.

CONCLUSIONS

I **CONCLUDE** that the Social Security Disability Dependent's Benefits received by petitioner's two children are subject to the \$50 disregard pursuant to *N.J.A.C.* 10:82-4.17. Respondent has improperly failed to apply the \$50 disregard to the Social Security Disability Dependent's Benefits received by petitioner's two children.

ORDER

It is hereby **ORDERED** that respondent's action in failing to apply the child support disregard of *N.J.A.C.* 10:82-4.17 to the Social Security Disability Dependent's Benefits received by petitioner's two children is **REVERSED** and petitioner's appeal is **GRANTED**. Pursuant to *N.J.A.C.* 10:82-2.19(b), correct payment shall be made

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retroactive to the date the incorrect action was taken. Respondent is therefore **ORDERED** to recalculate the AFDC benefits to which petitioner was entitled from the date the incorrect action was taken.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF PUBLIC WELFARE, MARION E. REITZ**, the designee of the Commissioner of the Department of Human Services, Drew Altman, who by law is empowered to make a final decision in this matter.

**FINAL DECISION BY THE DIRECTOR OF THE DIVISION OF
PUBLIC WELFARE, MARION E. REITZ:**

Having reviewed the Initial Decision and any exceptions or replies submitted, I hereby amend the decision of the Administrative Law Judge in the above captioned case as the Final Decision.

The Administrative Law Judge (ALJ) determined that Social Security Disability Benefits received by petitioner's two children are subject to the \$50 disregard pursuant to *N.J.A.C.* 10:82-4.17. Review of the code of Federal Regulations at 45 *CFR* 302.51(b) reveals clearly that only amounts collected as support by the IV-D Agency are subject to the \$50 disregard. Accordingly, the recommended decision by the ALJ cannot be accepted.

The agency action is affirmed.

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