

1996

# Josie D. Nelson v. Rod Betit : Brief of Appellee

Utah Court of Appeals

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Appeal from a final order of the Second District Court of Weber County, The Honorable Michael D. Lyon presiding, granting appellee's motion for summary judgment and denying appellant's motion for summary judgment.

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IN THE UTAH COURT OF APPEALS

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JOIE D. NELSON,	)	
	)	
Plaintiff and Appellant,	)	Case No. 960489-CA
	)	
v.	)	
	)	
ROD BETIT, in his capacity	)	
as Executive Director of	)	Priority 15
the DEPARTMENT OF HUMAN	)	
SERVICES,	)	
	)	
Defendant and Appellee.	)	
	)	

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BRIEF OF APPELLEE

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JURISDICTION

This is an appeal from a final order of the District Court of the Second Judicial District granting the motion for summary judgement of the defendant Department of Human Services (DHS) and denying plaintiff Joie D. Nelson's motion for summary judgment. Nelson appealed to the Utah Supreme Court. The Supreme Court subsequently transferred the case to the Court of Appeals. The Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j) (Supp. 1996).

### DETERMINATIVE STATUTES AND RULES

The following statutes and rules are relevant to the determination of this case:

42 U.S.C.S. §§ 602(a)(17) (1985); 602(a)(24) (Supp. 1996)

45 C.F.R. § 233.20(a)(1)(ii) (1992).

45 C.F.R. § 233.20(a)(3)(ii)(F) (1992).

Utah Department of Human Services, Office of Family Support Policy Manual, Volume II, §§ 122 and 438. See Addendum A.

### ISSUES PRESENTED/STANDARD OF REVIEW

1. Was the trial court correct in ruling that Nelson had not yet "received" Supplemental Security Income (SSI) on the date that she received her retroactive lump sum Social Security Disability Income Benefit (SSDIB) award, which resulted in her household being ineligible for Aid to Families with Dependent Children (AFDC) and Medicaid for several months?

In reviewing an appeal from a grant of summary judgment, the appellate court views the facts in the light most favorable to the losing party below. In determining whether those facts require, as a matter of law, the entry of judgment for the prevailing party below, the appellate court gives no deference to the trial court's conclusions of law, which are reviewed for correctness. Harlin v. Barker, 912 P.2d 433, 435 (Utah 1996);

Blue Cross and Blue Shield of Utah v. State, 779 P.2d 634, 636  
(Utah 1989).

STATEMENT OF THE CASE

In July 1992, Nelson and her son were recipients of AFDC and Medicaid benefits from the Utah Department of Human Services. On July 28, 1992, Nelson applied for Social Security Disability Insurance Benefits (SSDIB) and for Supplemental Security Income (SSI) disability benefits.

On October 17, 1992, the Social Security Administration (SSA) informed Nelson that she was entitled to monthly disability income benefits (SSDIB) beginning August 1991. (R. 8). SSA informed Nelson that she would receive her October 1992 benefits' check in November 1992 and that she would receive a check for \$355 each month thereafter while she remained disabled. SSA also advised Nelson that it had not yet determined the amount of her retroactive benefits for August 1991 through September 1992, as those SSDIB benefits would be reduced if she were found eligible for SSI benefits for those months. (R. 37).

On October 22, 1992, SSA informed Nelson that she would be receiving a check for \$4,918 for SSDIB for August 1991 through September 1992 "because [she] didn't get SSI money for August 1991 through September 1992." (R. 40). Nelson's lump sum

retroactive SSDIB check was received in October 1992. In November, 1992, the Social Security Administration notified Nelson that she had been found eligible for SSI in July 1992 (the date of her application). (R. 42, 67).

On December 7, 1992, the Department of Human Services notified Nelson that the SSDIB lump sum payment had placed her household over its income limit. The Nelson household was, therefore, ineligible for Medicaid and financial assistance (AFDC) beginning November 1992. (R. 43). Nelson did not actually receive her SSI benefits until December 1992 when a retroactive SSI check for July through December 1992 was issued to her.

Nelson requested an informal administrative hearing to challenge the agency's decision which made her household, including her son, ineligible for AFDC and Medicaid for several months. The State hearing officer upheld the position of the Department of Human Services. Nelson then filed an action in district court. The Second District Court, Judge Michael D. Lyon, granted summary judgement to the Department of Human Services and denied Nelson's motion for summary judgement. Nelson now seeks appellate review of the district court's final order upholding the denial of AFDC and Medicaid eligibility for

her son.

#### STATEMENT OF THE FACTS

Joie Nelson was receiving Aid to Families with Dependent Children (AFDC) and family medical assistance for herself and her son in July 1992, when she applied for both Social Security Disability Insurance Benefits (SSDIB) and Supplemental Security Income (SSI) on July 28, 1992. (R. 13, R. 42). In a letter dated October 17, 1992 Nelson was informed by the Social Security Administration (SSA) that she had been approved for SSDIB benefits as of August 1991 at an ongoing monthly benefit rate of \$355.00. (R. 8, R. 37). Nelson was further notified by SSA in a letter dated October 22, 1992, that she would receive a lump sum payment that month representing retroactive SSDIB benefits totaling \$4,918.00 for the time period of August 1991 through September 1992, and a monthly check of \$355.00 in SSDIB benefits. (R. 11, R. 40).

In October 1992, Nelson received the lump sum in the amount of \$4,918.00 representing the retroactive SSDIB payments for which she was qualified. (R. 46, R. 57). On October 27, 1992, Nelson delivered to her DHS caseworker at the Ogden Office of Family Support (OFS) copies of the SSA notice finding her eligible for SSDIB. (R. 67). On November 2, 1992, Nelson

delivered to her DHS caseworker a computer printout from SSA showing that she became eligible for SSI in July 1992 with development pending. (R. 67).

On December 7, 1992, Nelson was notified by her caseworker that she and her son were ineligible for AFDC and Medicaid benefits from November 1992 through October 1993. (R. 43, R. 67). Receipt of the SSDIB lump sum payment had resulted in the Nelson household exceeding the minimum income level for AFDC and Medicaid, thus disqualifying her family unit from continuing to receive those benefits for several months. (R. 43, 57-58). The agency's decision in this regard was based upon AFDC and Medicaid policy addressing lump sum payments. (R. 57-62).

Nelson then began receiving SSI benefits in December 1992, after being notified of the approval of her SSI application effective July 1992. (R. 58). On December 9, 1992, Nelson delivered to her DHS caseworker an updated computer printout from SSA showing her SSI eligibility effective July 1992, a recurring monthly SSI amount of \$89.00 (federal) and \$5.00 (state) and an underpayment of SSI benefits in the amount of \$174.00 (federal) and \$15.00 (state). (R. 67-68).

On December 29, 1992, Nelson appeared at a fair hearing to contest her son's loss of eligibility for AFDC and Medicaid. (R.

46). A hearing decision and order were issued on June 4, 1993, affirming the agency's decision. (R. 45-56). The hearing decision was reviewed on appeal and affirmed by the director of the Office of Administrative Hearings on April 7, 1995. (R. 57-62). Nelson filed a case in Second District Court challenging the agency's determination. Judge Michael Lyon granted summary judgement in favor of DHS. (R. 139-140).

