[ms-0398.007.001.005]

FILED
KENNETH E. MARTONE
Clerk of the Superior Court
SEP 01 1992
By: R. NAPPI, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CHARLES WASHINGTON, et al, Plaintiffs, vs. BOARD OF SUPERVISORS, et al, Defendants.	No. 647805 **STATEMENT OF INTENDED DECISION**

This case came on regularly for trial before this Court, without a jury, on August 4-6, 10-13, and 17-19, 1992. The matter was submitted on August 19, 1992. Anson Levitan and Carol Bracy of the Legal Aid Society of San Diego, Inc. and Robert Newman of the Western Center on Law and Poverty, Inc. appeared for the Plaintiffs. Theresa Stevenson and Ian Fan of the County Counsel's Office appeared for the Defendants.

I

Nature of the Case

This case challenges the validity of San Diego County Administrative Code Section 257.2, adopted by the San Diego County Board of Supervisors on January 14, 1992. The Ordinance

limits General Relief benefits to three months in a twelve-month period for all recipients classified as "employables".

Plaintiffs' complaint sets forth one cause of action premised on two counts: (1) Violation of Duty to Provide Benefits to Indigent Residents pursuant to Welfare and Institutions Code Sections 17000 et seq, and (2) Actions Contrary to Statutory Purpose in Violation of Welfare & Institutions Code Sections 10000 and 17000 et seq.[1] The Plaintiffs, a class of general relief recipients who have or will be affected by the Ordinance, seek injunctive and declaratory relief.

Defendants deny Plaintiffs' allegations and further assert the following: (1) the Board of Supervisors may lawfully impose durational limits on the General Relief Program; (2) fiscal defenses apply to this case; (3) the assumptions upon which case law authority interpreting Welfare and Institutions Code Section 17000 et seq are based, are no longer viable; and, (4) injunctive relief creates greater harm to the County as a whole than to the recipients impacted by the Ordinance.

II

Background

The General Relief Program is a program of last resort which is intended to serve residents who have no other means of support and who do not qualify for any other form of

---

[1]The Plaintiffs' complaint initially set forth a third count premised on equal protection arguments; at Plaintiffs' request, that count was dismissed on August 4, 1992. The complaint also sought a peremptory Writ of Mandate; on March 17, 1992, the Fourth District Court of Appeal dismissed the petition for Writ of Mandate as moot.

governmental aid [e.g., Supplemental Security Income or Aid to Families with Dependent Children]. The program is mandated by State law but is funded entirely from county resources.

Currently, the maximum level of support is a grant in the amount of $291 per month and $22 per month for transportation. Recipients are also eligible for $111 per month in food stamps, disbursed in the form of cash and health care through the County's indigent medical services program. In return, employable recipients are required to work 72 hours per month at a work site and show proof of at least four job applications per month. Failure to comply can result in the suspension of benefits.[2]

Welfare and Institutions Code Section 17000 imposes a mandatory duty upon counties to provide aid to "all incompetent, poor, indigent persons, and those incapacitated by age, disease or accident" who are lawful residents of the county and have no other means of support. To administer general relief, "each county shall adopt standards of aid and care for indigent and dependent poor . . . ." (§17001)

In San Diego, the General Relief (GR) Program is administered by the Department of Social Services. The recipients are classified as "employable", "interim assistance" (those unable to work and awaiting determination of eligibility for SSI), and "unemployable". In 1991, roughly 75% fell into

---

[2]AB 1012, passed by the Senate on August 19, 1992 and the Assembly on August 20, 1992, which adds Section 17001.5 to the Welfare and Institutions Code, specifically allows counties to impose sanctions upon able-bodied recipients who refuse to follow program requirements regarding job searches.

the latter two categories and 25% into the employable category. Procedures exist for a recipient to challenge the classification.

This lawsuit impacts only those GR recipients classified as employables. Employable recipients are those considered physically and mentally capable of working, or working with restrictions (i.e., limitations on standing, lifting, etc.). The subject Ordinance affects only those employable recipients who previously have received more than three months of benefits in a twelve-month time period.

The Plaintiffs filed suit on January 27, 1992, after San Diego County Board of Supervisors adopted San Diego Administrative Code Section 257.2. On January 30, 1992, this Court granted Plaintiffs' temporary restraining order enjoining the Defendants from implementing the Ordinance. On February 14, 1992, Plaintiffs' request for a Preliminary Injunction was denied. The Appellate Court reversed and directed that the Preliminary Injunction issue pending the outcome of this trial. Pursuant to stipulation and this Court's order dated April 9, 1992, the matter was certified as a class action.

The trial concluded on August 19, 1992, and the following issues were submitted before this Court.

