PUBLIC WELFARE "WIN" PROGRAM: ARM-TWISTING INCENTIVES

Congress has recently enacted a wide range of public welfare changes in title II of the Social Security Amendments of 1967.[1] The federal social security program has provided grants-in-aid for the partial financing of welfare relief for specific categories of disadvantaged persons.[2] One of these categories is Aid to Families with Dependent Children (AFDC).[3] AFDC has been most prominently amended in the new changes by the creation of the Work Incentive Program (WIN).[4] This program requires that appropriate AFDC recipients who are at least sixteen years old be referred to the Secretary of Labor for participation in employment, or in job training.[5] Refusal to participate without good cause results in removal from AFDC rolls.[6] WIN is heralded by its draftsmen as an opportunity to give participants "a sense of dignity, self worth, and confidence which will flow from being recognized as a wage-earning member of society. . . ."[7] Although the goal is desirable, this Comment will demonstrate that the compulsory nature of the program and its complex structure make its achievement doubtful.

I. Background of WIN

The WIN program's predecessor was the AFDC-UP community work and training program, created by the 1961[8] and 1962[9] amend-

---

[1] Act of Jan. 2, 1968, Pub. L. No. 90-248, tit. II, 81 Stat. 877, *amending* 42 U.S.C. §§ 601-1396 (1964) (codified at 42 U.S.C. §§ 601-1396 (Supp. III, 1968)).

[2] Grants-in-aid programs probably serve as the major form of welfare relief today. They are financed by both federal and state governments. *See* Wedemeyer & Moore, *The American Welfare System*, 54 Calif. L. Rev. 326, 327-29, 333 (1966).

[3] 42 U.S.C. §§ 601-610 (Supp. III, 1968). Dependent children are those who are "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent . . . ." 42 U.S.C. § 606(a)(1) (Supp. III, 1968). The children must be living with a parent or relative. *Id.*

[4] *See* 42 U.S.C. §§ 602(a)(19), 630-644 (Supp. III, 1968). WIN is perhaps the most controversial of the 1967 Amendments. *See Hearings on H.R. 12080 Before the Senate Finance Comm.*, 90th Cong., 1st Sess., pt. 2, at 781 (1967) (testimony of the late Senator Robert F. Kennedy); *id.* pt. 3, at 1776-79 (testimony of Professor Edward V. Sparer).

[5] *See* 42 U.S.C. §§ 602(a)(19)(A), 632(b) (Supp. III, 1968).

[6] 42 U.S.C. § 602(a)(19)(F) (Supp. III, 1968).

[7] *Id.* § 630. It is also expected that "the example of a working adult in [AFDC] families will have beneficial effects on the children in such families." *Id.*

[8] Act of May 8, 1961, Pub. L. No. 87-31, 75 Stat. 75, *as amended*, 42 U.S.C. § 607 (Supp. III, 1968). Federal aid to the states under the new program was optional. To avail themselves of it, the states had to meet extra requirements in the plan they submitted for federal approval. *Id.*

[9] Public Welfare Amendments of 1962, Pub. L. No. 87-543, §§ 104(a)(3)(E), 131(a), 134, 76 Stat. 185, 193, 196, *as amended*, 42 U.S.C. § 607 (Supp. III, 1968).

ments to the Social Security Act.[10] The AFDC program had previously been limited to supplying funds to children deprived of parental support because of the absence or incapacity of a parent. The amendments extended it to homes in which the parent was present due to unemployment. However, receipt of such relief was conditioned on acceptance by the parent of any available employment or job training. At the same time, provision was made for the incorporation of community work and training programs for the new unemployed recipients into the AFDC program.[11]

Writing in 1966, Margaret K. Rosenheim concluded that the range of employment and training opportunities offered to AFDC-UP recipients was unsatisfactory.[12] Although some attempts were made by the statute to ensure that the work would be useful,[13] Rosenheim argues that in practice the overall policy was aimed more toward punishing the idle than toward making a serious attempt at the economic rehabilitation of welfare recipients:

> A review of various work and training programs designed for assistance recipients identifies features more readily explained as reflections of dislike of idleness than of the unique requirements of the population in the recipient status.[14]

Instead of motivating recipients to work by supplying them with sufficient and immediate financial incentives, as well as work or training that would tend to have a beneficial effect on their long term employment prospects, the old AFDC-UP program limited itself to bludgeoning recipients into work of dubious utility by threatening the withdrawal of payments.