#### SUMMARY OF ARGUMENTS

Persons with disabilities may seek Supplemental Security Income (SSI) cash assistance and Social Security Disability Insurance Benefits (SSDIB) from the Social Security Administration (SSA). Additionally, they may seek AFDC financial assistance and Medicaid coverage from their designated State agency. Social Security benefits and AFDC and Medicaid are separate programs, authorized and regulated by separate laws, and administered by separate agencies.

Congress has created financial (AFDC) and medical (Medicaid) coverage for disabled and needy individuals to be paid for with a combination of federal and state funds. Consistent with Congressional objectives and state statutes, the Department of Human Services determines who will receive assistance based upon the need of all who may be eligible. It is reasonable and

appropriate for the agency to distribute scarce public funds by rendering ineligible those who have accumulated assets from which they could provide for the costs of their own care.

In 1981, Congress enacted a "lump sum" rule for the purpose of requiring AFDC households to utilize certain lump sum amounts to meet their daily living needs with lump sum monies, rather than with taxpayer dollars, for the period of calculated ineligibility. For AFDC and categorically needy Medicaid recipients, the receipt of certain lump sum amounts is treated as income for the month the lump sum is received. The "lump sum" rule results in an AFDC and Medicaid household unit becoming ineligible for those benefits for the number of months equal to the amount of the lump sum divided by the household's standard of need. In most situations, application of the lump sum rule causes hardships to recipients who may have large accrued bills which they would like to pay with their lump sum monies. However, Congress wished to create an incentive for AFDC recipients of lump sums to budget such sums for monthly necessities and to eliminate the incentive to spend the money all at once.

An SSDIB lump sum payment is included as a lump sum within the AFDC "lump sum" rule. Receipt of an SSDIB lump sum award is



treated as income to an AFDC household in the month in which it is received, not the months in which the AFDC household was eligible to receive the award. Similarly, the receipt of SSI benefits are treated as received by an SSI recipient in the month in which they are received, not the month for which the recipient was eligible for those benefits.

Federal law excludes an individual from an AFDC household for the period of time for which SSI benefits are received by that individual. Nelson was not an SSI recipient until December 1992 when she received her SSI benefits' check. By December 1992, Nelson and her child had already been disqualified from the AFDC and Medicaid programs as a result of her SSDIB retroactive lump sum award. The State of Utah's interpretation of applicable federal laws conforms with that of the Secretary of Health and Human Services. The Secretary's interpretation of complex federal regulations in the Social Security area must be given deference by reviewing courts

#### ARGUMENT

- I. NELSON HAD NOT ACTUALLY RECEIVED SSI BENEFITS UNTIL DECEMBER 1992 WHEN SHE HAD POSSESSION AND CONTROL OF THOSE FUNDS. CONSEQUENTLY, SHE WAS NOT RECEIVING SSI BENEFITS IN NOVEMBER 1992 WHEN HER SSDIB LUMP SUM PAYMENT MADE HER HOUSEHOLD INELIGIBLE FOR AFDC AND MEDICAID ASSISTANCE

A. General Background: SSDIB and SSI Benefits

Persons with disabilities may seek Supplemental Security Income (SSI) cash assistance and Social Security Disability Insurance Benefits (SSDIB) through the Social Security Administration. The two programs share a common definition of disability but have separate funding sources. The SSDIB program is an insurance program funded by joint worker/employee contributions while the worker is employed. To qualify for SSDIB, the applicant must have worked the requisite number of quarters and be insured at the time the disability began. On the other hand, SSI is an income maintenance program and is available to any qualified blind, disabled, or elderly person, regardless of work history.

An applicant for SSI benefits is entitled to those benefits as of the first day of the month in which he or she satisfies all eligibility requirements and has applied for benefits. See 20 C.F.R. §§ 416.330, 416.335 (1992). Yet, after a person applies for SSI benefits, the SSA takes a significant period of time to determine the applicant's eligibility and to begin making payments. This period of time--between the first date of SSI eligibility and the date of the first SSI payment--is referred to as the "determination period." Once a person is deemed eligible

for SSI benefits, he or she initially receives a retroactive lump sum payment for all benefits accrued during the determination period. During the SSI determination period, some SSI applicants apply for and receive AFDC payments. If an applicant is subsequently determined eligible for SSI benefits, the SSA deducts from its initial retroactive lump-sum SSI payment an amount equal to the amount of AFDC aid received by that individual during the determination period. See generally 42 U.S.C.S. §§ 1382(b) (1993), 1382a(b) (1993 & Supp. 1996); 20 C.F.R. §§ 416.1120, 416.1123; 416.1124(c)(2) (1992). The rationale for this deduction is to prevent a public assistance recipient from benefitting from both the SSI and the AFDC program for the same period of time.

B. General Background: AFDC Lump Sum Rule

The AFDC program is a public assistance scheme established by federal statute.<sup>1</sup> See 42 U.S.C.S. § 601-615 (1985 & Supp. 1996). Under the program, the federal government makes grants to

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<sup>1</sup>On August 22, 1996, President Clinton signed into law the Personal Responsibility and Work Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996), effectively repealing the AFDC program and replacing it with the Temporary Assistance to Needy Families (TANF) program. The discussion of the AFDC program herein is based upon the law as it existed at the time this case arose.

partially fund participating State programs that provide cash assistance to families with needy, dependent children. Although the program is funded jointly by the federal and state governments, it is administered by the States. To receive grants from the federal government, a State must submit an AFDC plan to the Department of Health and Human Services (HHS) which conforms to both statutory and regulatory requirements. See 42 U.S.C.S. § 602 (1985 & Supp. 1996).

The Medicaid program was established by Congress in 1965 as Title XIX of the Social Security Act "for the purpose of providing federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." Harris v. McRae, 448 U.S. 297, 301 (1980). It is a program designed to make medical services for the needy more generally available.

A participating state must provide Medicaid coverage to "categorically needy" persons. See 42 U.S.C.S. § 1396a(a)(10)(A)(i) (1993). The "categorically needy"--a group that includes dependent children as well as aged, blind, or disabled adults--receive both cash payments and Medicaid coverage; however, in order to be eligible for this assistance, both their income and resources must be below limits set by the

Department of Health and Human Services. See 20 C.F.R. §§ 416.1201; 416.1205; 416.1210 (1992).

The Nelson household qualified for AFDC and therefore also qualified for Medicaid as a "categorically needy" household. 42 U.S.C.S. § 1396a(a)(10)(A)(1993 & Supp. 1996). However, AFDC and Medicaid eligibility must be reviewed monthly to assure that the household's income and resources do not exceed the requirements set by Utah's AFDC and Medicaid programs.

The lump sum rule for determining an AFDC recipient's income was added to the AFDC program by Section 402(a)(17) of the Omnibus Budget Reconciliation Act of 1981 (OBRA). See 42 U.S.C.S. § 602(a)(17)(1985). The lump sum regulation at 45 C.F.R. § 233.20(a)(3)(ii)(F)(1992), which was applied to Nelson, provides:

When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC, Title II<sup>2</sup> and other retroactive monthly benefits, and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and worker compensation awards, to the extent that it is not earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills resulting

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<sup>2</sup>Title II refers to that Title of the Social Security Act (the Act) which sets forth the Federal Old-Age, Survivors, and Disability Insurance Benefits (SSDIB) of the Act.

from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income of, at State option, as late as the corresponding payment month.<sup>3]</sup>

The foregoing regulation requires that a lump sum SSDIB award be considered "unearned income" and taken into account in determining if a recipient and his or her household will continue to be eligible for AFDC assistance. The lump sum rule will apply when an AFDC family member receives in a month a lump sum of non-recurring income which, together with the family's other income, exceeds the state's standard of need for that family for that month.