III

Issues

1. Are the time limitations set forth by the Ordinance consistent with applicable state statutes and reasonably necessary to effectuate their purposes?

2. Is the Ordinance lawful within the meaning of Welfare

month is declining.[3]

B. Impact on "Affected" Recipients:

1. Demographically, the "affected" population (i.e., the GR recipients impacted by the Ordinance) presents the following characteristics.[4]

Gender:	Males	73%
	Females	27%
Race:	Afro-American	39%
	Whites	38%
	Hispanic	14%
Age:	Median Age:	35
	Mean Age:	36
Education:	12 years or more:	73%
Housing:	Place to live:	56%
	No Address:	44%
	Live Alone:	71%
	No Telephone:	56%
Prior Employment:	Labor:	51%
	Services:	27%
Veteran Status:	Veterans:	33%
Marital Status:	No Spouse Listed:	96%
	Spouse Listed:	4%

2. From January through December 1991, 13,450 employable GR cases received one or more months of aid.[5] Approximately two-thirds of the cases received one to three months of benefits in a twelve-month period, and thus would not be

---

[3]The average number of employable recipients per month in 1991 was approximately 3,300; in 1992 it was 2,013 per month.

[4]This information is derived primarily from the recipients' self-reported data.

[5]Almost all of the GR cases reported have only one recipient.

impacted by the Ordinance.

One-third (approximately 4,496 cases) received four to twelve months of benefits, and hence would be impacted by the Ordinance. Of these 4,496 cases, 2,243 (approximately one-half) received benefits for four months out of twelve, and therefore would have lost one month of benefits because of the Ordinance.

3. A significant number, but not all of the affected population, will find work in three months. Many explanations were offered during the trial to account for the affected recipients' inability to find work and to estimate the percentages of those who would find work.

The reasons given for inability to find work include the poor state of the economy; intense competition for jobs, especially at the unskilled and semi-skilled levels; poor work histories on the part of the GR applicants; barriers to employment among the GR applicants (i.e., homelessness, no transportation or telephone, etc.); and lack of motivation to find work.

Regrettably, definitive statistical data is lacking in these areas. The most that can be said concerning percentages is that less than half of the GR recipients impacted by the Ordinance will find work, and somewhere in the

range of 10% to 20% will retain their jobs for the remaining nine months in a year.

4. Those who do not find work will have to rely on family, friends, and non-profit community resources for support. Currently, non-profit community resources would be unable to provide services to all such impacted recipients. The evidence presented as to the extent of the deficiency was inconclusive. It is expected, however, that at least some will become homeless.

C. Public Considerations Regarding the Ordinance:

1. Over the past thirty years, a cycle of welfare dependency has developed. Persuasive expert testimony presented at the trial establishes such dependency is detrimental to the public at large and to the individual recipients. Such dependency demeans dignity and self-respect and depletes limited public fiscal resources. Accordingly, current welfare policies are being examined in order to find ways to break the cycle of dependency.

2. The Ordinance is consistent with sound public policy considerations, though this was not the reason it was adopted. The Ordinance continues to recognize society's interest in providing assistance to its needy residents, but its time limitations serve to reduce welfare dependency by

motivating GR recipients to return to work. This, in turn, fosters self-respect and dignity.

D. Fiscal Considerations:

1. Adoption of the Ordinance was precipitated and driven by fiscal considerations. In November of 1991, the County identified a $15.6 million deficit in its 1991-92 budget. By December, 1991, the County identified an additional $15 - $25 million shortfall in general revenues.

In response to this crisis, the County implemented a budget management strategy that included hiring freezes, voluntary time off (VTO) programs for employees, cuts in travel budgets, freezes in one-time expenditures, and some program cuts. While these efforts were successful, the fiscal crisis continues.[6]

2. The 1992-93 County budget is $1.93 billion. This is $26 million less than the expenditure level of the previous fiscal year and includes program cuts in all areas except the Sheriff and the Courts. From a program standpoint, $374 million is budgeted for public protection and $1.12 billion is budgeted for health and social services.

---

[6]One particularly telling indicia of this is the fact that investor services have placed San Diego county on "Credit Watch", a program which advises investors that the County has reduced flexibility in meeting its financial obligations and, therefore, has a higher risk of defaulting on its bonds.

Of the $1.93 billion, about 70% (or $1.35 billion) is derived from program revenues -- State and Federal subventions, grants, charges or fees earned as a result of operating specific programs. These revenues must be used for specific purposes, such as welfare grants, health, mental health and roads.

Approximately 29.95% (or $573.9 million) is derived from general purpose revenues -- property taxes, sales taxes, vehicle license fees, court fines and other miscellaneous sources. While these may be used for any purpose which is a legal expenditure of County funds, 28.4% of the 29.95% is dedicated to mandated programs, including general relief. Although the budget is $1.93 billion, the GR Program is funded from the $573.9 million general purpose revenue. Only about 1.6% of general purpose revenues is available to provide discretionary programs.

