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SUBCOMMITTEE ON HUMAN RESOURCES

Implementation of the Family Support Act of 1988
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My name is Casey McKeever. I am Directing Attorney of the Northern California office of Western Center on Law and Poverty in Sacramento. Western Center is a state support center for legal services programs in California which represent indigent people on civil legal matters including public assistance issues. Part of my job is to represent clients on legislative and administrative issues related to California's GAIN program. I have been doing this since late 1983, and therefore was involved in the debate over welfare reform prior to and upon the enactment of GAIN in 1985.

I have also been monitoring implementation of the program since its passage and have been analyzing data and representing clients on the legislative and administrative matters affecting the program. I have written several reports and memos on the implementation of GAIN, the latest of which, entitled "The More Things Change ... GAIN Revisited," I am submitting along with my testimony today.

I appreciate the opportunity to address you today as an advocate for low-income families affected by GAIN and JOBS. While there are scores of issues on which comment could be made, I want to focus on two general areas, each of which raises several concerns. First, the notion of self-determination and voluntariness of participation; second, the difficulties working poor recipients face both under existing AFDC rules and in grappling with low wages they are likely to receive upon employment.

SELF-DETERMINATION AND VOLUNTARINESS

Our duty as advocates for the poor is to promote the well-being of needy families as well as their ability to make decisions affecting their lives. As such, the concepts of voluntariness and choice are fundamental criteria by which we assess public policies directed toward low-income persons. We tend to trust the ability of the poor to act in their own interests and to know what is best for their families. When decisions about program participation, activities or services are to be made, we support deference to the choice of the recipient.

Of course, GAIN and JOBS are mandatory programs, so decisions are made within this context. However, there is still great room for respect for the wishes of participants even given the mandatory feature. In enacting JOBS, Congress declared that "[t]he employability plan shall ... to the maximum extent possible ...reflect the respective preferences of ... participants." 42 U.S.C. sec. 682(b)((1)(B). We have been strong proponents of self-determination and voluntariness which will effectuate this goal.

Priority for Services to Volunteers

One major area in which this principle arises is the difficult question of choosing among potential participants when resources are limited. One of JOBS' most important features was its requirement that "in determining the priority of participation by

individuals from among those [target] groups ..., the State will give first consideration to applicants for or recipients of [AFDC] within any such group who volunteer to participate in the program." 42 U.S.C. sec. 602(a)(19)(B)(ii).

This principle is an important one promoting service to those recipients of aid who have concluded that GAIN has something valuable to offer them and wish to take advantage of it. It is plain that the costs of a program such as GAIN do not permit full service to all applicants and recipients who are required or allowed to participate. Indeed, the total cost of the program if it were fully funded in the 1990-91 budget year would be $529 million, nearly twice the costs estimated when the bill was debated in the summer of 1985. The expense of the program in conjunction with the state's fiscal crisis has led to the failure of the Deukmejian administration to appropriate full funding for it. The proposed 1990-91 budget calls for a reduction of over $30 million in state general fund dollars, resulting in the inability to serve some 164,000 potential participants. If choices must be made about who is and is not served, it is sensible, fair and, we believe, cost-effective, to prefer those choosing to participate. It is worth noting that the most recent report by the Manpower Demonstration Research Corporation (MDRC) on GAIN implementation found a much better pattern of participation among volunteer participants (who for GAIN purposes were all exempt volunteers) than among mandatory ones. Some 63% of volunteers participated at least half the days after orientation, compared to less than half (48% of single parents, 39% of AFDC-U participants) of mandatory participants. MDRC, <u>GAIN: Early Implementation Experiences and Lessons</u>, April 1989, p. 133.

Until passage of JOBS, the GAIN program gave recipients who were exempt from the mandatory requirement but who wished to participate virtually the lowest priority for services. Welfare & Institutions Code (hereafter W.I.C.) sec. 11320.21(d). Despite the JOBS volunteer priority provision, the priority for volunteers was not extended to exempt volunteers in the original California legislation which implemented JOBS, in part due to the confusion created by HHS comments accompanying the proposed and final federal regulations. See 54 Fed.Reg. 42166-42168 (Oct. 13, 1989).