In the case of the Nelson household, the State divided \$4,918--the SSDIB benefits received by Nelson in October 1992--by the standard of need of her household size--\$431--resulting in her family becoming ineligible for AFDC and Medicaid for several months, commencing in November 1992. Even if the family spends

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<sup>3</sup>This federal regulation is incorporated into Utah policy at Office of Family Support policy manual, Volume II, §§ 122 and 438. (Addendum A).

the lump sum immediately and the family has no funds for support, the disqualification period continues as if the family had budgeted the lump sum funds to cover their standard needs budget. In essence, the lump sum rule is intended to force the family to use its lump sum payment to replace its AFDC grant during the proscribed period. See Gardebring v. Jenkins, 485 U.S. 415, 417-418 (1988); Smith v. Concannon, 938 F.2d 966, 970 (9th Cir. 1991).

State plans for AFDC must include a provision that if an individual is

receiving [SSI] benefits under Title XVI . . . , then for the period for which such benefits are received. . . , such individual shall not be regarded as a member of the family for purposes of determining the amount of benefits of the family under this Title [42 U.S.C.S. § 601 et. seq.] and his income and resources shall not be counted as income and resources of a family under this Title. . . .

(emphasis added). 42 U.S.C.S. § 602(a)(24)(Supp. 1996). See also 45 C.F.R. § 233.20(a)(1)(ii)(1992).

Nelson asserts, based upon the foregoing AFDC State plan requirement, that she should have been excluded from the AFDC household (which included her and her son) in October 1992 when she received her SSDIB lump sum award. She argues that she was an SSI recipient in October 1992 because, in December 1992, SSA

determined her to be SSI eligible retroactive to July 1992. It is her position that her retroactive July 1992 SSI eligibility should have caused her to be excluded from her household in October 1992 when her SSDIB lump sum income was received. To assert that position, Nelson strains the plain language of 42 U.S.C.S. § 602(a)(24) and disregards the statutory interpretation of both the federal and state agencies.

C. SSI Benefits are not "Received" Until a Recipient has Actually Obtained the Benefit Check from the Social Security Administration

The undisputed facts in this case are that Nelson was not even informed of her SSI eligibility until November 1992. In addition, the SSI benefit check, in a liquidated sum, was not legally available to her until December 1992. By that date, DHS had already determined that her lump sum SSDIB award was countable "income" and had disqualified her household from AFDC and Medicaid commencing November 1, 1992--the month after she received her SSDIB award.<sup>4</sup>

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<sup>4</sup>The Secretary of Health and Human Services has interpreted income and resources to be available to an applicant or recipient "when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance." 45 C.F.R. § 233.20(a)(3)(ii)(D)(1992).



Nelson's argument requires this Court to analyze the meaning of 42 U.S.C.S. § 602(a)(24) when it excludes, for AFDC eligibility purposes, the income and resources of a household member who "is receiving benefits under Title XVI" [SSI benefits] for the period for which such benefits "are received." The issue becomes the meaning of the words "receiving" and "received." Nelson argues that she "received" SSI benefits from the date on which she was determined to have been eligible for those benefits, not from the date on which those cash benefits were actually tendered to her.

The principles of statutory construction applicable to this issue are clear. "We look first to the plain language of the statute to discern the legislative intent. . . 'Only when we find ambiguity in the statute's plain language need we seek guidance from the legislative history and relevant policy considerations.'" City of South Salt Lake, et. al. v. Salt Lake County, No. 960325 (Utah Oct. 18, 1996); Gohler v. Wood, 919 P.2d 561, 562-563 (Utah 1996).

A review of the plain language of the statute in question reveals no ambiguity. The words "receiving" and "received" are clear and unambiguous. Black's Law Dictionary defines "receive" as "to take into possession and control; accept custody of;

collect." Black's Law Dictionary 1268 (6th ed. 1990). Clearly, Nelson did not take her SSI benefits into her possession and control until December 1992 when she actually accepted custody of them or collected them from the Social Security Administration. The term "receive" is not of uncertain meaning and is used in many statutes. If Congress had meant for an AFDC household member's income and resources to be excluded as of the date he or she becomes eligible for SSI, Congress would have written 42 U.S.C.S. §602(a)(24) to reflect that intent and meaning.

Clearly, Congress provided that the exclusion in Section 602(a)(24) applies only "if an individual is receiving" SSI benefits. The exclusion does not apply as of the date an individual is determined to have been eligible for SSI benefits. Because 42 U.S.C.S. § 602(a)(24) is unambiguous on its face, no inquiry into the legislative history or policy concerns underlying the statutory terms is necessary. However, exploring the policy considerations behind the statute, it remains clear that Nelson's arguments must fail.

D. DHS's Interpretation of 42 U.S.C.S. § 602(a)(24) is Consistent with Acceptable Congressional and Agency Objectives and Policy Concerns

Nelson cites a 1980 Pennsylvania decision, Gleim v. Com. Dept. of Public Welfare, 409 A.2d 951 (Pa. Cmwlth. 1980), which

analyzed the language of 42 U.S.C.S. § 602(a)(24). Examining facts similar to those in this case, the Pennsylvania court reviewed whether Gleim was a "recipient" of SSI within the meaning of the statute when the State agency was determining if he was included in a household for AFDC purposes. The court noted that it is "axiomatic that a statute may not be construed to reach an absurd or illogical result, and that in the absence of special intent statutory language must be given its clear and plain meaning." Gleim, 409 A.2d at 952.

However, rather than focusing on the clear meaning of the word "receive," the Gleim court rejected the State's argument that an SSI recipient does not become a recipient until he or she actually receives SSI monies, because the court opined that such an interpretation could lead to illogical and inconsistent results.

DPW would have us hold that an individual is not a "recipient" until he is in actual receipt of official notice of eligibility and the attendant payments. Thus, two persons might be declared eligible on the same day, . . . but because of processing delays at the SSA level become "recipients" under the statute on widely varying dates.

Gleim, 409 A.2d at 952.

The court in Gleim maintained that, "as of the date which SSA declares the individual eligible to receive SSI, he shall be

considered a 'recipient' under the Act. . . ." (emphasis added). Gleim, 409 A.2d at 953, n.3. In essence, the Gleim Court ruled that the term "receive" used in 42 U.S.C.S. § 602(a)(24) means "eligible to receive."

Later cases which have analyzed the meaning of Section 602(a)(24) have not agreed with the tortured reasoning found in Gleim. In Pennsylvania v. United States, 752 F.2d 795 (3d Cir. 1984), Pennsylvania sued the federal government to recoup AFDC payments it had made to SSI eligible individuals between the date of their SSI eligibility and their actual receipt of SSI benefits. <sup>5</sup>

The U.S. Secretary of Health and Human Services presented the federal agency's position that "Section 602(a)(24) is designed to prevent a person from receiving full benefits from both SSI and AFDC simultaneously ('double-dipping'), . . . , and that [the] policy of deducting AFDC payments from SSI benefits prevents double-dipping." Pennsylvania, 752 F.2d at 799. The

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<sup>5</sup>When SSA issues retroactive SSI benefits to a recipient, it reduces the retroactive award by the amount of AFDC benefits provided that individual by the AFDC program. The amount of that reduction is not paid over to the State agency which participates in the AFDC program. In Pennsylvania v. United States, Pennsylvania argued that the federal government's failure to return these AFDC payments to the State was illegal.