The principal fault in the old AFDC program was its almost total failure to provide work incentives. The only substantial income the state agency was obliged to disregard when it determined the need of AFDC recipients was the $150 per month of the earned income of a child under the age of 18. Since there might be several children in one home, a limit of $150 per month per home was placed on the

---

[10] These programs did not represent the introduction of work requirements to welfare programs in the United States. Many states provide for employment of paupers in their general assistance codes or in their aid to dependent children statutes. *See e.g.*, CONN. GEN. STAT. REV. § 17-281a (1968); IND. ANN. STAT. § 52-152 (1964); MICH. COMP. LAWS § 400.55a(d) (1967); PA. STAT. ANN. tit. 62, § 405 (1968). For a discussion of some historical work requirements, see tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 16 STAN. L. REV. 257, 258-91 (1964).

[11] Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 105(a), 76 Stat. 186.

[12] *See* Rosenheim, *Vagrancy Concepts in Welfare Law*, 54 CALIF. L. REV. 511, 531-41 (1966).

[13] Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 105(a), 76 Stat. 186.

[14] Rosenheim, *supra* note 12, at 541.

amount that could be disregarded in this manner.[15] In addition, the state agency was permitted to disregard five dollars per month per recipient, as well as any part of the income of the home that was being set aside for future needs of the dependent child.[16] Therefore, under this policy, if an unemployed recipient found work, whatever he gained from his earnings, he lost in a corresponding reduction of AFDC benefits (except in the case of a dependent child). His only incentive to work was the threat to withdraw payments if he refused to do so. Similarly, the creation of AFDC community work and training programs in 1962 neglected to supply an affirmative incentive for recipients to engage in such programs.[17]

The Work Incentive Program was intended to remedy the almost total failure of the old AFDC program to provide work incentives. However, the title of the program may have included the word incentive a little too freely, for it will eventually be demonstrated that WIN, in very subtle ways, compels AFDC recipients to work, or train for work, more than it provides incentives to do so.

II. Operation of the WIN Program

As part of the state plan (which must be submitted for federal approval) the 1968 amendment creating the WIN program requires a provision that the state agency promptly refer AFDC recipients to the representative of the Secretary of Labor for participation in a WIN program, if they think the recipient is "appropriate." [18] They are then screened for placement into one of three programs provided for by the statute.[19] Enrollees are placed in the highest level program (or "priority," as the *Labor Handbook* refers to it) for which they are suited. The three programs are (1) employment or on-the-job training; (2) for less advanced recipients, "a program of institutional and work experience training" designed to prepare participants for regular employment; and (3) "a program of special work projects for individuals for whom a job in the regular economy cannot be found." [20]

Before describing these programs and the incentives accompanying them, it should be noted, that while a new incentive system has been instituted, the old negative incentive of withdrawal of payments for refusal to participate in the programs has been retained, although

---

[15] 42 U.S.C. § 602(a)(7) (Supp. II, 1967), *as amended,* 42 U.S.C. § 602(a)(7) (Supp. III, 1968).

[16] *Id.*

[17] Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 105, 76 Stat. 186.

[18] 42 U.S.C. § 602(a)(19) (Supp. III, 1968).

[19] 42 U.S.C. § 632(b) (Supp. III, 1968).

