Welfare Benefits Termination
Administrative Due Process Hearing Requirements

40/1868

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Honorable Laurence E. Connoly, Jr.
State Representative
District 21
State House
Augusta, Maine 04333

Re: L.D. 1868; Requirements for Written Notice and Opportunity for Hearing Prior to the Termination, Reduction, or Suspension of General Assistance Benefits.

Dear Representative Connoly:

You have requested an opinion as to whether or not general assistance recipients are entitled to written notice and opportunity for hearing prior to the termination, reduction or suspension of general assistance benefits under the due process clause.
The United States Supreme Court has held that due process requires a hearing prior to the termination or suspension of welfare benefits. Goldberg v. Kelly, 397 U.S. 254 (1970). The Court characterized welfare benefits as a matter of statutory entitlement for persons qualified to receive them and held that the,

> ...termination of aid pending resolution of the controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely effects his ability to seek redress from the welfare bureaucracy. 397 U.S. at 264.

The issue raised in your request for an opinion concerning the necessity for a hearing prior to a reduction in general assistance benefits was not decided by the Court in Goldberg. That issue was raised during the same term of the Court in Daniel v. Goliday, 398 U.S. 73 (1970). While the Court noted that Goldberg applied only to the termination or suspension of welfare benefits, it remanded the case to the District Court for a decision as to whether or not a reduction in welfare benefits could be carried out without a prior hearing in view of its decision in Goldberg. While the Supreme Court has not yet decided this issue, it has been addressed in several federal court decisions subsequent to the decision in Daniel. In Merriweather v. Burson, 325 F.Supp. 1709 (N.D. Ga. 1970) the court held that reductions in welfare benefits should be analyzed in relationship to the impact of the reduction upon the recipient. If the proposed reduction was found to be of such a magnitude or significance that it would place the recipient in an immediately desperate situation i.e. similar to the situation described in Goldberg as a result of the termination, a hearing would be necessary prior to the reduction. It is the opinion of this office that the Constitution requires that a hearing be held prior to a reduction in general assistance benefits whenever the reduction would have the effect of placing the recipient in an immediately desperate situation. We, of course, recognize that such a determination of fact may not be easily made and that due process may require that a recipient be entitled to a hearing prior to the reduction in order to determine this issue. Our current general assistance law, 22 M.R.S.A. §4506, which L.D. 1868 would repeal, avoids these difficulties by providing for pre-reduction hearings.

The decision in Goldberg clearly provides for a hearing prior to termination or suspension of welfare benefits to which one is statutorily entitled. We must consider the nature of the general assistance program which L.D. 1868 establishes in order to determine when the requirements of Goldberg become operative. L.D. 1868 appears to mandate an overhaul of the character of the general assistance program as it is operated in Maine. Specific reference is made to proposed §4450(2) which defines the general assistance program as one which "...provides a specific amount and type of aid for defined needs during a limited period of time and is not intended to be a continuing 'grant-in-aid' or 'categorical' welfare program." Apparently the purpose

of defining the general assistance program is to avoid having it characterized as one of continuing aid as the Court did in Dupler v. City of Portland, 421 F.Supp. 1314 (D.C. Me. 1976), thereby avoiding the requirements of Goldberg for every termination of general assistance.

If, as §4450(a) of L.D. 1868 suggests, the intent of the Legislature is to change the character of the general assistance program from one in which aid is furnished on a continuing or on going basis to one in which specific limited periods of eligibility are established, the Constitution would not require a notice of termination or pretermination hearing at the end of the specific statutory period of entitlement. See Harrell v. Harder, 369 F.Supp. 810, 822 (D.C. Conn. 1974) and 45 C.F.R. §205.10(a)(4)(ii)(I). The rationale behind this approach is that the applicant is notified at the outset as to the time and conditions under which termination will become effective. Nevertheless, due process does require notice and a hearing prior to termination or suspension during the course of even a limited period of entitlement.

It is the opinion of this office that L.D. 1868 by failing to provide for a hearing prior to termination or suspension of general assistance benefits during the limited period of entitlement it purports to establish is unconstitutional.

Very truly yours,

Joseph E. Brennan

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