Third Circuit Court of Appeals agreed with that reasoning.

The court also found plausible the Secretary's position which had been adopted by the district court:

That Section [42 U.S.C.S. § 602(a)(24)] speaks only to an individual's eligibility for AFDC benefits and renders an individual ineligible for such payments when he is 'receiving' [SSI] benefits under subchapter XVI of this chapter.' (emphasis added). It is clear that, during the SSI determination period, an applicant does not receive SSI benefits, although he may later be found eligible to receive such benefits. . . . Thus, 42 [U.S.C.S.] § 602(a)(24) does not restrict AFDC payments during the determination period, nor does it require the adjustment suggested by plaintiffs. It addresses only the state's obligation with respect to AFDC eligibility when an individual is receiving SSI benefits.

Pennsylvania, 752 F.2d at 799.

The court also found the Secretary's implementation of Section 602(a)(24) to be consistent with other parts of the AFDC and SSI statutory schemes. See also West v. Bowen, 879 F.2d 1122 (3d Cir. 1989).

As noted by the policy unit for the DHS (R. 50), Nelson's assertion, carried to its logical extreme, would result in an applicant for SSI being declared ineligible for AFDC benefits during the SSI determination period. The position of the Secretary of HHS is that the purpose of Section 602(a)(24) is to prevent an SSI recipient from benefitting from both the AFDC

program and the SSI program. Utah DHS's interpretation of Section 602(a)(24) precludes a recipient from obtaining double benefits as intended by Congress and the Secretary.

If Nelson's interpretation is accepted by this Court, then, in order to avoid an SSI applicant from benefitting from both programs, the State may have to assume that an SSI applicant is also a recipient and thus ineligible for AFDC during the SSI determination period.

If the policy were applied as [Nelson] suggests, [DHS] would then deny AFDC benefits to someone whose SSI application had been pending for 2 years because if SSI is approved, the client would be an SSI recipient in those months. [DHS] would also compute overpayments for SSI months if any AFDC was received in those months, even though no SSI funds were issued in those months, this would not benefit our clients.

(R. 50).

The foregoing result would not promote the financial well-being of disabled poor people who seek SSI eligibility while receiving AFDC assistance from a State. The interpretation of Section 602(a)(24) which is espoused by both the Secretary of HHS and by DHS promotes the unambiguous meaning of the word "receive" and furthers the Congressional intent to prevent an individual from benefitting from both the SSI and AFDC programs simultaneously.

II. THE INTERPRETATION ACCORDED SECTION 602(a)(24) BY  
THE SECRETARY OF HHS IS ENTITLED TO DEFERENCE BY  
THIS COURT

When reviewing an agency's construction of a statute, this Court's role is to determine first, "whether Congress has directly spoken to the precise question at issue." Skandalis v. Rowe, 14 F.3d 173, 178 (2d Cir. 1994), (citing Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842, 104 S.Ct. 2778, 2781 (1984)). If so, then the Court must "give effect to the unambiguously expressed intent of Congress." Skandalis, 14 F.3d at 179. If, on the other hand, the statute is silent or ambiguous, deference is given to an agency's interpretation of a statute which it administers. Id.

It is a well settled principle of law "that a reviewing court must accord substantial deference to an agency's interpretation of a statute that the agency is directed by Congress to implement." Pennsylvania v. United States, 752 F.2d 795, 798 (3d Cir. 1984), see also, West v. Bowen, 879 F.2d 1122, 1124 (3d Cir. 1989) (the reviewing court is bound to defer to the Secretary's interpretation, if that interpretation is reasonable and based on a permissible construction of the statute); Skandalis v. Rowe, 14 F.3d 173, 178 (2nd Cir. 1994) (an agency's interpretation of a statute that the agency administers is

entitled to considerable deference; a court may not substitute its own reading unless the agency's interpretation is unreasonable); Martin v. Pav-Saver Mfg. Co., 933 F.2d 528, 530 (7th Cir. 1991) (an agency's interpretation is entitled to great deference by the judiciary).

This broad deference is even more warranted when the interpretation "concerns a 'complex and highly technical regulatory program,' in which the identification and classification of relevant 'criteria necessarily require significant expertise and entail the exercise of judgment grounded in policy concerns.'" Thomas Jefferson Univ. v. Shalala, No. 93-120, slip op. at 8 (U.S. June 24, 1994), 114 S.Ct. 2381, 2387 (1994), (quoting Pauley v. BethEnergy Mines, Inc., 501 U.S. 680, 697 (1991)); see also, Strickland v. Comm'r. Maine Dep't of Agric. v. Secretary, U.S. Dept. of Agric., 96 F.3d 542, 547 (1st Cir. 1996) (food-stamp case stating that deference to an agency's interpretation is particularly appropriate in complex and highly specialized areas where the regulatory net has been intricately woven).

The AFDC and SSI programs, and the interplay between them, certainly comprise complex and highly regulatory programs. This point has been illustrated specifically by the Supreme Court when



it stated "[t]he Social Security Act is among the most intricate ever drafted by Congress. . . . Perhaps appreciating the complexity of what it had wrought, Congress conferred on the Secretary exceptionally broad authority to prescribe standards for applying certain sections of the Act." Schweiker v. Gray Panthers, 453 U.S. 34, 43, 101 S.Ct. 2633, 2640 (1981).

Many additional Social Security Act cases support the view that deference is accorded to the Secretary's interpretation.

As the Supreme Court and this Court have emphasized frequently, our role is not to impose upon [the Social Security Administration] our own interpretation of the Social Security legislation. Rather, because Congress has delegated to the Secretary the responsibility for administering the complex programs, we must defer to her construction, as long as it is reasonable and not arbitrary and capricious.

Wheeler v. Heckler, 787 F.2d 101, 104 (3d Cir. 1986); see also, Visiting Nurse Ass'n of North Shore, Inc. v. Bullen, 93 F.3d 997, 1002 (1st Cir. 1996).

The Secretary of HHS has consistently asserted the position that an SSI recipient does not "receive" that benefit until the money is actually in the hands of the recipient. By an Action Transmittal, ACF-AT-93-20, the Department of Health and Human Services has stated that 42 U.S.C.S. § 602(a)(24) is "applicable beginning on the date SSI payments are actually received." (R.

125). In addition, it is the understanding of Utah DHS officials that Section 602(a)(24) applies to an individual only upon the actual receipt of SSI payments. (R. 85). That State understanding has been confirmed by the Deputy Director of the Office of Family Assistance, Department of Health and Human Services who has stated that Section 602(a)(24) is "applicable beginning on the date that Supplemental Security Income (SSI) payments under Title XVI of the Act are actually received, and not on the date SSI eligibility begins." (R. 129).

In evaluating the weight given specifically to agency interpretations, courts have held that deference is given to an agency's interpretation of a statute by using such devices as Action Transmittals. This deference is upheld unless the interpretation is judged unreasonable, or it contradicts an earlier position by the agency. See, e.g., Foley v. Suter, et. al., Medicare & Medicaid Guide (CCH) ¶ 37,695 (N.D. Ill. 1988) (1988 WL 235571, \*3); Wilkes v. Gomez, 32 F.3d 1324, 1329 (8th Cir. 1994), cert. denied, 115 S.Ct. 1431 (1995).