3. In the past decade, County revenues have not kept pace proportionately with increased expenses associated with population growth. In large part, this is because the County lost its major source of revenue raising capability in 1978 with the passage of Proposition 13.

Proposition 13 and AB 8, the enabling legislation enacted in 1979, have had a particularly

invidious fiscal impact on San Diego County. The County ranks among the lowest in California in terms of per capita annual receipts of general purpose revenue, and thus has less revenue for local programs than other counties. In County of San Diego v. Cory, Case Number 578681, the Court found AB 8 costs the County between $87 million to $94 million in revenues each year.

These factors, along with major reductions in funds from the State to help offset the cost of State mandated programs, have drastically reduced revenues available to the County to meet its expenses. As the gap between revenues and expenses has become more pronounced in the past three to five years, the County has been forced to make difficult fiscal decisions in order to maintain fiscal integrity and meet the many competing needs of its residents.

4. The County is required to operate with a balanced budget. To accomplish this in a time of fiscal crisis, as presently exists, the County has done the following.

(a) It has set priorities in all areas of public funding from health services to police protection to social services to criminal justice; it has also cut programs in virtually every County department.

& Institutions Code Sections 10000 and 17000, et seq?

3. For the Ordinance to be lawful, must the County establish that all recipients impacted by the Ordinance will find employment and remain employed during the nine months they are ineligible for benefits?

4. Under what circumstances do financial constraints relieve a County of its mandatory obligation to provide General Relief benefits?

5. Have such circumstances been met in this case?

IV

Factual Findings

Based on the evidence presented at trial, the evidence preponderates as follows:

A. The Ordinance:

1. San Diego Administrative Code Section 257.2, (hereinafter referred to as the Ordinance), was adopted on January 14, 1992, and applies only to employable GR recipients. Had it been implemented, it would have applied retrospectively from that date, and would have limited employable GR recipients to three months of benefits out of twelve months. Statistics from 1991 are useful in determining the approximate number of recipients who would be impacted by this Ordinance, recognizing that in 1992 the number of employable GR recipients per

(b) It has implemented various actions to save money including hiring freezes, VTO programs and deferred maintenance.

(c) It has established a policy of regularly conducting program audits in all departments, designed to identify inefficiency and promote cost savings techniques.

(d) In accordance with SB 2557, the County has raised new revenues by establishing a property tax administration fee, a booking fee, and a business license fee.[7]

(e) It has instituted lawsuits aimed at increasing County revenues, i.e., the County of San Diego v. Cory litigation challenging AB 8 allocations.

(f) It has required special assessment districts to return money contributed in the past from the General Fund to the General Fund, except in those areas where restrictions apply, such as the Airport Enterprise Fund and the Solid Waste Enterprise Fund.

This strategy is appropriate and reasonable.

5. If the Ordinance is implemented, it will save the

---

[7]The County declined to establish a utility user fee, believing that it was improper to charge a fee to residents in the unincorporated areas and use those fees for services throughout the County.

County approximately $4.7 million to $5.2 million each year. While such a savings represents less than 1% of the County's $1.93 billion budget, in a time of fiscal crisis, such savings take on added significance.

6. If the Ordinance is not implemented, the County will have to further reduce expenditures in other programs. Although it can be argued that revenues can be found from other sources, this is not realistic or reasonable. Such resources would have to come by further scaling back programs which are of critical importance to the overall health, safety and welfare of this County.

V

Analysis

It is well settled, and the defendants do not dispute, this County has a mandatory duty to support indigent residents and a resident may not be denied eligibility in the General Relief Program merely because the resident is employable. Such an exclusion was stricken down by our Supreme Court in 1971 in Mooney v. Pickett 4 Cal.3d 669, and is binding on this Court.

Further, the parties agree that a county has broad discretion "to determine eligibility for, the type and amount of, and conditions to be attached to indigent relief." (Welfare & Institutions Code §17001 et seq, County of Los Angeles v. Department of Social Welfare (1953) 41 Cal.2d 455, 458.) In

exercising such discretion, the regulation must be consistent with the statute and reasonably necessary to effectuate its purpose. See Government Code Section 11374 and Robbins v. Superior Court (1985) 38 Cal.3d 199, 211.

Welfare and Institutions Code Section 10000 sets forth the purpose of all public social services, including General Relief: "to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all the people of the state by providing appropriate aid and services to all of its needy and distressed." Such aid must also be administered "humanely". The section further declares that it is the legislature's specific intent that "all aid shall be so administered and service so provided as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society."