We are hopeful that this problem will be remedied in Assembly Bill 312, the follow-up JOBS implementation bill currently pending in the state legislature. We are working with the author and the Department of Social Services to reach agreement upon specific language so that our clients who volunteer to participate can expect to be assigned to the next available appropriate slot. I do believe, however, that the confusion created by the HHS regulatory language lends itself to avoidance of the clear directive of Congress, and I presume that other states are experiencing similar difficulties in implementing it.

<u>Impending Participation Rate Requirements for AFDC-U Families</u>

An issue which is looming is the not-too-distant future but could do much to undermine the volunteer target group priorities and the principle of voluntarism is the JOBS requirement that beginning in fiscal year 1994, states must require 16 hours per week of participation from AFDC-UP recipients in designated work programs, and meet stringent participation rates starting at 40% and rising to 75% by fiscal year 1997. 42 U.S.C. sec. 603(l)(4). Should this requirement be maintained, it will redirect substantial resources away from target group members toward a

population which by definition has a connection to the labor market and is less is need of the kinds of services programs such as JOBS can offer. It is also certainly true that AFDC-U households generally have shorter stays on aid. These charactistics are contrary to two of the federally-prescribed target group categories: (1) families on aid 36 of the past 60 months and (2) families headed by a parent under 24 without a high school diploma or recent work history.

Every study of the impact of such programs on AFDC-U families has demonstrated the failure to achieve significant improvements in their economic fortunes. Indeed, AFDC-U families are found to suffer cost-benefit losses as a result of such programs. See MDRC, Final Report on the San Diego Job Search and Work Experience Demonstration, Feb. 1986, pp. 100-102, 167, 170; MDRC, Saturation Work Initiative Model in San Diego, Nov. 1989, pp. 124, 128. It would certainly defeat what appeared to be a major feature of JOBS -- the focussing of resources on those in target groups -- to force a virtual complete reorganization of programs to meet participation rate standards which seem at odds with the need to serve longer-term recipients lacking education and work history. We strongly urge that these AFDC-U requirements be revisited by Congress, and that they be repealed to the extent they cause programs to be overhauled to serve less needy recipients.

Allowance of Self-initiated Programs

One of the most successful aspects of GAIN is the support provided to parents in "self-initiated programs," known by the acronym "SIP's." Since its inception, GAIN has allowed persons enrolled in education or training programs designed to lead to employment up to two years to continue their program during which they are eligible for child care and transportation. SIP's constitute some 84% of all training and education programs other than basic and remedial education. Comments from clients have indicated great satisfaction with this opportunity.

Yet the limitations on SIP's, especially GAIN's two-year maximum, have impeded many from taking full advantage of the opportunity SIP's could potentially offer. The kinds of jobs disadvantaged women can obtain with shorter term education or training frequently do not permit a family to markedly improve its economic condition or even exceed the poverty level. For example, we have seen several cases of women required to find work as an LVN, a job paying bare poverty wages, and give up their program aimed at becoming a Registered Nurse, which would lead to a job paying enough to support a family. The common expectation of those who would deny a participant the ability to continue with such programs is that she could pursue a more advanced degree while working at a full-time job. Yet this seems a harsh and unrealistic assumption which ignores the burdens on single parents. Should society give some support to struggling families whose head is seeking to improve her children's future by working toward a goal which would allow them to leave their subpoverty existence? I believe it should, and also believe that the benefits to government will exceed the costs if an extra two years of preparation for the job market is allowed instead of forcing a family into a less stable financial situation likely to result from short term training.

An analysis of Census data performed by the Center for Law and Social Policy concludes that "Four year colleges are much more closely linked with adequate earnings that are two-year programs -- especially for nonwhite women ..." CLASP, "Data Suggests Need

for College Access in 'JOBS' Program," December 1989, p. 2. Indeed, some 57% of adult women with only a high school education and 43% of those with 1-3 years of college had income under $10,000 per year in 1987. The percentage with income under $10,000 drops to 33% for women with four years of college, and 22% for college-educated black women. At the time of the data college, $10,000 was poverty level income for a family of four. As of today, annual income under $10,000 would leave a family of three in poverty.