In the present case, the Secretary of Health and Human Services' interpretation of 42 U.S.C.S. § 602(a)(24) represents a reasonable accommodation of the intersection between the AFDC and SSI programs. In fulfilling her charge to administer these

highly complex and overlapping programs, the Secretary has elected to implement the policy which best reconciles potential overlaps. The Secretary's policy is that SSI funds are not received until the recipient physically has collected them. This interpretation is consistent with the plain language of Section 602(a)(24). Moreover, this interpretation "is consistent with other parts of the AFDC and SSI statutory schemes." Pennsylvania v. United States, 752 F.2d 795, 799 (3d Cir. 1984). In the complex and interwoven areas of Social Security and AFDC, the interpretation given to Section 602(a)(24) by federal and state officials should be given deference by this Court.

#### CONCLUSION

For the foregoing reasons, DHS's decision denying AFDC and Medicaid eligibility to the Nelson household should be affirmed.

DATED this 8th day of November, 1996.



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LINDA LUINSTRA  
Attorney for Appellant

**CERTIFICATE OF MAILING**

I hereby certify that two copies of the foregoing BRIEF OF APPELLEE were mailed first-class, postage pre-paid on this 8th day of November, 1996 to the following:

MICHAEL E. BULSON  
Utah Legal Services, Inc.  
550 24th Street, Suite 300  
Ogden, Utah 84401

A handwritten signature in dark ink, appearing to read "Linda R. Smith", is written over a horizontal line.

**ADDENDUM A**

(17) provide that if a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family, receives in any month an amount of earned or unearned income which, together with all other income for that month not excluded under paragraph (8), exceeds the State's standard of need applicable to the family of which he is a member—

- (A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and
- (B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A);

except that the State may at its option recalculate the period of ineligibility otherwise determined under subparagraph (A) (but only with respect to the remaining months in such period) in any one or more of the following cases: (i) an event occurs which, had the family been receiving aid under the State plan for the month of the occurrence, would result in a change in the amount of aid payable for such month under the plan, or (ii) the income received has become unavailable to the members of the family for reasons that were beyond the control of such members, or (iii) the family incurs, becomes responsible for, and pays medical expenses (as allowed by the State) in a month of ineligibility determined under subparagraph (A) (which expenses may be considered as an offset against the amount of income received in the first month of such ineligibility);

(18) provide that no family shall be eligible for aid under the plan for any month if, for that month, the total income of the family (other than payments under the plan), without application of paragraph (8), other than paragraph (8)(A)(v), exceeds 185 percent of the State's standard of need for a family of the same composition, except that in determining the total income of the family the State may exclude any earned income of a dependent child who is a full-time student, in such amounts and for such period of time (not to exceed 6 months) as the State may determine;

(19) provide—

- (A) that every individual, as a condition of eligibility for aid under this part [42 USCS §§ 601 et seq.], shall register for manpower services, training, employment, and other employment-related activities (including employment search, not to exceed eight weeks in total in each year) with the Secretary of Labor as provided by regulations issued by him, unless such individual is—

tending (in good standing) an institution of higher education (as defined in section 481(a) of the Higher Education Act of 1965) [20 USCS § 1088(a)], or a school or course of vocational or technical training (not less than half time) consistent with the individual's employment goals, and is making satisfactory progress in such institution, school, or course, at the time he or she would otherwise commence participation in the program under this section, such attendance may constitute satisfactory participation in the program (by that caretaker or child) so long as it continues and is consistent with such goals;

(ii) any other activities in which an individual described in clause (i) participates may not be permitted to interfere with the school or training described in that clause;

(iii) the costs of such school or training shall not constitute federally reimbursable expenses for purposes of section 403 [42 USCS § 603]; and

(iv) the costs of day care, transportation, and other services which are necessary (as determined by the State agency) for such attendance in accordance with section 402(g) [subsec. (g) of this section] are eligible for Federal reimbursement;

(G) that—

(i) if an individual who is required by the provisions of this paragraph to participate in the program or who is so required by reason of the State's having exercised the option under subparagraph (D) fails without good cause to participate in the program or refuses without good cause to accept employment in which such individual is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined to be a bona fide offer of employment—

(I) the needs of such individual (whether or not section 407 [42 USCS § 607] applies) shall not be taken into account in making the determination with respect to his or her family under paragraph (7) of this subsection, and if such individual is a parent or other caretaker relative, payments of aid for any dependent child in the family in the form of payments of the type described in section 406(b)(2) [42 USCS § 606(b)(2)] (which in such a case shall be without regard to clauses (A) through (D) thereof) will be made unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made; and

(II) if such individual is a member of a family which is eligible for aid to families with dependent children by reason of section 407 [42 USCS § 607], and his or her spouse is not participating in the program, the needs of such spouse shall also not be taken into account in making such determination;

(ii) any sanction described in clause (i) shall continue—

(I) in the case of the individual's first failure to comply, until the failure to comply ceases;

(II) in the case of the individual's second failure to comply, until the failure to comply ceases or 3 months (whichever is longer); and

(III) in the case of any subsequent failure to comply, until the failure to comply ceases or 6 months (whichever is longer);

(iii) the State will promptly remind any individual whose failure to comply has continued for 3 months, in writing, of the individual's option to end the sanction by terminating such failure; and

(iv) no sanction shall be imposed under this subparagraph—

(I) on the basis of the refusal of an individual described in subparagraph (C)(iii)(II) to accept employment, if the employment would require such individual to work more than 20 hours a week, or

(II) on the basis of the refusal of an individual to participate in the program or accept employment, if child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate in the program or accept employment, such care is not available, and the State agency fails to provide such care; and

(H) the State agency may require a participant in the program to accept a job only if such agency assures that the family of such participant will experience no net loss of cash income resulting from acceptance of the job; and any costs incurred by the State agency as a result of this subparagraph shall be treated as expenditures with respect to which section 403(a)(1) or 403(a)(2) [42 USCS § 603(a)(1) or (2)] applies;

(20)–(23) [Unchanged]

(24) provide that if an individual is receiving benefits under title XVI or his costs in a foster family home or child-care institution are covered by the foster care maintenance payments

being made to his or her minor parent as provided in section 475(4)(B) [42 USCS § 675(4)(B)], then, for the period for which such benefits are received or such costs are so covered, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this title [42 USCS §§ 601 et seq.] and his income and resources shall not be counted as income and resources of a family under this title [42 USCS §§ 601 et seq.];

(25) [Unchanged]

(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required—

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed;

(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed; and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 406(b)(2) [42 USCS § 606(b)(2)] (without regard to clauses (A) through (D) of such section) unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made; and

(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the State's plan for medical assistance under title XIX [42 USCS §§ 1396 et seq.], unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; but the State shall not be subject to any financial penalty in the administration or enforcement of this subparagraph as a result of any monitoring, quality control, or auditing requirements;

(27)–(29) [Unchanged]

(30) at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automated data processing planning document approved under subsection (e), of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of the State plan for aid to families with dependent children approved under this part [42 USCS §§ 601 et seq.], so as (A) to control and account for (i) all the factors in the total eligibility determination process under such plan for aid (including but not limited to (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of such aid and the relative with whom any child who is such an applicant or recipient is living) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction, (II) checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra- and inter-State, for determination and verification of eligibility and payment pursuant to requirements imposed by other provisions of this Act), (ii) the costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid, (B) to notify the appropriate officials of child support, food stamp, social service, and medical assistance programs approved under title XIX [42 USCS §§ 1396 et seq.] whenever the case becomes ineligible or the amount of aid or services is changed, and (C) to provide for security against unauthorized access to, or use of, the data in such system;

(31) provide that, in making the determination for any month under paragraph (7), the State agency shall take into consideration so much of the income of the dependent child's stepparent living in the same home as such child as exceeds the sum of (A) the first \$90 of the total of such stepparent's earned income for such month, (B) the State's standard of need under such plan for a family of the same composition as the stepparent and those other individuals living in the same household as the dependent child and claimed by such stepparent as dependents for purposes of determining his Federal personal income tax liability



## § 233.20

mental incapacity of a parent, or unemployment of a principal earner, and

(3) Living in the home of a parent or of certain relatives specified in the Act.