To date, California courts have not specifically determined the issue presently pending before this Court: Whether a county may properly limit the time period that an employable GR recipient is entitled to benefits.

Plaintiffs argue that the time limitations imposed by Section 257.2 are prohibited, and represent an impermissible attempt by the County to amend a state statute. Factually, Plaintiffs contend that while employable GR recipients want to find work, they cannot. Thus, they urge the County Ordinance violates that part of Welfare & Institutions Code §17000 which requires that aid be provided to "all" indigent.

By contrast, Defendants argue such time limitations are proper. They assert applicable statutes do not impose an

obligation to provide GR benefits forever to employable recipients, and that the Ordinance is rooted in sound public policy, consistent with the purpose of Section 17000. They also contend because of enormous financial constraints, the County is excused from providing GR benefits to "all" indigent indefinitely.

The Ordinance in question does not exclude employable recipients from participation in the General Relief Program. Rather, it limits the time period the recipient will be given benefits. In the abstract, the Ordinance is consistent with applicable statutes and the stated purpose of those statutes. Aid is provided to needy residents of the County (Welfare & Institutions Code §17000), the monthly grant is reasonable (Welfare & Institutions Code §170001), the three-month time limitation is not inherently inhumane and it encourages self-reliance (Welfare & Institutions Code §10000).

As set forth in the evidentiary findings, because the Ordinance will serve to motivate recipients to find work, the impact of the statute is laudable and premised on sound public policy. Moreover, it has been established the Ordinance will tend to reduce welfare dependency, thereby enhancing a statutory scheme that is meant to promote self-respect and a desire to become a useful member of society.

If, factually, all of the affected recipients reasonably could be expected to find work in three months, the analysis could end and the Ordinance declared lawful. However, the evidence has shown that this will not occur, even among those recipients who have been diligent in their efforts to find work.

Therefore, it must be determined whether an Ordinance, which results in the denial of benefits for nine months out of twelve for otherwise eligible recipients, is allowable.

Because Section 17000 requires aid to all needy residents and the impact of the Ordinance runs contrary to the statute's unambiguous language to provide aid to all needy residents, it would appear that the Ordinance is unlawful. However, as the County points out, financial considerations can operate as a defense.

Historically, courts have rejected budgetary constraints as a justification for regulations which run contrary to Sections 10000 and 17000. Reasoning that counties have the ability to raise new revenues or adjust budgets without harming the public, the courts have concluded that financial resources are available and must be used to fund mandated programs. (See Mooney v. Pickett, supra, and Robbins v. Superior Court, supra.)

Implicit in these findings, however, is the suggestion that under proper circumstances (i.e., public harm), fiscal constraints can serve as a defense. With the decline in county revenues precipitated by Proposition 13, the overall poor state of the economy, the shift of funding responsibilities from the State to the counties, and the widening of the gap between revenues and expenses, this defense has received growing recognition.

In Board of Supervisors v. McMahon (1990) 219 Cal.App.3d 286, and in our own appellate court's slip opinion, the defense of fiscal impossibility was recognized. What remains unclear are the requirements of a fiscal impossibility defense.

Plaintiffs urge that where money is available from any source, impossibility is not a defense. By contrast, Defendants contend the standard is one of money being reasonably available without harming the public.

The evidence in this case has shown that the savings anticipated from implementation of this Ordinance could be funded by cutting other programs. But such an approach is theoretical and ignores the impact of such cuts. Even in times of fiscal stability setting priorities among competing needs is difficult. But during fiscal crisis, the task becomes monumental. In the words of our Appellate Court in its slip opinion, "the indefinite continued expenditure of public funds, when the public does not have the funds, might constitute ponderable damages of a sort that outweigh individual deprivation to a small group of people."

Thus, in this Court's opinion, the defense of fiscal impossibility is one premised on reasonableness: money must be available from other sources without violating the law or causing substantial harm to programs of equal importance and significance to the overall health, welfare, and safety of this County and its residents.

Applying that criteria, it becomes a factual question as to whether the County in this case has presented sufficient evidence to prove the fiscal impossibility defense. As noted in the factual findings, that defense has been established. Succinctly stated, the evidence shows the County is facing a fiscal crisis; extraordinary efforts have been made and must be continued to save revenues in all areas and money cannot be

taken from other programs without manifestly injuring the health, safety, and welfare of this County.

Accordingly, the Court finds that the Ordinance is lawful, the County having established the defense of fiscal impossibility. The County is, therefore, entitled to a verdict in its favor. However, because this decision turns on fiscal impossibility, this Court believes it appropriate to, and therefore retains jurisdiction to review this matter in September 1993 to determine whether conditions continue to exist to warrant ongoing implementation of the Ordinance.

DATED: 9/1/92

JUDITH L. HALLER
Judge of the Superior Court