[20] *Id.*

in a milder form. Under the old AFDC-UP program, refusal by the unemployed parent to accept employment or retraining necessitated denial of AFDC payments to the child. Thus the child might be denied aid through no fault of his own.[21] Under the new law, if any recipient refuses to participate in a WIN program, his needs may not be taken into account in making the determination with regard to the home of which he is a member.[22] Thus, while other members of the home are still indirectly penalized, no recipients are directly denied relief through the fault of others.

The first program provides for placement in employment or on-the-job training. Not many enrollees are likely to find their way into this program immediately. To be placed immediately into employment, it must be "definitely established that the enrollee is able to get and hold a job."[23] For on-the-job training, the enrollee must have the following requisites: "(1) Good basic work habits. (2) A functional educational level (at least basic education) necessary to understand training. (3) Familiarity with the occupational area."[24] The incentive provided for participants in the first priority is an earnings exemption in computing AFDC need of the first thirty dollars and one-third of the remainder of each month's wages.[25] The senate report pointed out that title VII of the Economic Opportunity Act provided for disregarding the first eighty-five dollars a month and one-half of the remainder for the purposes of public assistance under the first three titles of that Act.[26] The version which passed the Senate would have permitted disregarding the first fifty dollars per month and one-half of the remainder, but this was abandoned in conference.[27]

The *Labor Handbook* distinguishes various types of training within the second priority, including work internship, institutional vocational training, sub-professional training, and work experience.[28]

---

[21] Act of May 8, 1961, Pub. L. No. 87-31, 75 Stat. 76, *as amended*, 42 U.S.C. § 607 (Supp. III, 1968); Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 134, 76 Stat. 196, *as amended*, 42 U.S.C. § 607 (Supp. III, 1968); *see* Rosenheim, *supra* note 12, at 532.

[22] 42 U.S.C. § 607(19)(F) (Supp. III, 1968).

[23] Manpower Admin., U.S. Dep't of Labor, Work Incentive Program Handbook § 511G(1)(b) (July 25, 1968) [hereinafter cited as LABOR HANDBOOK].

[24] LABOR HANDBOOK § 514 1(C). The existence of this program suggests that the legislators assumed that there would be some recipients unemployed merely because of their reluctance to work. An alternative explanation for their unemployment might be discrimination by employers. § 534(B)(2)(a) of the LABOR HANDBOOK forbids discrimination in the administration of the WIN program, and § 416 provides a grievance procedure for complaints (about discrimination among other things) "within the power of the WIN sponsor to change." Nevertheless the legislation does not reach discriminatory hiring practices in general on the part of employers.

[25] 42 U.S.C. § 602(a)(8)(A)(II) (Supp. III, 1968); LABOR HANDBOOK § 407(C).

[26] S. REP. No. 744, 90th Cong., 1st Sess., reprinted in U.S. CODE CONG. & AD. NEWS 2834, 2994 (1967).

[27] *Id.* at 2995.

[28] LABOR HANDBOOK §§ 514.2-.5.

In addition to their regular welfare payments, participants in these programs receive an incentive payment of thirty dollars per month.[29] The senate report unsuccessfully suggested incentive payments of twenty dollars per week,[30] which, in addition to ten dollars per week expenses, is the rate for participants in the Manpower Development and Training Act's institutional training program.[31]

Although the special work projects under the third priority are considered the least desirable alternative, they could also produce innovative methods for helping the hard-core unemployed. These special work projects are to provide low-skilled or unskilled jobs which serve a public purpose, and at the same time, do not displace workers in the regular economy.[32] Recipients with marketable skills, but for whom suitable employment cannot be found in the regular economy, are temporarily enrolled in this program.[33] Indefinite enrollment exists for those who, because of physical impairment or mental incapacity, for example, cannot benefit from training programs.[34] Every six months the employment situation of all project employees is reviewed for the purpose of transferring as many employees as possible to other WIN programs.[35] The incentive provided under the third priority is a total income of at least the amount of the welfare grant to which the project participant's family has been entitled, plus twenty per cent of the wages paid by the employer.[36] Participants receive a wage from their employer instead of a welfare grant,[37] the statute guaranteeing it be at the minimum wage rate required by law, if applicable to their jobs.[38]

It should be noted that Labor Department regulations demand that referral agencies be able to produce an "objective justification" for

---

[29] 42 U.S.C. § 634 (Supp. III, 1968).