(b) The parent(s) of a dependent child, a caretaker relative (other than a parent) of a dependent child, and, in certain situations, a parent's spouse.

(iii) AB—for needy individual's under the plan who are blind.

(iv) APTD—for needy individuals under the plan who are 18 years of age or older and permanently and totally disabled.

(v) AABD—for needy individuals under the plan who are aged, blind, or 18 years of age or older and permanently and totally disabled.

(3) Federal financial participation is available in assistance payments made for the entire month in accordance with the State plan if the individual was eligible for a portion of the month, provided that the individual was eligible on the date that the payment was made; except that where it has been determined that the State agency had previously denied assistance to which the individual was entitled, Federal financial participation will be provided in any corrective payment regardless of whether the individual is eligible on the date that the corrective payment is made.

(4) Federal financial participation is available in assistance payments which are continued in accordance with the State plan, for a temporary period during which the effects of an eligibility condition are being overcome, e.g., blindness in AB, disability in APTD, physical or mental incapacity, continued absence of a parent, or unemployment of a principal earner in AFDC.

(5) Where changed circumstances or a hearing decision makes the individual ineligible for any assistance, or eligible for a smaller amount of assistance than was actually paid, Federal financial participation is available in excess payments to such individuals, for not more than one month following the month in which the circumstances changed or the hearing decision was rendered. Federal financial participation is available where assistance is required to be continued unad-

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justed because a hearing has been requested.

[36 FR 3866, Feb. 27, 1971, as amended at 38 FR 8744, Apr. 6, 1973; 39 FR 26912, July 24, 1974; 40 FR 32958, Aug. 5, 1975; 47 FR 5674, Feb. 5, 1982; 47 FR 47828, Oct. 28, 1982; 51 FR 9204, Mar. 18, 1986; 57 FR 30158, July 8, 1992]

### § 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

(1) *General.* (i) Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way except where otherwise specifically authorized by Federal statute and

(ii) Provide that the needs, income, and resources of individuals receiving SSI benefits under title XVI, individuals with respect to whom Federal foster care payments are made, individuals with respect to whom State or local foster care payments are made, individuals with respect to whom Federal adoption assistance payments are made, or individuals with respect to whom State or local adoption assistance payments are made, for the period for which such benefits or payments are received, shall not be included in determining the need and the amount of the assistance payment of an AFDC assistance unit; except that the needs, income, and resources of an individual with respect to whom Federal adoption assistance payments are made, or individuals with respect to whom State or local adoption assistance payments are made are included in determining the need and the amount of the assistance payment for an AFDC assistance unit of which the individual would otherwise be regarded as a member where the amount of the assistance payment that the unit would receive would not be reduced by including the needs, income, and resources of such individual. Under this requirement, "individuals receiving SSI benefits under title XVI" include individuals receiving mandatory or optional State supplementary payments

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under section 1616(a) of the Social Security Act or under section 212 of Public Law 93-66, and "individuals with respect to whom Federal foster care payments are made" means a child with respect to whom Federal foster care maintenance payments under section 472(b) and defined in section 475(4)(A) of title IV-E of the Social Security Act are made, and a child whose costs in a foster family home or child care institution are covered by the Federal foster care maintenance payments made with respect to his or her minor parent under sections 472(h) and 475(4)(B) of title IV-E. "Individuals with respect to whom Federal adoption assistance payments are made" means a child who receives payments made under an approved title IV-E plan based on an adoption assistance agreement between the State and the adoptive parents of a child with special needs, pursuant to sections 473 and 475(3) of the Social Security Act.

(iii) For AFDC, when an individual who is required to be included in the assistance unit pursuant to § 206.10(a)(1)(vii) is also required to be included in another assistance unit, those assistance units must be consolidated, and treated as one assistance unit for purposes of determining eligibility and the amount of payment.

(iv) For AFDC, when a State learns of an individual who is required to be included in the assistance unit after the date he or she is required to be included in the unit, the State must redetermine the assistance unit's eligibility and payment amount, including the need, income, and resources of the individual. This redetermination must be retroactive to the date that the individual was required to be in the assistance unit either through birth/adoption or by becoming a member of the household. Any resulting overpayment must be recovered or corrective payment made pursuant to § 233.20(a)(13).

(v) In determining need and the amount of payment for AFDC, all income and resources of an individual required to be in the assistance unit, but subject to sanction under § 250.34 or because of an intentional program violation under the optional fraud con-

trol program implementing section 416 of the Social Security Act, are considered available to the assistance unit to the same extent that they would be if the person were not subject to a sanction. However, the needs of the sanctioned individual(s) are not considered. In accord with § 250.34(c), if a parent in an AFDC-UP case is sanctioned pursuant to § 233.100(a)(5), the needs of the second parent are not taken into account in determining the family's need for assistance and the amount of the assistance payment unless the second parent is participating in the JOBS program. An individual required to be in an assistance unit pursuant to § 206.10(a)(1)(vii) but who fails to cooperate in meeting a condition of his or her eligibility for assistance is a sanctioned individual whose needs, income, and resources are treated in the manner described above.

(2) *Standards of assistance.* (i) Specify a statewide standard, expressed in money amounts, to be used in determining (a) the need of applicants and recipients and (b) the amount of the assistance payment.

(ii) In the AFDC plan, provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with paragraph (a)(3)(viii) of this section. Nevertheless, if a State maintains a system of dollar maximums these maximums must be proportionately adjusted in relation to the updated standards.

(iii) Provide that the standard will be uniformly applied throughout the State except as provided under § 239.54.

(iv) Include the method used in determining need and the amount of the assistance payment. For AFDC, the method must provide for rounding

down to the next lower whole dollar when the result of determining the standard of need or the payment amount is not a whole dollar. Proration under § 206.10(a)(6)(i)(D) to determine the amount of payment for the month of application must occur before rounding to determine the payment amount for that month.

(v) If the State IV-A agency includes special need items in its standard:

(A) Describe those that will be recognized and the circumstances under which they will be included, and

(B) Provide that they will be considered for all applicants and recipients requiring them; except that:

(1) Under AFDC, work expenses and child care (or care of incapacitated adults living in the same home and receiving AFDC) resulting from employment or participation in either a CWEP or an employment search program cannot be special needs, and

(2) In a State which has a JOBS program under Part 250, child care, transportation, work-related expenses, other work-related supportive services, and the costs of education (including tuition, books, and fees) resulting from participation in JOBS (including participation pursuant to §§ 250.46, 250.47, and 250.48) or any other education or training activity cannot be special needs.