JOBS allows self-initiated programs to be continued so long as the program is "consistent with the individual's employment goals" and attendance is "not less than half time." 42 U.S.C. sec. 602(a)(19)(F)(i). There are no federally-established time limitations. However, HHS comments to the federal regulations indicate that the agency looks upon postsecondary education with disfavor: "While we do not prohibit the use of JOBS funds for this activity, we are concerned about the potential cost... We will monitor State expenditures in this area for the purpose of deterining the extent to which investment in postsecondary education for JOBS participants produces more beneficial returns, such as longer term self-sufficiency, than are produced by other levels of education and training." 54 Fed. Reg. at 42182 (Oct. 13, 1989). No such exacting scrutiny is expressed about other JOBS components, even though there may be serious doubts about their efficacy.

Additionally, the HHS regulations specifically proscribe payment of JOBS funds for the cost of books of self-initiated education program participants. 45 C.F.R. §250.75(a). This limitation purported to follow the JOBS statutory exclusion of "the costs of such school or training" from federal reimbursement. Yet we believe the exclusion was intended to apply to tuition expenses, not incidental expenses essential to participation. The costs of books for students is often quite high and too difficult to afford out of a needy family's AFDC grant. These costs had been considered a covered "ancillary expense" in GAIN, W.I.C. sec. 11320(e)(3). As a result of the HHS exclusion, however, the Deukmejian administration is proposing to discontinue payment of books.

We believe that Congress should place some limits on the ability of states to interfere with self-initiated training or education programs only because they exceed a limited duration. We do not believe it furthers the purposes of JOBS to compel an AFDC parent to quit a program of her own choosing with prospects for permanent self-sufficiency and attend job search activities aimed at finding her short-term, low-paid work. Additionally, ancillary expenses such as books which are necessary for self-initiated program participation should be expressly subject to federal reimbursement.

DIFFICULTIES FOR WORKING AFDC RECIPIENTS

The next set of issues I'd like to discuss involves problems facing AFDC recipients who may participate in a JOBS program, find employment, but not earn enough to become ineligible for aid. The experience of GAIN is that some 80% of the single parent participants who are officially counted as employed remain on aid after they find work. This is also true for 55% of the AFDC-Unemployed Parent households, despite the effect of the 100-hour rule.

"Disregards" of Child Care and Work Expenses for AFDC families

While in GAIN, participants receive supportive services to cover costs of child care, transportation and other ancillary expenses. Child care costs are paid up to a level equal to 1.5 standard deviations from the average regional cost of care. W.I.C. sec. 11320.3(f). As a general rule, this covers about 93% of the available care.

Once working and on aid, however, a recipient is no longer a GAIN participant and is not eligible for supportive services. Child care or work expenses can be "disregarded" from gross earnings before those earnings are applied against a family's AFDC payment, but federal law sets maximum limits on the amounts that can be deducted. Work expenses, which include mandatory payroll deductions, are limited to $90 per month, and child care is limited to $175 per month or $200 for a child under two years. Actual costs incurred over these amounts are paid from the basic AFDC grant, which, of course, is designed to cover subsistence living expenses and not work-related expenses.

A recent article in the Sacramento Bee newspaper, joined to a piece on the release of the national Research Council's report on the need for child care, noted that in Sacramento, child care costs range from $200 for schoolage children, to $300-400 for preschool children, to $400-500 for infant care. Moreover, "[m]ore than half the families in need of day care in Sacramento County are unable to find a suitable facility." "The Local Angle: Half Can't Find Care," sidebar to "Upgrade of Child Care Urged," Sacramento Bee, March 15, 1990, p. A24. Child care advocates indicate that the cost of care is much higher in several other areas of the state than it is in Sacramento.

Of course, GAIN and JOBS have as a fundamental feature the requirement of participation by parents with preschool age children, and even those with infants, with the expectation that these parents will find employment. For those who do find work but stay on aid, the disregard amounts are entirely unrealistic. In practice, these parents will simply not used licensed or center-based care, and may not work unless they happen to have a free or very cheap source of child care. Such care may or may not serve the genuine needs of the child and parent, but if she is to keep a job, the parent will have virtually no choice.

Once a family earns enough to become ineligible for AFDC, transitional child care is available for one year. This was one of the most positive achievements of the Family Support Act. California is about to enact legislation -- Assembly Bill 1706-- which will set the child care payment rates for transitional care at the maximum level for which federal reimbursement is available, the 75th percentile of care in the region.