[30] S. REP. No. 744, 90th Cong., 1st Sess., reprinted in U.S. CODE CONG. & AD. NEWS 2834, 2985 (1967).

[31] LABOR HANDBOOK § 514.3(D).

[32] LABOR HANDBOOK § 514.6.

[33] 42 U.S.C. § 633(h) (Supp. III, 1968).

[34] LABOR HANDBOOK § 514.6(C)(1).

[35] 42 U.S.C. § 633(h) (Supp. III, 1968).

[36] 42 U.S.C. § 602(a)(19)(E) (Supp. III, 1968).

[37] Legislative history suggests Congress believed the wage form of payment would contribute significantly toward helping participants acquire a sense of dignity and self-worth. This wage is subject to income, social security, and other taxes. S. REP. No. 744, 90th Cong., 1st Sess., reprinted in U.S. CODE CONG. & AD. NEWS 2834, 2994-96 (1967).

[38] 42 U.S.C. § 633(e)(4) (Supp. III, 1968). Special work projects are developed by the Labor Department's Bureau of Work Training Programs through contracts with public agencies and private nonprofit agencies organized for a public purpose. *Id.* § 633(e). Each project contract is negotiated separately in order to obtain from each employer the wage payment which fairly represents the value of the participant's service to that employer. Where the value of the services the employer receives does not equal the employee's wage, state welfare monies make up the difference. *See id.* §§ 602(a)(19)(E), 633(e)(3).

placement of welfare recipients in the special work project program.[39] This requirement should be strictly applied, for although the special work project may provide a means of employing the supposed "unemployables," dead-end enrollment of the trainable or the skilled recipient will be just as debilitating as continued unemployment. Furthermore, this objective justification requirement should also be extended to require that the semi-annual evaluation justify any continued participation in this program. In this manner, dead-end enrollment could be spotted and terminated periodically.

A realistic analysis of the incentive program uncovers flaws in its logic. Even the incentives in the highest priority amount to no more than an exemption in computing AFDC need of the first thirty dollars plus one-third of the remainder of each month's wages.[40] This is far short of the minimal standards suggested in the senate report (that is, the first eighty-five dollars a month and one-half of the remainder—the sum used in computing public assistance in title VII of the Economic Opportunity Act).[41]

Complementing the hollow incentives within the program are the disturbing potentialities for coercion in the referral system. A thorough examination of this aspect reveals that the program could actually intimidate and compel recipients into working or training for work, rather than luring them into the job market. This could come about both overtly through the sanctions for refusal to participate,[42] and covertly by the myriad of regulations and the possibilities of caseworkers exercising subtle pressures upon recipients. Therefore, the combination of the sparse monetary incentives and the vexing potential for compulsion would appear to forecast a return to the poor laws that were frowned upon in western civilization centuries ago.[43]

Referral Process

As a prerequisite to receiving federal AFDC grants after July 1, 1969,[44] every state must have a welfare administration plan providing for the prompt referral of eligible individuals by local welfare agencies to the local state or Department of Labor employment office for enroll-

---

[39] LABOR HANDBOOK § 514.6.

[40] Text accompanying note 25.

[41] Text accompanying note 26.

[42] 42 U.S.C. § 602(a)(19)(F) (Supp. III, 1968).

[43] Before the 1935 Social Security Act, relief laws for the poor were direct descendants of the Elizabethan Poor Law of 1601, which contained work requirements for the poor and idle. 43 Eliz. 1, c. 2 (1601). For a discussion of early poor laws, see tenBroek, *supra* note 10.