(vi) For OAA, AB, APTD, or AABD, if the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy individuals, (a) specify the persons whose needs will be included in the individual's need, and (b) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest both with the recipient, and be supported and concurred in by the agency supervisory staff—a person of a higher position or authority than the first line caseworker or income maintenance intake employee.

(vii) For AFDC, if the State chooses to establish the need of the individual on a basis that recognizes, as essential to his/her basic well-being, the presence in the home of other needy individuals, (a) specify the persons whose needs will be included in the individ-

ual's need, but limited to those individuals who regularly provide at least one of the following benefits or services:

(1) child care which enables a caretaker relative to work on a full-time basis outside the home, (2) care for an incapacitated family member in the home, (3) child care that enables a caretaker relative to receive training on a full-time basis (4) child care that enables a caretaker relative to attend high school (or General Education Development (GED) classes) on a full-time basis, (5) child care for a period not to exceed two months that enables a caretaker relative to participate in Employment Search or another AFDC work program; and (b) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest both with the recipient, and be supported and concurred in by the agency supervisory staff—a person of a higher position or authority than the first line caseworker or income maintenance intake employee. A person will be considered incapacitated for purposes of the previous sentence when he has a physical or mental defect, illness, or impairment. The incapacity shall be supported by medical evidence and/or recorded testimony of a licensed medical health care professional, and must be of such a debilitating nature as to reduce substantially or eliminate his/her ability to support or care for himself/herself and be expected to last for a period of at least thirty (30) days. A finding of eligibility for OASDI or SSI benefits, based on disability or blindness, is acceptable proof of incapacity. The definition of the term *full-time*, applicable to both minor and adult caretaker relatives, as used above in paragraph (a)(2)(vii)(a) (1), (3), and (4) of this section shall be consistent with the definition used by the State for purposes of the earned income disregards at § 233.20(a)(11).

(viii) Provide that the money amount of any need item included in the standard will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally responsible individual; and the agency will not assume any contribution from such individual for the support of the assistance unit except

as provided in paragraphs (a)(3)(xiv) and (a)(5) of this section and § 233.51 of this part.

(ix) For AFDC, provide that a State shall consider utility payments made in lieu of any direct rental payment to a landlord or public housing agency to be shelter costs for applicants or recipients living in housing assisted under the U.S. Housing Act of 1937, as amended, and section 236 of the National Housing Act. The amount considered as a shelter payment shall not exceed the total amount the applicant or recipient is expected to contribute for the cost of housing as determined by HUD. *Utility payments* means only those payments made directly to a utility company or supplier which are for gas, electricity, water, heating fuel, sewerage systems, and trash and garbage collection. Utility payments are made "in lieu of any direct rental payment to a landlord or public housing agency" when, and only when, the AFDC family pays its entire required contribution at HUD's direction to one or more utility companies and does not make any direct payment to the landlord or the public housing agency. Housing covered by "the U.S. Housing Act of 1937, as amended, and section 236 of the National Housing Act" means Department of Housing and Urban Development assisted housing which includes Indian and public housing, section 8 new and existing rental housing, and section 236 rental housing.

(3) *Income and resources.* (i) (A) OAA, AB, APTD, AABD, Specify the amount and types of real and personal property, including liquid assets, that may be reserved, i.e., retained to meet the current and future needs while assistance is received on a continuing basis. In addition to the home, personal effects, automobile and income producing property allowed by the agency, the amount of real and personal property, including liquid assets, that can be reserved for each individual recipient shall not be in excess of two thousand dollars. Policies may allow reasonable proportions of income from businesses or farms to be used to increase capital assets, so that income may be increased; and (B) in AFDC—The amount of real and per-

sonal property that can be reserved for each assistance unit shall not be in excess of one thousand dollars equity value (or such lesser amount as the State specifies in its State plan) excluding only:

(1) The home which is the usual residence of the assistance unit;

(2) One automobile, up to \$1,500 of equity value or such lower limit as the State may specify in the State plan; (any excess equity value must be applied towards the general resource limit specified in the State plan);

(3) One burial plot (as defined in the State plan) for each member of the assistance unit;

(4) Bona fide funeral agreements (as defined and within limits specified in the State plan) up to a total of \$1,500 in equity value or such lower limit as the State may specify in the State plan for each member of the assistance unit (any excess equity value must be applied towards the general resource limit specified in the State plan). This provision addresses only formal agreements for funeral and burial expenses such as burial contracts, burial trusts or other funeral arrangements (generally with licensed funeral directors) and does not apply to other assets (e.g., passbook bank accounts, simple set-aside of savings, and cash surrender value of life insurance policies);

(5) Real property for a period of six consecutive months (or, at the option of the State, nine consecutive months) which the family is making a good faith effort (as defined in the State plan) to sell, subject to the following provisions. The family must sign an agreement to dispose of the property and to repay the amount of aid received during such period that would not have been paid had the property been sold at the beginning of such period, but not to exceed the amount of the net proceeds of the sale. The family has five working days from the date it realizes cash from the sale of the excess real property to repay the overpayment; failure to make repayment within this period results in the cash being considered to be an available resource. If the family becomes ineligible for AFDC for any other reason during the conditional pay-

ment period while making a good faith effort to sell the property, or fails to sell the property by the end of the period despite such a good faith effort, then the amount of the overpayment attributable to the real property will not be determined and recovery will not be begun until the property is, in fact, sold. However, if the property was intentionally sold at less than fair market value so that a good faith effort to sell it was not made, or if it is otherwise determined that a good faith effort to sell the property is not being made, the overpayment amount shall be computed using the fair market value determined at the beginning of the period. For applicants, the conditional payment period begins with the first payment month for which all otherwise applicable eligibility conditions are met and payment is authorized. For recipients who acquire property while receiving assistance, the period begins with the payment month in which the recipient receives the property; and

(6) At State option, basic maintenance items essential to day-to-day living such as clothes, furniture and other similarly essential items of limited value.

(ii) Provide that in determining need and the amount of the assistance payment, after all policies governing the reserves and allowances and disregard or setting aside of income and resources referred to in this section have been uniformly applied:

(A) In determining need, all remaining income and resources shall be considered in relation to the State's need standard;

(B) In determining financial eligibility and the amount of the assistance payment all remaining income (except unemployment compensation received by an unemployed principal earner) and, except for AFDC, all resources may be considered in relation to either the State's need standard or the State's payment standard. Unemployment compensation received by an unemployed principal earner shall be considered only by subtracting it from the amount of the assistance payment after the payment has been determined under the State's payment method;

(C) States may have policies which provide for allocating an individual's income for his or her own support if the individual is not applying for or receiving assistance; for the support of other individuals living in the same household but not receiving assistance; and for the support of other individuals living in another household. Such other individuals are those who are or could be claimed by the individual as dependents for determining Federal personal income tax liability, or those he or she is legally obligated to support. No income may be allocated to meet the needs of an individual who has been sanctioned under §§ 224.51, 232.11(a)(2), 232.12(d), 238.22 or 240.22 or who is required to be included in the assistance unit and has failed to cooperate. The amount allocated for the individual and the other individuals who are living in the home must not exceed the State's need standard amount for a family group of the same composition. The amount allocated for individuals not living in the home must not exceed the amount actually paid.