A common "transition" for working GAIN participants would begin with GAIN participation itself, followed by a period of employment while remaining AFDC eligible, and when wages increase to the point of ineligibity, reliance on earnings only perhaps supplemented by transitional child care and Medicaid benefits. Yet in California each of these stages has different standards for child care payment. The best care can be afforded when one is in GAIN. Once out of GAIN and still on aid, the disregard amounts drop precipitously. A parent who has relied on a provider paid by GAIN may well not be able to afford that care when she finds a job. If the family leaves AFDC due to earnings, the rates will increase, but still not allow for the kind of care the parent received while in GAIN.

Such divergent rates make continuity of care extremely difficult for working parents. We all can appreciate the value to children and parents of maintaining consistency in child care providers. How can a parent achieve this when the amounts available jump from one level to another unrelated either to reason or the family's needs?

Use of Disregard to Meet Child Care Guarantee

The Family Support Act does provide that "[e]ach State agency must guarantee child care ... for each family with a dependent child requiring such care to the extent that such care is determined by the State agency to be necessary for an individual in the family to accept employment or remain employed." 42 U.S.C. sec. 602(g)(1)(A)(i). The Act lists several methods by which this guarantee can be met: direct provision, contracts or with child care providers, reimbursement to the family. Yet this has been interpreted by HHS to allow a state merely to rely upon the child care disregard for those on aid. 45 C.F.R. sec. 255.3(a)(6). A state may supplement the disregard up to a higher level, 45 C.F.R. sec. 255.3(f)(2), but states experiencing serious fiscal constraints with higher-than-anticipated program costs simply won't do this. The disregard supplement was raised in the context of AB1706, the transitional child care bill, but the current administration maintained steadfast opposition to providing such a supplement, primarily for fiscal reasons, but also based upon a convoluted notion that a lower disregard for working recipients would give them an "incentive" to get off AFDC in order to take advantage of the higher rate applicable in transitional care. Such a view assumes that the amount of earnings or hours of employment are fully within a worker's control rather than the employer's. It also ignores the likely inability of many finding work to keep their job if they suffer a drastic reduction in child care benefits as would occur with the shift from GAIN care to the disregard.

There is a serious question as to whether use of an unsupplemented disregard actually satisfies the Family Support Act's guarantee of care to those needing it to find or keep jobs. We believe that it doesn't, and that Congress needs to clarify the duty to assure that child care is meaningfully available to working poor families receiving AFDC.

Federal Limits on Child Care Reimbursement

The important question of child care rates merits two additional comments. As I previously described, California's GAIN child care rates have been higher than the amount for which federal reimbursement is available. The difference will exclude approximately 18% of the care from coverage, and one estimate by child care advocates suggested that in some areas about a quarter of GAIN participants use care that falls within the gap between the 75th percentile and 1.5 standard deviations. While GAIN will continue to use the standard deviation formula for its participants, and California will make up the difference in state-only funds, the state was unwilling to pay at that level for 12-month transitional care, even though prior to JOBS the GAIN formula was also used for the state's three month transitional care benefits. Again, participants moving from GAIN to employment that causes them to leave AFDC may face disruption in their care as the 75th percentile standard is implemented, while they also must pay a monthly fee. Again, this change in rates may hinder the ability of some workers to maintain their

employment if the face loss of their child care provider.

Additionally, we should also consider the social consequences of pressures toward cheaper care on the children of AFDC participants. Rather than looking at child care as mere babysitting, we should be attentive to the quality of care and its impact on child development. The recent National Child Care Staffing Study conducted by the Child Care Employee Project has documented the connection between the cost of care and its quality. I would hope that concern for the value of care delivered to AFDC children through the Family Support Act would be a consideration in any review of the amounts available under the program.

Unquestionably, the federal reimbursement cap has driven the state's policy on transitional care rates, as in many others. The strain on state funding causes the administration to search for means of saving money, and conformity with federal standards is a convenient basis on which to justify program reductions. We believe that the child care reimbursement rate should be revisited by Congress, and that states like California which have made commitments to quality care should be permitted to continue to do so with full federal participation.

Employment and the 100-hour rule

I'd also like to make a brief point about the 100-hour rule. This is another of AFDC's arcane rules which makes two-parent AFDC-Unemployed Parent families ineligible once the principal wage earner works 100 hours in a month. This makes a family ineligible for any aid which could supplement earned income, even if the wages received are well below the amount a family would receive on AFDC alone. A worker reaching 100 hours, therefore, can make his family far worse off than if he or she worked fewer than 100 hours.