[44] State AFDC plan requirements went into effect July 1, 1968, unless a state had a statute preventing compliance on that date; then the state was required to adopt a plan no later than July 1, 1969. Act of Jan. 2, 1968, Pub. L. No. 90-248, § 210(a)(2).

ment in a WIN program.[45] Those AFDC recipients who are not involuntarily referred by their local welfare agency may volunteer for referral unless the referring agency believes their employment would be inimical to their well-being or to that of their family.[46]

The operative factor in this referral process is the local welfare agency's determination of a recipient's eligibility for referral. The federal statute requires that state welfare agencies, under the guidance of the Department of Health, Education and Welfare (HEW), refer all individuals sixteen years of age or older who receive AFDC aid or who live with an AFDC recipient and whose needs are taken into account in determining the amount of the welfare payment, and all recipients who volunteer for referral.[47] The statute makes ineligible for referral those who are ill, incapacitated or advanced in age, live so far from a WIN program that they cannot effectively participate, attend school full time, or must remain in the home because of the illness or incapacity of another member of the household.[48] Once eligibility has been established, recipients are referred to WIN programs under a referral priority established by the HEW.[49] The welfare agency must first refer unemployed fathers receiving AFDC-UP assistance and AFDC unemployed fathers currently participating in a Community Work and Training Program or in a Work Experience and Training Program under title V of the Economic Opportunity Act.[50] Next in priority for referral are (1) other AFDC unemployed fathers, (2) AFDC mothers and other caretaker relatives who volunteer for referral and are currently participating in federally subsidized work training programs, (3) AFDC mothers and others who volunteer and who have no pre-school children, (4) AFDC mothers who volunteer and have pre-school children, and lastly (5) "any other AFDC recipients determined by the . . . Agency to be appropriate for referral. This includes mothers who do not volunteer whether or not they have pre-school children." [51]

The potential severity of the last referral group presents difficult problems. It should be noted, however, that HEW has instructed local welfare agencies, who are responsible for making child-care ar-

---

[45] LABOR HANDBOOK § 511.

[46] 42 U.S.C. § 602(a)(19)(A)(iii) (Supp. III, 1968).

[47] *Id.* § 602(a)(19)(A)(i)-(iii).

[48] *Id.* § 602(a)(19)(A)(iv)-(vii).

[49] HEW Interim Policy Issuance 1, Reg. A(2)(a), 33 Fed. Reg. 10026 (1968). HEW priorities have been adopted by the LABOR HANDBOOK § 406.

[50] LABOR HANDBOOK § 406. The Community Work and Training Program authorized by the Social Security Amendments of 1965 and the work-training program authorized by Title V of the Economic Opportunity Act will be phased out after a WIN program is established in a given locality. *Id.* § 407(D).

[51] LABOR HANDBOOK § 406.

rangements and for providing supportive social services to WIN participants, not to refer mothers of pre-school children unless a suitable child care plan is actually available. Despite this gesture of "concern," taking family members out of the house, and in the case of unwilling mothers, away from their children, could be disastrous to the family structure.[52] The removal of mothers from the home also undercuts an announced purpose of AFDC to "help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. . . ." [53]

In addition, the ability of the caseworker to influence the AFDC recipient presents potential danger that those mothers "volunteering" to work (thus falling in one of the middle three referral groups) may really be doing so involuntarily. When a caseworker decides that the AFDC mother should work, both formal and informal pressures can overwhelm her genuine reluctance to leave her children in the hands of the available day-care agency. Informally, the caseworker has great power over welfare recipients. The mother realizes the need to remain on welfare assistance, and knows this caseworker will make other decisions in the future that affect her standard of living. The mother must weigh her on-going relationship with the caseworker against the possibility that she might be able to remain at home by "going over his head." [54] This informal pressure to acquiesce in a determination of eligibility, or even to volunteer for referral, can be mitigated only if caseworkers give full consideration to the injurious effects of taking the mother away from pre-school children.