(D) Income after application of disregards, except as provided in paragraph (a)(3)(xiii) of this section, and resources available for current use shall be considered. To the extent not inconsistent with any other provision of this chapter, income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

(E) For AFDC, income tax refunds, but such payments shall be considered as resources; and

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC, title II and other retroactive monthly benefits, and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, i.e., monies for back

medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes all persons whose needs are taken into account in determining eligibility and the amount of the assistance payment, and includes solely for determining the income and resources of a family an individual who must be in a family pursuant to § 206.10(a)(1)(vii) but who does not meet a condition of his or her eligibility due to a failure to cooperate or is required by law to have his or her needs excluded from an assistance unit's AFDC grant calculation due to the failure to perform some action. A State may shorten the remaining period of ineligibility when: the standard of need increases and the amount the family would have received also changes (e.g., situations involving additions to the family unit during the period of ineligibility of persons who are otherwise eligible for assistance); the lump sum income or a portion thereof becomes unavailable to the family for a reason beyond the control of the family; or the family incurs and pays for medical expenses. If the State chooses to shorten the period of ineligibility, the State plan shall:

(1) Identify which of the above situations are included;

(2) In the case of situations involving an increase in the need standard and changes in the amount that should have been paid to the family, specify the types of circumstances which will be included;

(3) In the case of situations involving the unavailability of the lump sum income, include a definition of unavailability, and specify what reasons

will be considered beyond the control of the family; and

(4) In the case of situations involving the payment of medical expenses, specify the types of medical expenses the State will allow to be offset against the lump sum income.

For purposes of this paragraph (a)(3): Automobile means a passenger car or other motor vehicle used to provide transportation of persons or goods. (In AFDC, in appropriate geographic areas, one alternate primary mode of transportation may be substituted for the automobile); Equity value means fair market value minus encumbrances (legal debts); Fair market value means the price an item of a particular make, model, size, material or condition will sell for on the open market in the geographic area involved (If a motor vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle); Liquid assets are those properties in the form of cash or other financial instruments which are convertible to cash and include savings accounts, checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies, and similar properties; Need standard means the money value assigned by the State to the basic and special needs it recognizes as essential for applicants and recipients; Payment standard means the amount from which non-exempt income is subtracted;

(iii) States may prorate income received by individuals employed on a contractual basis over the period of the contract or may prorate intermittent income received quarterly, semi-annually, or yearly over the period covered by the income. In OAA, AB, APTD and AABD, they may use the prorated amount to determine need under § 233.23 and the amount of the assistance payment under §§ 233.24 and 233.25. In AFDC, they may use the prorated amount to determine need under § 233.33 and the amount of the assistance payment under §§ 233.34 and 233.35.

(iv) Provide that in determining the availability of income and resources,

GENERAL PROVISIONS - THE ROLES, RESPONSIBILITIES AND RIGHTS OF  
ELIGIBILITY WORKERS

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122 Eligibility Workers

1. Roles:

Determine eligibility for temporary and appropriate benefits accurately and timely; select from a wide variety of programs those necessary to support clients in their efforts to become self sufficient.

2. Responsibilities

- A. Contact each client who applies.
- B. Provide information so each client can make informed decisions.
- C. Determine with the client which programs are applicable to her circumstances.
- D. Explore strategies for overcoming barriers and assist the client to obtain needed services.
- E. Make appropriate referrals to the self sufficiency worker and allied agencies.
- F. Monitor and redetermine eligibility.
- G. Keep records which document eligibility and clients' movement toward goals.
- H. Encourage and support appropriately.

3. Expectations:

- A. Use all skills, information, tools and resources available to assist the client.

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GENERAL PROVISIONS - THE ROLES, RESPONSIBILITIES AND RIGHTS OF  
ELIGIBILITY WORKERS

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- B. Refrain from assuming responsibilities which belong to the client.
- C. Foster clients' ownership of her self sufficiency pathway.
- D. Refrain from making moral or personal judgements.
- E. Observe the rights of the client -- refer to Section 110 for rights of client.
- F. Safeguard information and protect confidentiality .
- G. Offer problem resolution opportunities.

4. Rights:

To keep professional and personal life separate. The professional worker is not expected to be the best friend of the clients. Rather the worker should be available to the clients in a professional setting. In that setting, the relationship with the clients will be a professional one.

INCOME STANDARDS - LUMP SUM PAYMENTS AND OTHER INCOME IN EXCESS  
OF STANDARD NEEDS BUDGET

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438 Lump Sum Payments and other Income in Excess of Standard Needs Budget

Lump sum payments, including Social Security Lump sums, VA lump sums, unemployment compensation lump sums, and other one time payments, are income. Earned Income Tax Credit (EITC) payments are NOT lump sum payments. Lump sums can be earned or unearned income.

1. If a household's net countable income (including the net amount of the lump sum payment) exceeds the standard needs budget, then the amount in excess of the standard needs budget will count as income for future months. (Unless the only reason the net income exceeds the standard budget is because a recipient is paid weekly or biweekly and receives an extra check in a month).
2. The client will be ineligible for assistance for the number of months determined by dividing the net countable income for the budget month by the standard budget for the household size for the payment month. Any amount remaining will only count for the month following the last month of ineligibility.
3. A net lump sum\* payment that causes the net countable income to exceed the standard budget in the budget month will cause the household to be ineligible starting with the corresponding payment month.

**EXAMPLE:**

Ms. A has net countable income of \$50.00 received during the budget month of January. In January she also received a lump sum of \$1,750.

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Net lump sum: That portion of a lump sum left after excluding:

1. Legal fees expended in the effort to make the lump sum available **AND**
2. Payments for past medical bills.

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**INCOME STANDARDS - LUMP SUM PAYMENTS AND OTHER INCOME IN EXCESS  
OF STANDARD NEEDS BUDGET**

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She has a household of two with standard budget of \$407. Determine her period of ineligibility by adding the \$50.00 net countable income to the lump sum of \$1,750. This equals \$1,800.

Divide \$1,800 by the standard budget amount of \$407.00. \$407 will go into \$1,800 four full times with a remainder of \$172.

The open AFDC case would be closed the end of February because the client is ineligible for four months beginning with March and ending with June. If the client reapplies in July, then the remainder of \$172 will be added to any July income she may have to determine eligibility for July and the initial grant for July.

4. If the lump sum, plus any net countable income, is less than the Standard Needs Budget Figure, then continue to compute the grant by counting the lump sum received in the budget month as income to be subtracted from the grant in the payment month.
5. A lump sum received either before or after the date of application in the month of application, shall be counted as income in the month of application.

If the case is ineligible, and the application is thus denied, then the month of application is the first month in the period of ineligibility.

6. Do not count a lump sum received before the month of application.
7. A lump sum received after the month of closure shall not be counted nor can it be used to extend the period of ineligibility.
8. Treat as a separate assistance unit new household members who meet the 2 rules below:

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INCOME STANDARDS - LUMP SUM PAYMENTS AND OTHER INCOME IN EXCESS  
OF STANDARD NEEDS BUDGET

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- A. The new member is born or moves into the home after the lump sum is received.

**AND**

- B. The new member was not included as part of the SNB used to figure the period of ineligibility.

Do not use the lump sum income when determining eligibility and grant amount. Use all other household income. Include the income of household members who are not eligible due to the receipt of the lump sum.

The lump sum funds are not an asset for the new members. But, all other household assets must be considered.

Use the figures from Table II for the number of new household members to determine eligibility and the amount of payment. For example, if a child is born after the period of ineligibility is calculated, base the grant for that child on a household size of 1.

Beginning the month following the last month of ineligibility, all family members must be in one household. This rule applies even if there is an amount remaining from the lump sum that is used as income.