The impact of this rule may be reflected in official state GAIN data indicating that only 45% of AFDC-U families leave aid once the worker finds a job. This would suggest that over half of the AFDC-U recipients finding work are employed for fewer than 100 hours per month. Even allowing for the fact that some families may not be counted as leaving aid due to their failure to submit a monthly income report, this is a staggering figure revealing that huge numbers of recipients who do find employment are barely half-time workers. This could mean that many AFDC-U families consciously eschew more hours to avoid the trap of the 100-hour rule. I don't believe this serves any legitimate public policy.

Ultimately, the illogic of the 100-hour rule reveals the obsolete concept of "deprivation" upon which much of AFDC policy is based. Families are only assisted if there is a legitimate reason for their poverty apart from bare economic need. The most common basis of eligibility is the "continued absence of a parent." Two-parent households only qualify because the "deprivation" is based upon unemployment, which is defined by additonal byzantine rules on connection to the labor market. The 100-hour rule makes sense only within this anamolous context, since a person working 100 hours is not "unemployed." The premise that one must demonstrate an additional element of "worthiness" beyond the presence of needy children in a family in order to qualify for subsistence aid is one that should be reexamined in any future efforts at "welfare reform." I don't think we need years of operation and study of "demonstration projects" to recognize the irrationality of this policy.

The Net Impacts of Employment

Finally, I want to suggest that in examining the success or lack thereof of JOBS programs, we should not begin and end with the premise that the only goal is to get families "off welfare." Those of us who advocate for the poor have long argued that the real problem is poverty, not welfare. I do not want to minimize the personal satisfaction many in GAIN feel when they find a job, even if that job is not one which provides enough in wages and benefits to put a family substantially over the poverty line. But in judging a program comprehensively, we think it should aim to significantly improve the economic fortunes of those at whom it is directed, not merely substitute one form of income for another without increasing the family's ability to meet its needs.

When gross employment statistics are cited, it should not be assumed that GAIN or JOBS is responsible for all, most or even a substantial portion of jobs found by recipients. State GAIN data count anyone who finds work and is registered with GAIN, regardless of participation in any component. As we all know, many recipients find work on their own without assistance from any employment program. The MDRC report on San Diego's SWIM program found that over half of the single parents and 62% of the AFDC-U's in the "control group" who received no services found employment in the two-year follow up period.

Secondly, even what have been interpreted as "successful" results in these programs are indeed questionable when viewed from the point of view of the participants themselves. The "cost-benefit" calculations performed usually show little or negative net benefits for AFDC recipients. This was also true of SWIM. When "gains" (earnings, fringe benefits, supportive services) were measured against "losses" (taxes, lost AFDC and other benefits), the single parent families barely broke even ($39 to $151 more gains than losses, but over 5 years), while the two-parent households slightly lost out (minus $37 to $67). Moreover, these studies considered supportive service payments to program participants a "gain," but did not deduct the cost of paying for the services. Therefore, the "gains" were overstated by $72 for single parents and $48 for AFDC-U participants. Moreover, the study did not measure the post-program impact of added child care costs and lost Medicaid for employed participants. The true "net costs" to participants, then, cannot be known from the data gathered in these studies.

MDRC is performing a more comprehensive study of GAIN, which will include a number of personal interviews with participants and collect information on areas not part of previous studies, but, as I understand the methodology, the added information from these interviews cannot be incorporated into the numerical "impact" and "cost-benefit" calculations. I do not mention this to dismiss MDRC's studies, all of which have provided extremely valuable data and information essential to an understanding of the these programs. I do want to emphasize, however, the inherent limits of such studies, and the careful scrutiny which must be given to them in judging the value of the programs assessed to the lives of the poor at whom they are directed.

CONCLUSION

As advocates for the poor, we want programs such as JOBS to better the quality of life for poor families who are struggling

with subpoverty income. For us, it is not enough to reduce welfare costs; we want to see improvements in the well-being of our clients through better education, training, jobs and wages. The Family Support Act contains some features which will help a limited number of AFDC families improve their fortunes. Much more needs to be done, however, both in enhancing the Act's commitments and, we hope, addressing further welfare reform and anti-poverty efforts which look beyond the welfare system.