Some protection from the pressures of the caseworker is provided by the statutory provision that voluntary referral is not to be granted if the state agency determines that participation "would be inimical to the welfare of such person or the family." [55] This can serve as a guide by which welfare agency caseworkers can measure the appropriateness of a voluntary referral. Unfortunately, such a guide does not also exist for determining eligibility for involuntary referral. Its absence provides little assistance to caseworkers to consider all factors relevant to the particular individual in making the referral decision.

---

[52] *See Hearings on H.R. 12080 Before the Senate Finance Comm.*, 90th Cong., 1st Sess., pt. 3, at 1776-79 (1967) (testimony of Professor Sparer). The Senate attempted to exclude mothers of pre-school children and "persons whose participation in the program would not (as determined by the State agency) be in their best interest and in the interest of the program," S. REP. No. 744, 90th Cong., 1st Sess. 26 (1967); but the Conference Committee rejected this amendment. CONF. REP. No. 1030, 90th Cong., 1st Sess., reprinted in U.S. CODE CONG. & AD. NEWS 3179, 3204 (1967).

[53] 42 U.S.C. § 601 (Supp. III, 1968). WIN also seems to contradict the original goals of the 1935 Social Security Act, which attempted to keep families intact by having the mother remain at home with her children. *See* H.R. REP. No. 615, 74th Cong., 1st Sess. 10 (1935); S. REP. No. 628, 74th Cong., 1st Sess. 17 (1935).

[54] *See* Handler, *Controlling Official Behavior in Welfare Administration*, 54 CALIF. L. REV. 493-95 (1966).

[55] 42 U.S.C. § 602(a)(19)(A)(iii) (Supp. III, 1968).

It might be argued that the AFDC recipient who is coerced into volunteering for referral through pressures of the caseworker has the further protection that volunteer referral subjects can withdraw without the "good cause" required for withdrawal by involuntary participants [56] and without the fear of losing AFDC funds. However, the same subtle pressures that coerced someone into volunteering, can easily be a continual pressure on that person to stay within the program. Therefore, statutory relief is only illusory.

III. Review Procedures

Finally, the recipient who refuses to participate within the program must face the program's uncertain review procedures. The individual who refuses to participate in WIN is entitled to a fair hearing at two stages: the person referred to WIN can have a fair hearing with the welfare department as to the "appropriateness" of the referral and the "adequacy of child care facilities." [57] In addition, if after referral an individual refuses the position offered him, he is entitled to a fair hearing within the Labor Department on the issue of whether he had "good cause" for refusal to work.[58]

A. *Referral Hearing*

Neither the statute, the HEW Interim Policy Issuance regulations nor the WIN handbook set out referral procedures to be followed by state WIN plans. However, hearing requirements for other state-administered public assistance programs, as prescribed in the HEW *Handbook of Public Assistance Administration,* apparently are applicable to WIN referral hearings.[59]

Federal regulations require that the state welfare administration plans provide for notice to the referred claimant of his right to a referral hearing, that hearing procedures be publicized and made available to the claimant and that the claimant be given "a clear understanding of what he needs to do to prepare for an effective presentation of his case and to secure witnesses or legal counsel, if he desires." [60] A recent regulation requires state welfare agencies to provide counsel if requested.[61] (Formerly, federal funds were available to states which chose to provide legal assistance but the states were free to decide not to provide counsel and to forego federal cost sharing.) [62] In addition,

[56] *See id.* § 633(g).

[57] HEW Interim Policy Issuance 1, Reg. A(16), 33 Fed. Reg. 10027 (1968).

[58] 42 U.S.C. § 633(g) (Supp. III, 1968); HEW Interim Policy Issuance 1, Reg. A(17), 33 Fed. Reg. 10027 (1968).

[59] U.S. Dep't of Health, Education, and Welfare, Handbook of Public Assistance Administration, Pt. IV, Supp. B, § B-2472 [hereinafter cited as Federal Handbook].

[60] Federal Handbook, Pt. IV, § 6333.

[61] 33 Fed. Reg. 17853 (1968).

[62] Federal Handbook, Pt. IV, § 6335.

federal financial participation is authorized to help pay "other costs, expenditures, and fees reasonably related to the hearing." [63]

Although these general requirements of the hearing scheme which are set out in the *Federal Handbook* are meritorious, states can exercise wide discretion in implementing them. Thus the benefits of the notice requirement could be defeated if the state made notice either very general or too legalistic; in either case it would be of little use to the recipient. The state's plan is to insure the claimant's right to confront and cross-examine those who seek to uphold his referral; [64] but unless the members of the welfare agency who make the decision of referral to WIN are required to appear at the welfare hearing, the claimant will have no opportunity to refute their statements by cross-examination.

Other difficulties also exist. To insure his protection, "non-record or confidential information which the claimant does not have an opportunity to hear or see may not be made a part of the hearing or used in making a decision on the case." [65] This may result in the claimant's inability to see his entire case record when it contains statements favorable to him. Another problem is that recipients, fearing reprisals by caseworkers, may decide not to challenge the referral at all. Also, the agency making the referral is the hearing body which passes on the appropriateness of referral. Problems arising from this combination of functions could best be solved by promulgation through regulations of a test for eligibility against which the agency's final determination could be reviewed.

B. *Refusal to Work Hearing*

The *Labor Handbook* contains comprehensive administrative procedures designed to ensure that the enrollee is afforded adequate opportunity to press his reasons for failure to satisfactorily participate in the WIN program. At the outset, the WIN counselor is encouraged to make every effort to resolve the case informally as the issues arise. To this end, the counselor is charged with the responsibility for explaining to the enrollee the benefits of participation and consequences of refusal, ascertaining the enrollee's true reasons for refusal to participate, and evaluating the reasons given in light of a possible good cause standard.[66] Following this determination, the

[63] *Id.* § 6400(2)(C). Such funds may be available to reimburse and transport claimant's witnesses who would otherwise be unavailable or reluctant to appear in claimant's behalf.

[64] *See* Willner v. Committee on Character & Fitness, 373 U.S. 96, 103 (1963):

> We have emphasized in recent years that procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood.

[65] FEDERAL HANDBOOK, pt. IV, § 6337.

[66] LABOR HANDBOOK § 412(F).

WIN staff member is required to submit a notice to the enrollee explaining his findings, and in the event of an adverse result, advise him of his rights to further review.[67] If the enrollee is dissatisfied he may, within seven days, request reconsideration from a determination review committee.[68] This committee is afforded wide discretion concerning the type and form of inquiry it may undertake, including the power to order a *de novo* review.[69] Notice of the committee's findings are then formally communicated to the enrollee who is advised that if he does not demand a "fair hearing" within ten days the decision will become final.[70]

If the enrollee requests the "fair hearing" it is conducted by an Unemployment Insurance referee, or other designated officer, in accord with the procedures and rules that are applicable to disputed unemployment insurance claims at the applicable state's first appeal level.[71] At this hearing the enrollee is provided an opportunity to air his case and employ counsel in his behalf, although WIN funds will not be provided for that purpose.[72] In the event of an adverse decision, the enrollee is provided one final appeal, if taken within ten days, to the regional director of the Bureau of Work Training Programs.[73] This is normally the final procedure available although the Secretary of Labor may on his own motion take over the case at any time, in which event his decision will be final and conclusive.[74]

The success of the WIN enrollee's case turns on his ability to establish "good cause." The *Labor Handbook* contains a list of suggested criteria which the individual should be able to assert as good cause.[75] Offered as examples of good cause for refusal of employment are such general categories as "detrimental effects to the economic welfare of the individual or to the family . . . to the family life of the

---

[67] *Id.* § 412(F)(1).

[68] *Id.* § 412(F)(2). The Determination Review Committee is a 3 member panel consisting of one "familiar with jobs and skill requirements and one familiar with the social and economic problems of WIN enrollees." Although not made a mandatory requirement, it is recommended that the third member should be a "representative of the poor," preferably one recommended by a local community action agency. *Id.* § 412(G).

[69] *Id.* § 412(G)(1).

[70] *Id.* §§ 412(G)(1), 412(H).

[71] *Id.* § 412(I)(1). For a comparison of the differing state procedures, *see* U.S. Dept. of Labor, Manpower Admin., Bur. of Employment Security, Comparison of State Unemployment Insurance Laws, BES No. U-141, Aug. 1967, at AT—7-8. *See also,* Larson & Murray, *The Development of Unemployment Insurance in the United States,* 8 VAND. L.R. 181 (1955).

[72] LABOR HANDBOOK § 412(G)(3)(c).

[73] *Id.* §§ 412(I)(4), 412(J).

[74] *Id.* § 412(K).

[75] *Id.* §§ 412(E)(1)(a)-(o).

individual . . . to the health or safety of the individual or to family members." [76] These rather vague criteria make it difficult for the claimant to challenge the agency determination. More certainty could be provided, however, if the records of previous hearings which clarify the scope of these general phrases were kept and made available.[77] State WIN proposals should also establish more effective criteria for "good cause." The work refusal case law that has been developed by the states may provide the additional assistance in establishing WIN criteria as to "good cause" refusal. Indeed, the *Federal Handbook of Public Assistance Administration* has urged development of such "good cause for refusal" criteria for Community Work and Training Programs based on the unemployment insurance model.[78]

After this hearing, termination of welfare assistance is postponed for sixty days while the state welfare agency provides intensive counseling in an effort to persuade the claimant to participate in the WIN program.[79] If the claimant accepts these counseling services, his needs during this period are computed in determining the family assistance payment. But if the claimant refuses to participate at the end of the period he is dropped from the family payment computation.[80] Certainly the loss of aid for refusing to work without good cause ought not to last indefinitely. The individual may become inappropriate for referral because of changed circumstances or may leave the home, or if the recipient agrees to participate, a renewal of payments should ensue.

IV. Conclusion

The increasing growth of AFDC rolls exerted a major influence on the House committee which drafted the 1967 Social Security Amendments. In an effort to limit this expanding financial burden the WIN program was devised to create a mandatory work situation for AFDC recipients so that they would be able to contribute to their

[76] *Id.* §§ 412(E)(1)(m)-(o).

[77] Cal. Welf. & Inst'ns Code § 10964 (West 1966). Recently a test case has been brought to compliance with the Federal Handbook, pt. IV, § 6200(c), which requires that state agencies "establish and maintain a method of informing, at least in summary form, all local agencies of all fair hearing decisions by the hearing authority, and the decisions . . . be accessible to the claimants, their representatives, and the public . . . ." Little v. Montgomery, No. 592396 (Cal. Super. Ct., San Francisco Co., filed June 29, 1968), 14 Welf. L. Bull. 7 (Sept. 1968).

[78] Federal Handbook pt. IV, § 3462.23.

[79] 42 U.S.C. § 602(a)(19)(F) (Supp. III, 1968).

[80] If the individual refusing to participate is the only dependent child receiving aid, all AFDC assistance terminates. If there is more than one dependent child, the refusing child's needs will not be taken into account; the same result obtains if the refusing individual is not an AFDC recipient. If, however, the refusal is by a "relative" receiving AFDC funds, assistance for the family continues in the form of vendor or protective payments or foster care during the 60-day counseling period and thereafter. 42 U.S.C. § 602(a)(19)(F)(i)-(iii) (Supp. III, 1968).

own support while simultaneously attempting to develop that sense of dignity which normally attends personal employment. Although such goals are commendable, the compulsive, non-incentive framework of the program, the potential for disturbing important family ties, and the difficulties in challenging agency determinations regarding eligibility, all serve to make fruition of these aims doubtful. It is imperative that these problems be tackled quickly and effectively if WIN is to contribute in a positive sense to welfare programs, and not lead this country back to a Elizabethan "poor law" environment.